

August 1, 2022

Mr. Raja Kumar
President
The Financial Action Task Force
2, Rue André Pascal
75775 Paris Cedex 16 FRANCE

Submitted via email: FATF.Publicconsultation@fatf-gafi.org

Re: Public Consultation on White Paper – Revisions to FATF Recommendation 25

Dear Mr. Raja Kumar:

On behalf of the Financial Accountability and Corporate Transparency (FACT) Coalition, we write to respond to the questions as identified in the public consultation white paper on revisions to Recommendation 25.

The FACT Coalition is a non-partisan alliance of more than 100 state, national, and international organizations in the United States working toward a fair tax system that addresses the challenges of a global economy and promoting policies that combat the harmful impacts of corrupt financial practices.¹ The FACT Coalition has likewise been central to the effort to establish and improve beneficial ownership transparency disclosures in the United States.

We have supported the improvements to disclosures that the Financial Action Task Force (FATF) has advanced regarding corporations, LLCs, and other entities under Recommendation 24. Relatedly, we see the increased requirements for transparency under consideration in Recommendation 25 as vital to curbing the secrecy currently available through other nodes of financial networks, especially trusts and other legal arrangements.

As such, we endorse the comments submitted by Open Ownership and Transparency International. We particularly support their recommendations, following, to further refine revisions under consideration for Recommendation 25.

- **Clarify the definition of “trusts” and “similar legal arrangements” (Q1):** Article 2 of the Hague Convention, while helpfully referred to by the FATF, falls short of an adequate definition of trusts – for instance, in failing to state that there can be more than one settlor, or in explicitly identifying that there can be multiple parties to a trust that are also legal entities. The definition should be

¹ Global Financial Integrity is a member of the FACT Coalition. For a full list of our members, see <https://thefactcoalition.org/about-us/coalition-members-and-supporters/>.

revised to reflect the tremendous flexibility and complexity that trusts and “similar legal arrangements” employ. Likewise, the term “similar legal arrangements” should be clarified to cover any arrangement in which there is a degree of separation between the beneficial owner and the legal owner of assets, similar to the definition provided by the European Commission; provided, however, that the definition should also reflect the possibility that any particular relevant party may represent multiple roles (i.e., as a trustee and one of several beneficiaries, etc.).

- **Be more inclusive in defining “sufficient links” that trigger reporting (Q1, Q2):** The current FATF revisions are currently too narrow to provide adequate transparency into trusts and legal arrangements. The definition of “sufficient link” should be broadened to include the following categories: (1) the trust being formed under the laws of a jurisdiction, (2) any party to the trust being resident in the jurisdiction (to include nominees or others who administer the trust), (3) any trust asset whether that be a bank account, real estate, legal entity formed or registered, or other asset in the jurisdiction, and (4) any service providers to the trust based in that jurisdiction.
- **Require that trustees, whether professional or unprofessional, hold information on all beneficiaries and classes of beneficiaries (Q4, Q6):** Record-keeping and maintenance – holding up-to-date, historical, and adequate information on all parties, assets, and activities of the trust – is a reasonable expectation of trustees, as trustees inherently have a fiduciary duty. These duties should include record-keeping and maintenance with respect to “objects of power,” which may be clarified to include discretionary beneficiaries, contingent beneficiaries, or other beneficiaries (or classes of beneficiaries) that may obtain such status as a result of trustee or similar discretion under trust or related arrangements.
- **Define “beneficial owner” in line with Recommendation 24, but provide specificity of how that definition applies in regard to specific roles in a legal arrangement (Q7, Q8):** A “beneficial owner” in a legal entity and legal arrangement is essentially the same: the natural person(s) who have ultimate effective ownership or control. How this applies to legal arrangements, however, could use further clarification from the FATF. The FATF should clarify that the following parties should be considered non-exclusive beneficial owners of a trust or legal arrangement: (1) settlors, (2) protectors, (3) trustees, (4) administrators (if different than the trustees), (5) beneficiaries (including, as may be identifiable discretionary beneficiaries or other objects of power – however defined – and identifiable classes of beneficiaries), or (6) any other natural person exercising effective ultimate control over the trust (including through a chain of ownership). The FATF should require indirect beneficial ownership (such as, due to ownership through a different legal entity or arrangement) to be identified and adequately recorded/reported, including by providing a chain of ownership. Information should also not be limited to beneficiaries that have the power to revoke the arrangement or who otherwise have the right to demand or direct distribution of assets. For example, this might ignore the possibility of beneficiaries that have other key governance or similar control rights with respect to the trust (or similar legal arrangement), or with respect to assets (including legal entities or arrangements) held by the trust or legal

arrangement. Any definition should take into account the extreme potential complexity and flexibility of trust (or similar arrangement) control structures, as well as the complexity of ownership with respect to trust assets (such as legal entities).

- **Incorporate an evidence-based argument in favor of central registries, as a means to ensure that adequate, accurate, and up-to-date information is available to competent authorities (Q13):** While the FATF has refrained from being prescriptive in its recommendations regarding which mechanisms would enable timely access by competent authorities, the drafters could still provide evidence and identify as *a best practice* as to what elements of the multi-pronged approach have been most successful in satisfying FATF standards. In this vein, revisions to this recommendation should reflect the best practices – in particular, the central registry approach – that are evident from the FATF’s own mutual evaluation reviews regarding Recommendation 24. A lack of centralized registry presents considerable challenges to ensuring adequate, accurate, and up-to-date information is available and useful to competent authorities or other potentially responsible parties for safeguarding financial systems. Further, FATF should clarify that central registry best practices would require identification and disclosure with respect to complex ownership structures (such as by clarifying that chain of ownership information should be collected, stored, and reported, and that competent users should have full access to any registry with respect to any beneficial owner or applicable trust or legal arrangement, as applicable).
- **Do not draft the standard in a way that solely relies on intermediaries to collect, store, and provide ownership information about trusts to the authorities, nor to be independently responsible for verifying the data (Q12, Q14, Q15, Q18, Q19, Q20):** It should be noted that in many jurisdictions, there is no obligation for trustees to disclose their status, as such, in engaging in certain relevant transactions. The FATF should clarify that it would be best practices to require trust identification in relevant transactions to further other FATF recommendations. Relying on agents and service providers to collect, store, and provide trust and similar legal arrangement ownership information creates a potential conflict of interest and could create unnecessary barriers to timely access to information by competent authorities. It further risks tipping off subjects to the investigation. The FATF should consider requiring or identifying as best practices that a central, competent authority collect, validate, and verify this information. Financial institutions and designated non-financial business professionals (DNFBPs), or “gatekeepers,” can play a complementary role to a central authority effort. FACT shares Open Ownership and Transparency International’s concerns about the challenges of ensuring adequate, up-to-date, and timely information in the absence of central registration for trusts and other similar arrangements.
- **Include recommendations to make information on trusts and legal arrangements public (Q19):** In alignment with FACT’s previous comments for Recommendation 24 regarding legal entities, the Coalition encourages the FATF to consider requirements to make beneficial ownership information of trusts and legal arrangements public, or at least accessible for other data users

responsible for combating financial crimes – including competent authorities, financial institutions, non-AML regulated businesses who engage with trusts, journalists, and civil society.

- **Consider how revisions to Recommendation 25 will impact Recommendation 10 (Q3):** Recommendation 10, governing customer due diligence requirements, already includes a definition of beneficial owner, and this definition may result in limited effectiveness of customer due diligence with respect to certain legal entities and arrangements or regarding ownership of particular assets – particularly, with respect to trusts (including in the United States). The FATF should evaluate the interaction between these standards and avoid problematic limitations that fail to recognize the complex and flexible nature of legal and beneficial ownership relationships, including for trusts and similar legal arrangements.
- **Provide additional guidance and training to non-trust law countries (Q3),** to improve the working understanding of how the Recommendation extends to and interacts with the practices in those jurisdictions.

Conclusion

Thank you for considering our views. For questions or comments, please contact Erica Hanichak (ehanichak@thefactcoalition.org).

Best,

Ian Gary
Executive Director

Erica Hanichak
Government Affairs Director

Ryan Gurule
Policy Director