Financial Action Task Force
Groupe d'action financière

UNITED STATES OF AMERICA

Report on Observance of Standards and Codes
FATF Recommendations for Anti-Money Laundering
and Combating the Financing of Terrorism

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REPORT ON OBSERVANCE OF STANDARDS AND CODES

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1. Background Information

1. This Report on the Observance of Standards and Codes for the *FATF 40 +9 Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism* was prepared by the Financial Action Task Force (FATF). This report provides a summary[1] of the AML/CFT measures in place in the United States (U.S.) as 5 May 2006 (shortly after the on-site visits). The report describes and analyses those measures and provides recommendations on how certain aspects of the system could be strengthened. The views expressed in this document are the views of the FATF, but do not necessarily reflect the views of the Boards of the IMF or World Bank.

2. The U.S. has significantly strengthened its overall AML/CFT measures since its last mutual evaluation (June 1997), implementing a very large number of statutory amendments and structural changes. The most high-profile development was the enactment of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act). The U.S. authorities are committed to identifying, disrupting, and dismantling money laundering and terrorist financing networks. They seek to combat money laundering and terrorist financing on all fronts, including by aggressively pursuing financial investigations. These efforts have produced impressive results in terms of prosecutions, convictions, seizures, asset freezing, confiscation and regulatory enforcement actions. Overall, the U.S. has implemented an effective AML/CFT system, although there are remaining concerns in relation to some of the specific requirements for undertaking customer due diligence, the availability of corporate ownership information, and the requirements applicable to certain designated non-financial businesses and professions (DNFBPs).

2. Legal System and Related Institutional Measures

3. Sections 1956 and 1957 of Title 18 of the United States Code criminalize four different types of money laundering: basic money laundering; international money laundering (where criminal proceeds are moved in or out of the U.S.); money laundering in the context of an undercover "sting" case (where the money being laundered has been represented by a law enforcement officer as being criminal proceeds); and knowingly spending greater than USD 10,000 in criminal proceeds. The U.S. has adopted a list approach to define the scope of predicate offenses. The list includes a wide range of predicate offenses in almost all of the 20 designated categories of offenses set out in the Glossary to the FATF 40 Recommendations. However, only 12 out of the 20 designated categories of offences are covered by U.S. law as predicate offenses for money laundering if they occurred in another country. Criminal sanctions for money laundering are effective and dissuasive (e.g. a fine of not more than USD 500,000 or twice the value of the property involved in the transaction and/or imprisonment for up to 20 years). The U.S. proactively investigates and prosecutes money laundering cases and has a record of successful prosecutions and convictions over a number of years. At the federal level, in fiscal year 2005, the U.S. convicted 1,075 defendants of 18 USC 1956/1957 money laundering violations. Additional money laundering convictions have been obtained at the state level. While there are a few deficiencies in the criminalization of money laundering, particularly in relation to the coverage of foreign predicate offences, this record demonstrates that the system is working effectively overall.

[1] A copy of the full Mutual Evaluation Report can be found on the FATF website: www.fatf-gafi.org.

4. Title 18 also creates four autonomous federal offenses which deal directly with financing of terrorism or terrorist organizations: providing material support for commission of certain terrorism related offenses; providing material support or resources to a designated foreign terrorist organization (FTO); providing or collecting terrorist funds; and concealing or disguising either material support to FTOs or funds used or to be used for terrorist acts. These offenses are each predicate offenses for money laundering. Additionally, violations of Executive Order 13224 (EO 13224) which prohibits, among other things, the contribution of funds to certain designated persons and organizations are de facto terrorist financing offenses. Together, these offenses cover all of the conduct required by the United Nations Convention for the Suppression of the Financing of Terrorism (1999). Penalties include fines and significant terms of imprisonment. The U.S. has convicted 54 persons of terrorist financing offenses and an additional 72 cases are pending.

5. The Bank Secrecy Act (BSA), which was substantially amended by the USA PATRIOT Act in 2001, provides the basis for most of the preventive measures applied to the financial sector and other businesses, as discussed in section 3 below.

6. The U.S. has parallel civil and criminal forfeiture systems, which provide for the forfeiture of both the instrumentalities and proceeds of crime. The combination of both confiscation proceedings provides for effective asset recovery. Administrative forfeiture can also be applied under certain conditions. Some enhancements could be made to an otherwise effective regime, including extending the range of predicate offenses and allowing for equivalent value pre-trial seizure. The U.S. has made a priority of the recovery of criminal assets and is systematically and vigorously pursuing seizure and confiscation. The amounts seized and forfeited are substantial, totaling USD 767.4 million in 2005.

7. Overall, the U.S. has built a solid and well-structured system aiming at effective implementation of the UN sanctions under S/RES/1267(1999) and S/RES/1373(2001). A designation under EO 13224 puts U.S. persons on notice that they are prohibited from having dealings with those specific persons, must block their assets and must report these actions to the Office of Foreign Assets Control (OFAC) which administers and enforces the EO 13224 sanctions and certain other terrorism-related programs targeting specific groups. However, while the obligation under S/RES/1267(1999) is to freeze the assets of those persons designated by the UN's 1267 Committee, the U.S. has not specifically included the individual Taliban names in EO 13224. Instead, it has simply designated the Taliban as an entity, whereby all individuals involved in that organization are deemed to be included. The implementation in this manner of the obligations resulting from S/RES/1267(1999) raises the question as to whether and to what extent a country can deviate from the text of a UN Security Council Resolution when implementing its obligations.

8. As of 19 August 2005, the U.S. had frozen/blocked a total of USD 281,372,910 of terrorist-related assets (including over USD 264,935,075 related to the Taliban). OFAC uses to good effect the powerful legal and structural means at its disposal to fulfill its mission with respect to specifically targeted terrorist groups. However, a real challenge lies in effecting compliance given the sheer number of persons and entities affected by the designations. Monitoring of compliance by the less or non-regulated sectors (such as DNFBPs) and the state-regulated industries is problematic, and will require further efforts.

9. The U.S. financial intelligence unit is the Financial Crimes Enforcement Network (FinCEN), located within Treasury. Created in 1990, it is one of the founding members of the Egmont Group. Overall, FinCEN substantially meets the requirements of Recommendation 26; however, there are a few issues that should be addressed to improve its effectiveness and strengthen its role in the AML/CFT chain. FinCEN receives a very large number of reports annually—over 14 million in 2004, including over 600,000 suspicious activity reports (SARs). About 30% of the reports are currently received electronically, and FinCEN is working towards increasing electronic filing substantially. At present, given the volume of reports received, FinCEN devotes its analytical resources to those SARs considered most valuable to law enforcement (in particular, those related to suspected terrorist financing activity). FinCEN provides broad and, in some circumstances, direct access to its databases by certain law

enforcement agencies, but this must be properly managed to maintain FinCEN's key role within the AML/CTF chain, including its analytical functions and ability to study ML/FT methods, trends and typologies. Additionally, because some agencies hold the position that they are better able to make their own analysis of BSA data, FinCEN should focus on the challenge of promoting the added-value of its analytical products to law enforcement. Although FinCEN provides various types of guidance and general feedback to domestic financial institutions and DNFBPs regarding the detection and reporting of suspicious activity, further efforts are required, given that the quality of SARs varies substantially from institution to institution. Additionally, FinCEN should ensure that terrorism-related information in requests from foreign FIUs is not shared with law enforcement without the prior authorization of the foreign FIU (in accordance with the international principles of information exchange established by the Egmont Group).

10. The U.S. has designated law enforcement authorities that have responsibility for ensuring that ML/FT offenses are properly investigated. These authorities have adequate powers, are producing good results and seem to be working effectively. Investigatory jurisdiction for the crime of money laundering rests by statute with the Department of Justice (which is the central authority for the investigation and prosecution of federal laws in the U.S., including the federal ML/FT offenses), the Treasury, the Department of Homeland Security, and the U.S. Postal Service. The FBI investigates money laundering relating to the many predicate crimes over which it has jurisdiction, while the DEA investigates money laundering specifically as it relates to the proceeds of drug trafficking. Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) focus on deterring, interdicting, and investigating ML/FT threats arising from the movement of people and goods into and out of the U.S. ICE investigates financial crime related to cross-border activities and in 2005 made 1,569 arrests for money laundering-related offences, 248 of which were for violation of 18 USC 1956/1957. The Internal Revenue Service Criminal Investigation (IRS-CI) has investigative jurisdiction for all money laundering crimes and for currency reporting violations under the BSA, except for those involving cross-border activities. IRS-CI conducts about 1,600 money laundering investigations each year. Additionally, many law enforcement agencies have units that specialize in investigating the proceeds of crime and are staffed with trained financial investigators. Numerous interagency working groups and task forces also specialize in ML/FT investigations, including the High Intensity Financial Crime Areas and the FBI-led multi-agency Joint Terrorism Task Forces. Law enforcement authorities have all of the normal search and seizure powers, as well as powers to use special investigative techniques such as wiretaps, controlled delivery, undercover techniques and Geographic Targeting Orders.

11. With respect to cross-border cash transfers, the U.S. has implemented a declaration and disclosure system that applies to incoming or outgoing physical transportations (by person, by container, or by mail) of cash and monetary instruments exceeding USD 10,000. The data collected on the declaration forms is maintained in a computerized database which is available to all competent authorities involved in AML/CFT enforcement (including FinCEN). These systems are enforced through intelligence-driven targeting, inbound and outbound surprise examinations, random checks and increased scrutiny of courier hubs. Persons who make false disclosures or declarations are subject to a wide range of criminal, civil and administrative sanctions, including seizure and forfeiture of the funds involved. Overall, these measures are working effectively. From 2001 through February 2005, ICE arrested more than 260 individuals and seized more than USD 107 million in relation to bulk cash smuggling violations.

3. Preventive Measures - Financial Institutions

12. Following the enactment of the USA PATRIOT Act in 2001, AML/CFT obligations have been extended across most of the key sectors of the U.S. financial services industry, which is very large, diverse and complex. The authorities have mostly applied a risk-based approach in determining which sectors should be subject to various AML requirements, and how covered financial institutions should apply their AML/CFT obligations. The vast majority of depository institutions are subject to the full range of BSA/AML requirements, including requirements to implement internal controls and procedures (the AML Program requirement), a Customer Identification Program (CIP), recordkeeping,

and reporting of suspicious activities. In the securities sector, brokers and futures commission merchants are subject to similar requirements, but investment advisers and commodity trading advisors (some of which, as asset managers, meet the FATF definition of a "financial institution") are not currently required to implement such measures. Life insurers (since May 2006) and money services businesses (MSBs) are required to establish AML Programs and file SARs, but are not subject to the CIP rules. There is no explicit federal requirement on insurance companies to verify the identity of each customer and form a reasonable belief that it knows the customer's true identity. Insurance agents and brokers are integrated into the AML Programs of their insurance company principals.

13. At the heart of the preventive measures is the requirement for financial institutions in the banking, securities, insurance and MSB sectors to establish AML Programs which must include, at a minimum: the development of internal policies, procedures and controls; the designation of a compliance officer; an ongoing employee training program; and, independent testing of BSA/AML compliance.

14. Overall, the U.S. regulations address in detail a substantial number of the FATF requirements on customer due diligence (CDD), but certain key elements of the FATF standards are not fully addressed by statute, although, in certain sectors, these elements are addressed by other enforceable means, such as the examination manual that has been developed by the Federal Banking Agencies. Covered entities in banking and securities sectors are required to implement a CIP, which must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practical, and must enable the financial institution to form a reasonable belief that it knows the true identity of each customer. Core identification information must be collected at the time the customer seeks to open the account and must be verified within a reasonable time (generally considered to be no more than 30 days) after the account is established. In addition, financial institutions must identify and verify the identity of occasional customers prior to undertaking large currency transactions, purchasing certain financial instruments, or ordering wire transfers. The CIP must include procedures for responding to circumstances in which the financial institution cannot form a reasonable belief that it knows the customer's true identity (e.g. closing the account, placing restrictions on an account's use while verification is being undertaken, etc.). The identification procedures do not necessarily apply retroactively to existing customers, but are expected to be applied on a risk-sensitive basis to such customers.

15. There is no explicit legal obligation to undertake ongoing due diligence in all cases. The U.S. authorities interpret the suspicious activity reporting obligations as necessarily requiring institutions to have policies and procedures in place to undertake ongoing due diligence generally. This is based on the fact that the SAR regulations require financial institutions to report any transaction that "is not the sort in which the particular customer would normally be expected to engage, and the bank knows of no reasonable explanation for the transaction after examining the available facts."

16. The CIP rules do not require a financial institution to look through a customer to establish the identity of the beneficial owners in all cases. A financial institution is required to look through a non-individual customer to individuals with authority or control over the account when the financial institution cannot verify the customer's true identity using standard verification methods. Explicit statutory requirements to identify the beneficial owner before or during the course of establishing a business relationship apply in relation to certain private banking accounts opened or maintained for a foreign person, and correspondent accounts provided to certain non-U.S. banks and other financial institutions. In addition to the general risk-based approach, financial institutions are required by regulation to apply ongoing monitoring to certain correspondent and private banking accounts. The obligation more generally to undertake ongoing monitoring of accounts is implicit within the suspicious activity reporting (SAR) requirements.

17. MSBs do not maintain what would typically be considered account relationships with their customers. The obligation to obtain and verify the customer's name and address is triggered when a

customer buys a monetary instrument involving currency in amounts of USD 3,000 to USD 10,000 inclusive, or makes a funds transfer of USD 3,000 or more.

18. Banks and securities firms are required by regulation to establish enhanced due diligence procedures with respect to private banking accounts valued at USD 1 million or more held by, or on behalf of, a non-U.S. person. Within this context they must also have procedures to identify politically exposed persons (PEPs), including ascertaining the identity of the nominal and beneficial owners of, and the source of the funds deposited into, the account. This rule does not apply to insurance companies and MSBs. The scope of the PEP requirement has been circumscribed by the narrow definition of private banking and the value threshold, but more general guidance, which was issued prior to this rule, remains in force and does not contain these limitations.

19. Covered financial institutions are required to apply enhanced due diligence when providing correspondent banking services for certain statutorily defined foreign banks. Such procedures must include taking reasonable steps to ascertain the identity of the foreign bank's owners, including the nature and extent of their individual ownership interests. Senior management must approve the overall enhanced due diligence procedures to be applied to correspondent accounts; however, there is no explicit requirement that the opening of individual correspondent accounts should involve senior management approval. Regulations prohibit the provision of correspondent banking services to foreign shell banks, either directly or indirectly through another foreign bank's account.

20. There are extensive BSA record-keeping requirements across most of the financial sector, but these are less complete for the insurance sector. With respect to wire transfers, the U.S. currently implements a USD 3,000 threshold for detailed record-keeping purposes. Above this level the ordering financial institution is required to obtain, verify and maintain the identity of the originator and obtain and maintain a record of the originator's name, address and account number. In the case of an established customer, financial institutions may rely on information obtained and recorded pursuant to customer identification and verification procedures required pursuant to account opening regulatory requirements. This originator information must be sent with the payment message in accordance with the "Travel Rule". Intermediary financial institutions must pass on as much of the originator information as is received with the payment message. Beneficiary financial institutions must implement risk-based procedures to handle wire transfers that are not accompanied by complete originator information. The U.S. currently does not comply with the FATF standards relating to the threshold level (now required to be USD 1,000) and batch transfers, although it should be noted that, under the interpretative note to Special Recommendation VII, countries have until then end of December 2006 to implement these measures.

21. Banks, securities firms, insurance companies and MSBs (except check cashers) are required to report suspicious transactions to FinCEN, which receives a very substantial number of such reports each year. In addition, a broad range of businesses and entities are required to report large cash transactions of USD 10,000 or more. Federal law provides protection from civil liability for all SAR reports made to the appropriate authorities, and "tipping off" is prohibited. However, the U.S has implemented a USD 5,000 threshold (USD 2,000 for MSBs) for mandatory reporting, which conflicts with the FATF standard that requires the reporting of all suspicious transactions, regardless of the amount. This impacts, in particular, the effectiveness of the reporting requirement with respect to terrorist financing-related transactions, as the importance of tracking relatively low-value transactions has been highlighted in this field. In addition, the SAR reporting requirement has not yet been extended to investment advisers and commodity trading advisors.

22. Countermeasures are available and have been applied by the U.S. with respect to foreign jurisdictions and entities. Such measures include designating jurisdictions of primary money laundering concern, and prohibiting the opening or maintaining of correspondent accounts with financial institutions in such jurisdictions. The U.S. uses a number of channels to advise financial institutions about concerns in the AML/CFT systems of other countries.

23. The U.S. has an extensive, but complex regulatory framework. FinCEN has core responsibility for administering the regulatory regime under the BSA, but it has formally delegated its authority to examine financial institutions for compliance with the BSA to eight federal functional and financial regulatory agencies. In certain cases, this authority has been further delegated to the self-regulatory authorities. Although some parts of the financial services sector are regulated for safety and soundness purposes at state level only, there has been no delegation of BSA compliance responsibilities to the state authorities. However, cooperation between federal and state authorities is generally close.

24. The Federal Banking Agencies have sought to standardize their BSA examination procedures, and in June 2005 published a common procedures manual, which also serves as extensive guidance to financial institutions. Examinations carried out by state banking agencies under the cooperative agreements with the federal authorities are also conducted in accordance with the common manual. Between 1 October 2004 and 30 September 2005, the Federal Banking Agencies and the IRS (with respect to its responsibilities for certain depository institutions) undertook a total of 10,409 BSA/AML examinations and put in place a total of 71 formal enforcement actions due to BSA violations. The securities regulators, who have not published their examination manual, undertook over 2,400 BSA examinations over the same period.

25. The insurance industry is subject to state rather than federal regulation for safety and soundness purposes, but responsibility for oversight of compliance with BSA requirements has been given to the IRS. At the time of the on-site visit, the IRS had not yet commenced its AML/CFT examination of the insurance sector, since insurers have been given until 2 May 2006 to implement the AML Programs requirement and begin filing SARs as required by the new final rules.

26. In the MSB sector, the U.S. has implemented a federal registration system. As of 5 April 2006, 24,884 MSBs had registered with FinCEN; however, a 1997 study estimated that up to 200,000 MSBs may be operating in the U.S. It should be noted that part of this number are not required to register. Identifying and tracing unregistered MSBs poses a major challenge to the authorities and will have significant resource implications for the IRS as the competent authority for this sector. Additionally, 46 states have MSB licensing requirements, but these are not uniform. It is a federal offense to operate a money transmitting business in contravention of any applicable state licensing requirements; to fail to register with FinCEN; or to transport or transmit funds that are known to have been derived from a criminal offense or intended to be used to promote or support unlawful activity. The IRS is responsible for ensuring that MSBs register with FinCEN and for conducting AML/CFT compliance examinations. The IRS has undertaken approximately 6,500 BSA compliance examinations (including 3,712 in 2005) across the range of businesses for which it is responsible, including MSBs. The level of compliance by some agents in certain geographical areas is relatively low, and the ability/willingness of some MSBs to expend resources on ensuring compliance is limited.

27. In general, the regulators have broad legal authority and adequate powers to supervise, conduct examinations, acquire information and conduct enforcement proceedings against financial institutions and their employees for AML compliance failures. There is clear evidence that these powers are used extensively and on a regular basis. While examination authority for BSA compliance has been delegated to the federal functional regulators, FinCEN applies directly its enforcement powers under the BSA. Additionally, the federal functional regulators have broad authority to impose concurrent and independent administrative sanctions against the financial institutions, for example, those found to be in violation of the AML Program requirement. Sanctions may be imposed against a partner, director, officer, or employee of a financial institution, as well as against the financial institution itself. The sanctions regime is wide-ranging in terms of the options available, and institutions that have been found to be deficient have faced severe financial penalties.

4. Preventive Measures – Designated Non-Financial Businesses and Professions (DNFBPs)

28. The application of AML requirements to DNFBPs is limited, but measures are being taken to expand their obligations.

29. Casinos are subject to the BSA requirements relating to suspicious activity and large cash transaction reporting, record keeping and the establishment of AML Programs (i.e. internal controls). These requirements apply to state-licensed casinos (both land-based and riverboat), tribal casinos and state-licensed and tribal card clubs. Gaming establishments with a gross annual revenue of USD 1 million or less do not fall within the BSA definition of "casino" and are, therefore, not subject to these requirements. Internet gaming is prohibited in the U.S.

30. State/territory-licensed casino gaming operations are found in fourteen jurisdictions, each of which has a gaming regulator. The state gaming commissions typically investigate the qualifications of each applicant seeking a gaming license, issue casino licenses, promulgate regulations (including relating to internal controls), investigate violations of these regulations, and initiate regulatory compliance actions against licensees.

31. Tribal gaming is present in 27 states across the U.S. Many tribal gaming commissions have been established to oversee tribal gaming and are typically semi-autonomous or independent agencies of tribal governments. Tribal governments are required to submit their gaming ordinances or resolutions as well as any management contracts for the operation of gaming activities to the National Indian Gaming Commission (NIGC) for approval. The NIGC is authorized to conduct background investigations of primary management officials and key employees of a gaming operation, conduct audits, review and approve tribal gaming ordinances and management contracts, promulgate federal regulations, investigate violations of these gaming regulations, and undertake enforcement actions (including the assessment of fines and issuance of closure orders).

32. Casinos are required to collect, verify and record the customer's name, address and social security number when there is: a deposit of funds, account opened or line of credit extended; a transaction for or through a customer's deposit or credit account; an extension of credit in excess of USD 2,500; an advice, request or instruction with respect to a transaction involving persons, accounts or places outside the U.S., regardless of residency; a transaction with a face value of USD 3,000 or more; and transmittals of funds in excess of USD 3,000. Casinos are required to obtain information on the purpose and intended nature of the business relationship, and conduct ongoing due diligence, when customers open credit or check cashing accounts. They are also required to retain copies of certain records for a period of five years, including customer identification records and any supporting documentation or business records in support of all SARs that are filed.

33. FinCEN has delegated examination responsibility to the IRS for state/territory licensed casino gaming operations as well as tribal casinos.2 Casinos are subject to civil and criminal penalties for violations of the BSA. The existing AML/CFT obligations appear to be implemented effectively in the casino sector, but the overall obligations with respect to CDD do not fully match those required of financial institutions.

34. Dealers in precious metals, stones or jewels were required to establish an AML Program (with generally the same elements as those required in the financial sectors) by 1 January 2006. Civil and criminal penalties are available for non-compliance. There are no obligations similar to those of the financial sector with respect to CDD measures, record keeping and suspicious transaction reporting. The IRS (which has been delegated examination authority for this sector) has indicated that it will commence AML compliance examination of dealers in precious metals, stones and jewels by mid-2006.

35. Accountants, lawyers, other legal professionals, real estate agents, and trust and company service providers (other than trust companies, which are subject to the same requirements as banks) are not currently subject to AML/CFT requirements (other than the large cash transaction reporting requirements).

[2] In the case of Nevada casinos, the IRS has examination responsibility for BSA compliance for Nevada casinos with between USD 1 million and USD 10 million in gross gaming revenues, examination responsibility for SAR compliance for all Nevada casinos, and backup examination authority for all Nevada casinos. FinCEN retains civil enforcement authority over all Nevada casinos.

5. Legal Persons and Arrangements & Non-Profit Organisations

36. The U.S. authorities rely primarily on an investigatory approach to satisfy the requirements for access to adequate, accurate and timely information on the beneficial ownership and control of legal persons in order to investigate money laundering. At both the federal and state level there is a range of investigatory powers available to law enforcement and certain regulators to compel the disclosure of ownership information. These are generally sound and widely used, but the system is only as good as the information that is available to be acquired. For those companies whose shares are not quoted on the exchanges (i.e. the vast majority of the 13 million active legal entities in the U.S.), the information available within the jurisdiction is often minimal with respect to beneficial ownership. In the case of the states whose procedures were reviewed in the course of this evaluation (Delaware and Nevada), the company formation procedures and reporting requirements are such that the information on beneficial ownership may not, in most instances, be adequate, accurate or available on a timely basis. This is a vulnerability for the U.S. AML/CFT system.

37. With respect to legal arrangements, the U.S. recognizes trusts which are legal entities that are created under state law. The U.S. relies on the investigative approach to satisfy the requirements for access to accurate and current information on the beneficial ownership and control of trusts. Although it is acknowledged that the investigatory powers are generally sound and widely used, again, the system is only as good as the information that is available to be acquired. Virtually all U.S. states recognizing trusts have purposely chosen not to regulate them like other corporate vehicles. There are tax filing requirements imposed on trusts by the IRS and the IRS has access to some beneficial owner information when distributions are made to the beneficiary or income is earned by the trust, but can only share this information with law enforcement agencies in the course of an on-going investigation that has criminal tax implications. Otherwise, law enforcement agencies can only access the information by obtaining an order from a judge, which can be readily obtained.

38. The NPO sector is monitored by the federal government and state authorities. Transparency is facilitated by federal tax laws, which provide that most information reported by tax-exempt NPOs to the IRS is available to the public. Tax exempt organizations are examined by the IRS for compliance with the tax laws and to ensure that applicants for tax exempt status are not persons who have been designated as terrorists. The other main transparency mechanisms include the certification program for USAID and self-regulation managed by umbrella and watchdog organizations. The U.S. states and the District of Columbia oversee the fund-raising practices of charities domiciled or operating in their jurisdictions. Thirty-nine U.S. states require any charity to register before soliciting funds within the state, no matter where the charity is domiciled. Overall, the measures which have been implemented to ensure that the NPO sector cannot be abused by terrorists or terrorist financiers are working effectively. U.S. authorities at both state and federal levels take action against illegitimate or fraudulent charities, including where they are able to demonstrate that these charities have been established to facilitate terrorist financing.

6. National and International Co-operation

39. Overall, the U.S. has implemented sufficient policy- and operational-level mechanisms to facilitate interagency cooperation and coordination at all levels nationally. However, the law enforcement arena appears to be fragmented. The U.S. authorities have tried to overcome this problem by, among other initiatives, undertaking a series of important reorganizations, the effectiveness of which cannot yet be measured since they are still in the relatively early days. At the operational level, there is much overlap between the jurisdictions of the various law enforcement agencies. This creates the need for more refined coordination. The joint task force model seems to be generally effective, provided that it is appropriately resourced and developed.

40. The capability and willingness of the U.S. for cross-border cooperation generally, and on AML/CFT specifically, is quite evident. Although based primarily on treaties and multilateral conventions allowing for extensive assistance, mutual legal assistance may also be granted in response

to and on the sole ground of letters rogatory and through direct letters of request by Ministries of Justice. Most of the bilateral treaties entered into by the U.S. contain no dual criminality requirement as a condition for granting assistance. For the treaties with dual criminality provisions, those provisions are mostly limited to requests for assistance requiring compulsory or coercive measures.

41. The system for providing international cooperation in relation to freezing, seizure and confiscation is notable for its flexibility which assists in achieving maximum efficiency. Assistance in tracing and identifying assets normally does not necessitate formal proceedings and can mostly be done in an informal way via police-to-police communication. If for some reason an MLA request cannot directly be complied with in its own right, the U.S. authorities can seek implementation by initiating their own procedures based on a violation of U.S. statutes, with the only condition that the underlying activity can be translated in a criminal act punishable under U.S. law. It is U.S. policy and practice to share the proceeds of successful forfeiture actions with countries that made possible, or substantially facilitated, the forfeiture of assets under U.S. law.

42. The U.S. extradition regime, based on a network of treaties supplemented by conventions, is underpinned by a solid legal framework allowing for an efficient and active use of the extradition process. The shift from rigid list-based treaties to agreements primarily based on dual criminality has given the system much more flexibility and opportunities. The possibility for the U.S. to extradite its own nationals is an additional asset that can assist in dealing with issues of double jeopardy, jurisdiction and coordination. The statistics provided show an active use of the extradition process by the U.S. authorities, both in ML and TF. As with mutual legal assistance, the limitation to the ML offense in terms of predicate criminality may constitute a negative element in the light of the dual criminality condition. Indeed, if (in case of a non U.S. listed underlying offense) the facts cannot be translated to a criminal conduct punishable under U.S. law, the dual criminality principle will not be met and extradition may be obstructed or prohibited. Dual criminality does not affect terrorism-related extradition procedures, as the scope of terrorism related offenses is quite broad under U.S. law and largely corresponds with the definitions provided in the Terrorist Financing Convention.

43. The U.S. has implemented mechanisms that allow its FIU, law enforcement agencies and regulators to provide their foreign counterparts with a wide range of international cooperation. Similar mechanisms exist to facilitate international cooperation diagonally (e.g. from FIU to law enforcement, or from law enforcement to regulator). In general, exchanges of information concerning money laundering or terrorist financing may be provided promptly, either spontaneously or upon request, and without unduly restrictive conditions. Additionally, many U.S. agencies (including the FIU) are authorized to make inquiries or conduct investigations on behalf of their foreign counterparts.

7. Resources and statistics

44. Overall, authorities seem to be well-equipped, staffed, resourced and trained. However, there are concerns about the availability of resources within the IRS to undertake comprehensive examinations of the large number of institutions for which it is responsible (MSBs, insurance companies, non-federally regulated credit unions, credit card operators, casinos and card clubs, and dealers in precious metals and stones). It is clearly the case that the IRS needs to be allocated significantly more resources simply to address the MSB sector.

Table 1: Ratings of Compliance with FATF Recommendations

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology [Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)], or could, in exceptional cases, be marked as not applicable (na).

Forty Recommendations	Rating	Summary of factors underlying rating[3]
Legal systems		
1. ML offense	**LC**	• The list of domestic predicate offenses does not fully cover 2 out of the 20 designated categories of offenses specifically (insider trading and market manipulation, and piracy). • The list of foreign predicate offenses does not cover 8 out of the 20 designated categories of offenses. • The definition of "transaction" in s.1956(a)(1) means that mere possession as well as concealment of proceeds of crime , does not constitute the laundering of proceeds. • The definition of "property" in relation to the section 1956(a)(2) offense (international money laundering) only includes monetary instruments or funds.
2. ML offense–mental element and corporate liability	**C**	• The Recommendation is fully observed.
3. Confiscation and provisional measures	**LC**	• Where the proceeds are derived from one of the designated categories of offenses that are not domestic or foreign predicate offenses for ML, a freezing/seizing or confiscation action cannot be based on the money laundering offense. • Property of equivalent value which may be subject to confiscation cannot be seized/restrained.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**C**	• This Recommendation is fully observed.
5. Customer due diligence	**PC**	• No obligation in law or regulation to identify beneficial owners except in very specific circumstances (i.e. correspondent banking and private banking for non-U.S. clients). • No explicit obligation to conduct ongoing due diligence, except in certain defined circumstances. • Customer identification for occasional transactions limited to cash deals only. • No requirement for life insurers issuing covered insurance products to verify and establish the true identity of the customer, (except for those insurance products that fall within the definition of a "security" under the federal securities laws). • No measures applicable to investment advisers and commodity trading advisors. • Verification of identity until after the establishment of the business relationship is not limited to circumstances where it is essential not to interrupt the normal course of business. • No explicit obligation to terminate the business relationship if verification process cannot be completed. • The effectiveness of applicable measures in the insurance sector (which went into force on 2 May 2006) cannot yet be assessed.
6. Politically exposed persons	**LC**	• Measures relating to PEPs do not explicitly apply to MSBs, the insurance sector, investment advisers and commodity trading advisors.

[3] These factors are only required to be set out when the rating is less than Compliant.

7. Correspondent banking	**LC**	• No obligation to require senior management approval when opening individual correspondent accounts.
8. New technologies & non face-to-face business	**LC**	• No explicit provision requiring life insurers MSBs, or investment advisers and commodity trading advisors to have policies and procedures for non-face-to-face business relationships or transactions.
9. Third parties and introducers	**LC**	• No explicit obligation on relying institution to obtain core information from introducer. • No measures have been applied to investment advisers and commodity trading advisors, or the insurance sector.
10. Record keeping	**LC**	• Life insurers of covered products are only required to keep limited records of SARs, Form 8300s, their AML Program and related documents.
11. Unusual transactions	**LC**	• In the insurance, and MSB sectors, there is no specific requirement to establish and retain (for five years) written records of the background and purpose of complex, unusual large transactions or unusual patterns of transaction that have no apparent or visible economic or lawful purpose (outside of the SAR, CTR and Form 8300 requirements). • No measures have been applied to investment advisers and commodity trading advisors.
12. DNFBP – R.5, 6, 8-11	**NC**	• Casinos are not required to perform enhanced due diligence for higher risk categories of customer, nor is there a requirement to undertake CDD when there is a suspicion of money laundering or terrorist financing (R.5). • Accountants, dealers in precious metals and stones, lawyers and real estate agents are not subject to customer identification and record keeping requirements that meet Recommendations 5 and 10. • None of the DNFBP sectors is subject to obligations that relate to Recommendations 6, 8 or 11 (except for casinos in relation to R.11).
13. Suspicious transaction reporting	**LC**	• The existence of a USD 5,000 threshold for reporting suspicious activity. • No measures have been applied to investment advisers and commodity trading advisors. • The effectiveness of measures in the insurance and mutual funds sectors cannot yet be assessed.
14. Protection & no tipping-off	**C**	• The Recommendation is fully observed.
15. Internal controls, compliance & audit	**LC**	• AML Program requirements have not been applied to certain non-federally regulated banks, investment advisers and commodity trading advisors. • It is not yet possible to assess the effectiveness of these measures in the insurance sector. • There is no obligation under the BSA for financial institutions to implement employee screening procedures.
16. DNFBP – R.13-15 & 21	**NC**	• Casinos are the only DNFBP sector that is required to report suspicious transactions; however, there is a threshold on that obligation. • Accountants, lawyers, real estate agents and TCSPs are not subject to the "tipping off" provision or protected from liability when they choose to file a suspicious transaction report. • Accountants, lawyers, real estate agents and TCSPs are not required to implement adequate internal controls (i.e. AML Programs). • Dealers in precious metals, precious stones, or jewels are required to implement AML programs; however, the effectiveness of implementation cannot yet be assessed. • There are no specific obligations on accountants, lawyers, real estate agents or TCSPs to give special attention to the country advisories that FinCEN has issued and which urge enhanced scrutiny of financial transactions with countries that have deficient AML controls.

17. Sanctions	**LC**	• Some banking and securities participants are not subject to all AML/CFT requirements and related sanctions at the federal level. • The effectiveness of the measures in the insurance sector can not yet be assessed. • There are concerns about how effectively sanctions are applied in the MSB sector given the current level of the IRS's resources.
18. Shell banks	**C**	• The Recommendation is fully observed.
19. Other forms of reporting	**C**	• The Recommendation is fully observed.
20. Other NFBP & secure transaction techniques	**C**	• This Recommendation is fully observed.
21. Special attention for higher risk countries	**LC**	• In the insurance sector, there is no specific requirement to establish and retain written records of transactions with persons from/in countries that do not or insufficiently apply the FATF Recommendations. • No measures have been applied to investment advisers and commodity trading advisors.
22. Foreign branches & subsidiaries	**LC**	• BSA requirements do not apply to the foreign branches and offices of domestic life insurers issuing and underwriting covered life insurance products.
23. Regulation, supervision and monitoring	**LC**	• Some securities sector participants are not subject to supervision for AML/CFT requirements. • The effectiveness of the measures in the insurance sector can not yet be assessed. • Concerns about IRS examination resources.
24. DNFBP - regulation, supervision and monitoring	**PC**	• There is no regulatory oversight for AML/CFT compliance for accountants, lawyers, real estate agents or TCSPs. • The supervisory regime for Nevada casinos is currently not harmonized with the BSA requirements.
25. Guidelines & Feedback	**C**	• The Recommendation is fully observed.
Institutional and other measures		
26. The FIU	**LC**	• The effectiveness of FinCEN, is impeded by: - perceptions concerning the value of its products and the risk that over-emphasis on FinCEN's network function will weaken its place in the AML/CFT chain; - the handling of the huge amount of 14 million reports of which 70% are still filed in a paper format; - the fact that SAR filing is only done in 30-60 days after detection; and - insufficient adequate/timely feedback to reporting institutions. • Since terrorism-related information in requests from foreign FIUs is shared with law enforcement—for networking—without the prior authorization of the foreign FIU, the U.S. does not act in accordance with international principles of information exchange established by the Egmont Group.
27. Law enforcement authorities	**C**	• The Recommendation is fully observed.
28. Powers of competent authorities	**C**	• The Recommendation is fully observed.
29. Supervisors	**C**	• This Recommendation is fully observed.
30. Resources, integrity and training	**LC**	• The IRS is not adequately resourced to conduct examinations of the entities that it is responsible for supervising, in particular, the MSB and insurance sectors.

31. National co-operation	**LC**	• There remains a gap between the policy level and operational level law enforcement work. • More refined coordination is needed amongst law enforcement agencies with overlapping jurisdictions.
32. Statistics	**LC**	• Freezing, seizing and confiscation statistics are not specified into ML and TF related seizures and confiscations. • No statistics on TF related confiscations. • FinCEN collects and maintains substantial valuable statistical BSA data, which can be used to provide a partial picture of the effectiveness of the U.S. AML/CFT regime; however, FinCEN's data would need to be coupled with that of other federal agencies and departments in order to produce a comprehensive view of overall effectiveness of U.S. AML/CFT systems. • MLA and extradition statistics are not broken down annually, and do not show the time required to respond to a request.
33. Legal persons – beneficial owners	**NC**	• While the investigative powers are generally sound and widely used, there are no measures in place to ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. • There are no measures taken by those jurisdictions which permit the issue of bearer shares to ensure that bearer shares are not misused for money laundering.
34. Legal arrangements – beneficial owners	**NC**	• While the investigative powers are generally sound and widely used, there is minimal information concerning the beneficial owners of trusts that can be obtained or accessed by the competent authorities in a timely fashion.
International Co-operation		
35. Conventions	**LC**	• Not all conduct specified in Article 3 (Vienna) and Article 6 (Palermo) has been criminalized, and there is no a sufficiently comprehensive list of foreign predicates related to organized criminal groups as required by Article 6(2)(c) (Palermo).
36. Mutual legal assistance (MLA)	**LC**	• Dual criminality may impede MLA where the request relates to the laundering of proceeds that are derived from a designated predicate offense which is not covered.
37. Dual criminality	**C**	• This Recommendation is fully observed.
38. MLA on confiscation and freezing	**LC**	• Dual criminality may impede MLA where the request relates to the laundering of proceeds that are derived from a designated predicate offense which is not covered.
39. Extradition	**LC**	• Dual criminality may impede extradition where the request relates to the laundering of proceeds that are derived from a designated predicate offense which is not covered. • List-based treaties do not cover ML.
40. Other forms of co-operation	**C**	• This Recommendation is fully observed.
Nine Special Recommendations	**Rating**	**Summary of factors underlying rating**
SR.I Implement UN instruments	**LC**	• Not all UN1267 designations are transposed in the OFAC list.
SR.II Criminalize terrorist financing	**C**	• This Recommendation is fully observed.
SR.III Freeze and confiscate terrorist assets	**LC**	• Compliance monitoring in non-federally regulated sectors (e.g. insurance, MSBs) is ineffective. • Not all S/RES/1267(1999) designations are transposed in the OFAC list.
SR.IV Suspicious transaction reporting	**LC**	• The existence of a USD 5,000 threshold for reporting suspicious activity. • No measures have been applied to investment and commodity trading

		advisers. • The effectiveness of measures in the insurance and mutual funds sectors cannot yet be assessed.
SR.V International co-operation	**LC**	• List-based treaties do not cover FT.
SR VI AML requirements for money/value transfer services	**LC**	• The limitations identified under Recommendation 5, 8, 13 and SR.IV with respect to the MSB sector also affect compliance with Special Recommendation VI. • Major concerns with respect to resources of the IRS for monitoring of this sector.
SR VII Wire transfer rules	**LC**	• Threshold of USD 3,000 instead of USD 1,000 as is required by the revised Interpretative Note. • It is not mandatory to include all required originator information on batch transfers.
SR.VIII Non-profit organizations	**C**	• This Recommendation is fully observed.
SR.IX Cross Border Declaration & Disclosure	**C**	• The Recommendation is fully observed.

Table 2: Recommended Action Plan to Improve the AML/CFT System

AML/CFT System	Recommended Action (listed in order of priority)
1. General	
2. Legal System and Related Institutional Measures	
2.1 Criminalization of Money Laundering (R.1 & 2)	• Expand the list of foreign predicate offenses to include all of the domestic predicate offenses (including piracy, market manipulation and insider trading). • Amend the list of SUA to include the offenses of piracy, market manipulation and insider trading. • Take legislative measures to ensure that the definition of "transaction" is broadened to cover all conduct as required by the Vienna and Palermo Conventions. • Take legislative measures to ensure that the scope of the section 1956(a)(2) offense is broadened include proceeds other than funds or monetary instruments.
2.2 Criminalization of Terrorist Financing (SR.I)	• There are no recommendations for this section.
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	• Extend domestic and foreign predicates to fully cover all 20 categories of predicate offenses listed in the Glossary to the FATF 40 Recommendations. • Take measures to ensure that property which may be subject to equivalent value confiscation may be seized/restrained to prevent its being dissipated.
2.4 Freezing of funds used for terrorist financing (SR.III)	• Take further efforts to improve compliance monitoring of all targeted entities, particularly the state-regulated sectors and DNFBPs. • Given that the reliability of the 1267 list has been improved through successive rounds of corrections and additions of identifiers, the U.S. should consider revising its approach to listing the Taliban as an entity, rather than including individual names, particularly where those names have sufficient identifiers.
2.5 The Financial Intelligence Unit and its functions (R.26)	• FinCEN should invest in a faster and more efficient reporting system with a preference to: (1) mandatory e-filing for all reporting institutions, and (2) the use of a single form for all reporting institutions. • FinCEN should ensure that it receives adequate and continual feedback from law enforcement agencies using the BSA-direct system so that it does not lose its important position within the AML/CTF chain. • FinCEN should improve its guidance and feedback with a view to improving the quality of reports filed by reporting entities. • FinCEN should also ensure that its information and guidance for reporting entities is combined and/or coordinated with the law enforcement agencies and regulators that issue similar or related material. • FinCEN should focus on the challenge of promoting the added-value of its analytical products to law enforcement. • Law enforcement agencies should work at the operational level to change their perceptions concerning the value of FinCEN's products (i.e. by promoting within their agencies a broader use of FinCEN's ability to produce operational and/or strategic analysis). • The U.S. should handle terrorism-related information received in requests from foreign FIUs in accordance with international principles of information exchange.

2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	• There are no recommendations for this section.
2.7 Cross Border Declaration & Disclosure	• Further invest in the detection and investigation as well as the resources, techniques and methods to counter outgoing cross-border transportations of cash or any negotiable bearer instrument. • Focus on conducting thorough border checks of people, vehicles, trains, cargo, etc., without allowing the level of thoroughness to be dictated by the volume of traffic waiting to cross the border.
3. Preventive Measures – Financial Institutions	
3.1 Risk of money laundering or terrorist financing	• Extend AML/CFT measures to investment advisers and commodity trading advisors, and the limited number of depository institutions that are currently not covered.
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	• Introduce a primary obligation to identify the beneficial owners of accounts (which may, of course, be implemented on a risk-based approach with respect to low-risk customers or transactions). • Implement a CIP requirement for the insurance sector. • Introduce an explicit obligation that financial institutions should conduct ongoing due diligence, rather than rely on an implicit expectation within the SAR requirements and on the existing guidance. • In the case of occasional transactions, extend the customer identification obligation to non-cash transactions. • Other than with respect to non-face-to-face business, securities transactions, and life insurance business, limit the circumstances in which institutions may open an account prior to completing the verification process, and introduce a presumption that institutions should close an account whenever the verification cannot be completed, for whatever reason. If necessary, accompany this with some form of indemnification against other conflicting statutes. • Introduce an explicit requirement that the opening of individual correspondent accounts should involve senior management approval. • Extend AML/CFT obligations (including the PEPs requirements) to investment advisers and commodity trading advisors, in line with those applicable to the rest of the securities industry. • Publish confirmation that, despite the promulgation of the final section 312 rule, the 2001 Guidance on PEPs remains in force and that it applies to all relevant financial institutions. • Introduce an explicit requirement for the life insurance and MSB sectors to address the specific risks associated with non-face to face business relationships or transactions. • Extend the obligation for AML Programs and CIP (as applicable) to all depository institutions to remove the historical anomaly.
3.3 Third parties and introduced business (R.9)	• Introduce a requirement that the relying bank or other financial institution should obtain immediately from the introducing institution details relating to the identity of the account holder, the beneficial owner, and the reason for which the account is being opened. • Extend such measures to investment advisers and commodity trading advisors, and the insurance sector (including insurance agents and brokers).
3.4 Financial institution secrecy or confidentiality (R.4)	• There are no recommendations for this section.

3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	• Ensure that NACHA completes its current process of developing and approving a rule that would allow cross-border ACH transfers to meet the new FATF requirements with respect to batch transfers before January 2007. • Ensure that the threshold is lowered to USD 1,000 before January 2007. • Extend full record-keeping requirements to the insurance sector, including insurance brokers and agents. • Consider simplifying the record keeping framework.
3.6 Monitoring of transactions and relationships (R.11 & 21)	• Extend the requirement to establish and retain (for five years) written findings that relate to unusual transactions to those participants in the securities sector that are currently not subject to a requirement to file SARs. • Require insurers to establish and retain written records of transactions with persons from/in countries that do not or insufficiently apply the FATF Recommendations to the extent that this is not already addressed by the AML program and SAR requirements • Extend the requirements to establish and retain written records of transactions with persons from/in countries that do not or insufficiently apply the FATF Recommendations to those participants in the securities sector that are currently not covered.
3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	• Remove the threshold from the reporting obligation. • Extend the SAR obligations to investment advisers and commodity trading advisors. • Consider imposing direct SAR reporting requirements on independent insurance agents and brokers. • Clarify that confidentiality of SARs applies to the more limited disclosure restrictions under the BSA (i.e. to any person involved in the transaction) to put current practice beyond doubt.
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	• Extend the AML Program requirement to the limited number of non-federally regulated depository institutions that are currently exempted. • Complete the process of extending AML Program requirements to unregistered investment companies, investment advisers and commodity trading advisors. • Ensure that insurance companies are required to apply AML/CFT measures to their foreign branches and subsidiaries. • Require all financial institutions (not just those in the securities sector) to screen prospective employees for high standards.
3.9 Shell banks (R.18)	• There are no recommendations for this section.
3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)	• In the securities and insurance sectors issue guidance similar to the FFEIC manual. • Extend AML Program requirements to the limited number of uninsured, state-chartered banks and other depository institutions that are currently exempt. • Consider providing more and better resources to examining AML compliance in the privately insured credit union sector. • Ensure that the new AML/CFT measures applicable to the insurance sector are implemented effectively. • Once AML/CFT measures are applied to the investment advisers and commodity trading advisors, ensure that they are effectively supervised, monitored and (if appropriate) sanctioned for compliance. • Ensure that the IRS has sufficient resources to undertake comprehensive examinations of the large number of institutions for which it is responsible.

3.11 Money value transfer services (SR.VI)	• Undertake a thorough review of the workload and resources of the IRS in the area of BSA compliance to ensure that the allocation of responsibilities is delivering the most effective and efficient results (i.e. are other agencies better placed to take on some of these responsibilities?). • Irrespective of any reallocation of responsibilities, it is clearly the case that the IRS needs to be allocated significantly more resources simply to address the MSB sector. • Extend the examination program for agents quite extensively. • Make further efforts to standardize the AML examination procedures both between the states, and between the individual states and the IRS.
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	• Explicitly require casinos to perform enhanced due diligence for higher risk categories of customers and to undertake CDD when there is a suspicion of money laundering or terrorist financing. • Extend customer identification, record keeping and account monitoring obligations that are consistent with FATF Recommendations to these sectors as soon as possible. • Extend obligations that relate to Recommendations 6, 8 or 11 to all DNFBPs. (This does not apply to casinos in relation to R.11). • In the short term, a proposed final rule should be issued to expedite the introduction of AML obligations for "persons involved in real estate closings and settlements." • Prepare an advance notice of proposed rulemaking in the near future in relation to the TCSP sector to extend both the AML Program and CIP requirements to this sector.
4.2 Suspicious transaction reporting (R.16)	• Remove the threshold on the SAR reporting obligation for casinos. • Extend the obligation to report suspicious transactions to the other DNFBP sectors. • Accountants, lawyers, real estate agents and TCSP should be made subject to the "tipping off" provision and should be protected from liability when they choose to file a suspicious transaction report. • Accountants, lawyers, real estate agents and TCSP should also be required to implement adequate internal controls (i.e. AML Programs). • Continued work is needed to ensure that dealers in precious metals and stones are aware of their obligation to establish AML Programs and are implementing them effectively. • The U.S. should obligate accountants, lawyers, real estate agents and TCSPs to give special attention to the country advisories that FinCEN has issued and which urge enhanced scrutiny of financial transactions with countries that have deficient AML controls.
4.3 Regulation, supervision and monitoring (R.24-25)	• Accountants, lawyers, real estate agents and TCSPs should be made subject to AML/CFT obligations and appropriate regulatory oversight. • In the case of TCSPs a registration process should be introduced for agents engaged in the business of providing company formation and related services (perhaps with a de minimis threshold to ensure that single company agents are not required to register). • The regulatory regime applied to the casino sector generally appears to be working effectively. However, the work to further harmonize Nevada's regulatory requirements with the BSA should continue as rapidly as possible.
4.4 Other non-financial businesses and professions (R.20)	• Consideration of extending BSA requirements to other sectors should proceed as quickly as possible.

5. Legal Persons and Arrangements & Non-Profit Organizations	
5.1 Legal Persons – Access to beneficial ownership and control information (R.33)	• Undertake a comprehensive review to determine ways in which adequate and accurate information on beneficial ownership may be available on a timely basis to law enforcement authorities for companies which do not offer securities to the public or whose securities are not listed on a recognized U.S. stock exchange. It is important that this information be available across all states as uniformly as possible. It is further recommended that the federal government seek to work with the states to devise procedures which should be adopted by all individual states to avoid the risk of arbitrage between jurisdictions. As the January 2006 threat assessment indicates, the U.S. authorities are well aware of the problems created by company formation arrangements, and have formulated an initial program to try to address the issue. This should be pursued in a shorter timescale than seems to be envisaged at present. In particular, the proposal to bring company formation agents within the BSA framework, and to require them to implement AML Programs and CIP procedures should be taken forward in the very near future.
5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)	• Implement measures to ensure that adequate, accurate and timely information is available to law enforcement authorities concerning the beneficial ownership and control of trusts.
5.3 Non-profit organizations (SR.VIII)	• Continue to devote resources to preventing the abuse of this sector from terrorist organizations, including ensuring the effective flow of information between competent authorities.
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31)	• Continue to work towards closing the gap that still seems to remain between the policy level and the factual operational law enforcement work. • Consider expanding the HIFCA and HIDTA model, provided that it is appropriately resourced and developed • Law enforcement agencies should take more refined coordination at the operational level, perhaps in the context of the Treasury's recent government-wide analysis on money laundering. Such a study should not lead to the creation of new entities, but rather initiate a discussion on the basic law enforcement framework in a system as complex as that in the U.S.
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	• Review the money laundering offenses to ensure all conduct required to be criminalized by the Vienna and Palermo Conventions is covered. • Include "participation in an organized criminal group" as a foreign predicate offense as required by Article 6(2)(c) of the Palermo Convention. • Transpose all S/RES/1267(1999) designations in the OFAC list.
6.3 Mutual Legal Assistance (R.36-38 & SR.V)	• A formal legal basis should be provided to allow for equivalent value seizure upon a foreign request. • Extend the list of domestic and foreign predicate offenses to all 20 designated categories.
6.4 Extradition (R.39, 37 & SR.V)	• Extend the list of domestic and foreign predicate offenses to all 20 designated categories. • Ensure that older, list based extradition treaties that were concluded before the introduction of money laundering and terrorism financing offenses in the respective legislations and that have not been supplemented since do not pose an obstacle to extradition. • Consider allowing extradition according to the principles of the UN TF Convention on an ad hoc and unilateral basis.
6.5 Other Forms of Co-operation (R.40 & SR.V)	• FinCEN should improve the quality of its analytical research reports so that they contain a more practical and deeper level of analysis tailored to the specific investigative needs of the requesting FIU.