Australian Banking Association

17 March 2021

The Hon. Andrew Bragg
Senator for New South Wales
PO Box 6100
Senate
Parliament House
Canberra ACT 2600

Dear Senator Bragg

Senate Select Committee on Financial and Regulatory Technology

The Australian Banking Association (**ABA**) advocates for a competitive, and innovative banking industry that delivers excellent and equitable outcomes for customers. We promote and encourage policies that improve banking services for all Australians.

In response to the Committee's query regarding access to banking services for some digital asset businesses, banks offer services in accordance with their risk-appetite, risk-profile, and their ability to manage the risks associated with customers operating in certain sectors; all in compliance with the law.

Key points:

- The ABA welcomes the G20 support[1] for Financial Action Task Force (**FATF**) action on the regulation and oversight of virtual assets and virtual asset service providers.
- AUSTRAC notes that digital currency exchange providers[2] face risks for money laundering, fraud and scams, terrorism financing, human trafficking and tax evasion. The ABA aligns with the FATF view that without proper sector regulation, they risk becoming a virtual safe haven for the financial transactions of criminals and terrorists.
- The ABA supports Australia's adoption of FATF 2019 Standards[3] to regulate and supervise virtual asset activities and related service providers for anti-money laundering and counter-terrorism financing (**AML/CTF**) including the expectations for how countries must develop robust AML/CTF frameworks in order to mitigate the associated money laundering and terrorist financing risks and support responsible innovation across the financial services sector.

The ABA disputes the statement[4] of the CEO of FinTech Australia (appearing at the hearings held on 11 February 2021) that major banks use de-banking to slow the growth of the Fintech sector. This statement misunderstands the core issues and inherent risks the FATF, governments, regulators and the global banking industry seek to solve to further enable virtual assets, which the ABA will detail here.

The issue of de-banking has been examined previously, by the Australian Competition & Consumer Commission (**ACCC**) in their 2019 inquiry into foreign currency conversion services looked at de-banking and concluded[5]:

[1] In 2018, G20 Leaders called for virtual assets to be clearly regulated for anti-money laundering and counter terrorist financing purposes. And in June 2019, the Financial Action Task Force (FATF) set the first ever global standards in this area.
[2] AUSTRAC Factsheet for digital currency exchange providers.
[3] Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers, https://www.fatf-gafi.org/publications/fatfrecommendations/documents/guidance-rba-virtual-assets.html
[4] Select Committee on Financial Technology and Regulatory Technology, Hansard, Thursday, 11 February 2021
[5] ACCC Foreign currency conversion services inquiry, Final Report, 2019,

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- *Some non-bank suppliers have been denied access or find access to bank services under threat. The need to comply with Australia's anti-money laundering and counter terrorism financing (AML/CTF) laws has been a factor in the banks' decisions to withdraw access to banking services for non-bank rivals (known as de-banking).*

To address this issue, the ACCC report recommended a scheme through which international money transfers suppliers can address the due diligence requirements of banks, including in relation to AML/CTF requirements.

The regulatory solution to enable the economic benefits of virtual assets needs to be a globally consistent solution, the work of FATF will be a critical enabler in this area.

The Financial Action Task Force (FATF) & virtual assets

FATF is the global money laundering and terrorist financing watchdog. The inter-governmental body sets international standards that aim to prevent these illegal activities and the harm they cause to society. As a policy-making body, the FATF works to bring about national legislative and regulatory reforms in these areas.

The term 'virtual asset' refers to any digital representation of value that can be digitally traded, transferred, or used for payment. It does not include the digital representation of fiat currencies.

AUSTRAC defines[6] a digital currency exchange provider is an individual, business or organisation that exchanges:

- money (Australian or foreign currency) for digital currency
- digital currency for money (Australian or foreign currency)
- as part of operating a digital currency exchange business.

The FATF view of Blockchain, bitcoin, crypto assets, virtual currencies

The FATF website details the work they are undertaking on Virtual Assets[7], the last sentence is most telling (emphasis added).

- "Blockchain, bitcoin, crypto assets, virtual currencies…a whole new vocabulary describing innovative technology to swiftly transfer value around the world. The fast-evolving blockchain and distributed ledger technologies have the potential to radically change the financial landscape. But, their speed, global reach and above all - anonymity - also attract those who want to escape authorities' scrutiny.
- Blockchain originated just over 10 years ago. Since then, **virtual assets have become widely available and have started to be used as payment products. However, without established regulation and oversight, the sector is often still referred to as the "wild west" of the finance industry."**
- The ABA recognises the real risks[8] that virtual assets present, but also the opportunity for Australia. The ABA agrees with the World Economic Forum statement that 'the advent of cryptocurrencies has led to the creation and operation of new global, decentralized networks that have been used by over 100 million people across the world to transfer trillions of dollars of value. Bitcoin, for example, is more than just a technology – it is a powerful social, political and cultural movement that asks us to imagine money, banking and payments in new and novel ways[9]'.

[6] Anti-Money Laundering and Counter-Terrorism Financing Act 2006, https://www.legislation.gov.au/Details/C2020C00362
[7] Virtual Assets, http://www.fatf-gafi.org/publications/virtualassets/documents/virtual-assets.html?hf=10&b=0&s=desc(fatf_releasedate)
[8] Collapse of crypto platform a cautionary tale, https://www.afr.com/companies/financial-services/collapse-of-crypto-platform-a-cautionary-tale-20210228-p576hn
[9] World Economic Forum, Global Future Council on Cryptocurrencies, Crypto, What Is It Good For? http://www3.weforum.org/docs/WEF_Cryptocurrency_Uses_Cases_2020.pdf

- The key risk to banks across the globe, is that the identity of users of virtual assets are often unknown to banks and sometimes not adequately known to the operators of the exchanges where virtual assets are traded. Though banks can conduct due diligence on the markets-operators; there remains the question as to how exchanges can effectively conduct Know Your Customer (KYC) and Customer Due Diligence (CDD) on individuals and entities using virtual assets – given the anonymity. Without improved global regulation and oversight (and potentially even then) governments, banks and the community remain exposed to risks arising from virtual assets, particularly if the difficulty in identifying the owner and the end-use of virtual asset transactions remains unresolved.

In November 2020, the Reserve Bank of Australia (**RBA**) announced[10] a partnership with Commonwealth Bank, National Australia Bank, Perpetual and ConsenSys Software on a Wholesale Central Bank Digital Currency (**CBDC**) Research Project to explore the implications of a CBDC for efficiency, risk management and innovation in wholesale financial market transactions.

Much of the information in this ABA response is taken directly from the FATF website[11]. The ABA will take the opportunity to describe the gaps in the current regulatory regime for digital currency exchange and virtual assets and a potential pathway for Australia in order to mitigate the associated money laundering and terrorist financing risks inherent in virtual assets which would support responsible innovation across the Australian financial services sector.

The work of FATF on virtual assets

The FATF has developed Standards, which ensure a co-ordinated global response to prevent organised crime, corruption, and terrorism. They help authorities like AUSTRAC to go after the money of criminals dealing in illegal drugs, human trafficking, and other crimes. The FATF also works to stop funding for weapons of mass destruction.

The FATF reviews money laundering and terrorist financing techniques and continuously strengthens its standards to address new risks, such as the regulation of virtual assets, which have spread as cryptocurrencies gain popularity. The FATF monitors countries to ensure they implement the FATF Standards fully and effectively. The last FATF assessment of the effectiveness of Australia's AML/CFT regime was conducted in 2015[12].

FATF's recent focus on virtual assets

The ABA agrees with FATF that virtual assets have many potential benefits[13]. They could make payments easier, faster, and cheaper; and provide alternative methods for those without access to regular financial products.

But without proper regulation, they risk permanently becoming a virtual safe haven for the financial transactions of criminals and terrorists. The FATF has been closely monitoring the developments in the CryptoSphere and in recent years has seen the first countries start to regulate the virtual asset sector, while others have prohibited virtual assets altogether. However, as yet, the majority of countries have not taken any action. These gaps in the global regulatory system have created significant loopholes for criminals and terrorists to abuse.

Across the globe, banks and regulators sit at the front-line in detecting, deterring, and disrupting criminal activity, as required by the current Anti Money Laundering regimes in place in the FATF jurisdictions including Australia. Banks offer products and services in accordance with their skills, capability, risk-appetite and risk-profile.

In June 2019, with support from the G20, FATF issued[14] global, binding standards to prevent the misuse of virtual assets for money laundering and terrorist financing. The 2019 FATF standards ensure that virtual assets are treated fairly, applying the same safeguards as the financial sector. FATF's rules

[10] Reserve Bank of Australia, https://www.rba.gov.au/media-releases/2020/mr-20-27.html
[11] Financial Action Task Force (**FATF**), https://www.fatf-gafi.org/home/
[12] Mutual Evaluation Report of Australia, http://www.fatf-gafi.org/countries/a-c/australia/documents/australia-mature-regime-to-combat-money-laundering-terrorist-financing-key-areas-remain-unaddressed.html
[13] Virtual Assets, https://www.fatf-gafi.org/publications/virtualassets/documents/virtual-assets.html?hf=10&b=0&s=desc(fatf_releasedate)
[14] Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers, https://www.fatf-gafi.org/publications/fatfrecommendations/documents/guidance-rba-virtual-assets.html

apply when virtual assets are exchanged for fiat currency, but also when they are transferred from one virtual asset to another.

FATF consider that countries need to:

- Understand the money laundering and terrorist financing risks the sector faces,
- Licence or register virtual asset service providers, and
- Supervise the sector, in the same way it supervises other financial institutions.

What is being done in Australia

The June 2019 revisions to the FATF Standards clearly placed anti-money laundering and counter-terrorism financing requirements on virtual assets and virtual asset service providers (**VASPs).** The FATF also agreed to undertake a 12-month review by June 2020 to measure how jurisdictions and the private sector have implemented the revised Standards, as well as monitoring for any changes in the typologies, risks and the market structure of the virtual assets sector. The 2020 FATF report[15] sets out the findings of the review.

The 2020 report finds that, overall, both the public and private sectors have made progress in implementing the revised FATF Standards. 35 out of 54 reporting jurisdictions advised that they have now implemented the revised FATF Standards, with 32 of these regulating VASPs and three of these prohibiting the operation of VASPs. The other 19 jurisdictions have not yet implemented the revised Standards in their national law.

Australia is one of those 19 jurisdictions that have not yet implemented the 2019 FATF Standard on virtual assets and virtual asset service providers into national law. Importantly, the ABA understands that FATF is currently reviewing that 2019 Standard with a view to updating the rules given the speed of how this sector is evolving (e.g., the advent of StableCoins).

The ABA supports responsible innovation across the Australian financial services sector for digital currency exchange and virtual assets and supports the FATF pathway for Australia which has the potential to mitigate some of the associated money laundering and terrorist financing risks inherent in virtual assets. AUSTRAC reporting entities in the finance sector will continue their work to detect, deter and disrupt serious financial crime, and offer products and services in accordance with their skills, capability, risk-appetite, and risk-profile.

Kind regards

Aidan O'Shaughnessy
Executive Director, Policy

[15] 12 Month Review of Revised FATF Standards - Virtual Assets and VASPs, https://www.fatf-gafi.org/publications/fatfrecommendations/documents/12-month-review-virtual-assets-vasps.html