FACTCOALITION
Financial Accountability & Corporate Transparency

September 13, 2011

The Honorable Timothy Geithner
Secretary of Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Secretary Geithner,

re: U.S. must perform a regulatory review of banks' management of high money laundering risk situations to assess the extent to which U.S. laws to prevent money laundering are being enforced.

We are writing to draw your attention to the UK regulator's recent review of UK banks' dealings with high-risk customers and corruption, and to urge you to perform a similar regulatory review to determine the extent to which U.S. laws aimed at minimizing the risk of money laundering through U.S. banks are being enforced and make the results of that review publicly available. We are members of the Financial Accountability and Corporate Transparency (FACT) Coalition, which unites representatives of civil society, labor, small business, faith-based, human rights and international development organizations. FACT seeks greater accountability and transparency in the global financial architecture to curb illicit financial flows and put an end to the use and abuse of offshore tax havens. We advocate for strong U.S. laws and enforcement to prevent the proceeds of corruption, organized crime and terrorism from entering the U.S. financial system.

The Arab Spring uprisings have brought the public's attention to the everyday anger and frustration felt by millions of citizens living under corrupt and brutal dictators, and to the billions of dollars these dictators stashed in bank accounts in the U.S. and other major financial centers. Many developing countries are rich in natural resources but their people remain in poverty as the revenues are siphoned off by corrupt rulers into foreign bank accounts. If banks were not willing to accept this money, it would be much harder to steal such large amounts.

Over the past year, the UK's Financial Services Authority (FSA) conducted an unprecedented thematic review of how UK banks handle corruption risk. The findings are extremely disturbing, with 75% of banks surveyed not doing proper customer due diligence and the regulator admitting it is likely that British banks harbor corrupt funds. The review also identified the following results:

- A third of banks are failing to do enough to identify 'politically exposed persons' (PEPs) —i.e. senior public officials of other countries;
- Half of banks are not reviewing their high risk and PEP relationships regularly;
- A third of banks dismissed serious allegations about their customers without adequate review;

- A third of banks do not keep adequate records of their high-risk and PEP customers, impeding their ability to assess money laundering risk;
- Some banks considered "risk analysis" to be an assessment of the reputational and financial risk to the bank that a customer might be laundering money *and* the customer relationship might be discovered, as opposed to the level of risk that a given customer might be laundering money, independent of a bank's reputational and financial risk.
- Some banks had inadequate safeguards to mitigate conflicts of interest on the part of their relationship managers;
- Many relationship managers are rewarded primarily on the basis of profit and new business, regardless of their performance on anti-money laundering issues;
- There is inadequate handling of the risks presented by correspondent banking relationships;
- Three quarters of banks reviewed are not doing enough to establish the legitimacy of their customers' source of wealth—some in situations where they had adverse information about their customer's integrity;
- At least two banks have been referred to enforcement for 'serious weaknesses' in their systems and controls for managing high-risk customers, including PEPs.[1]

There is no evidence to suggest that the situation in other financial centers, including the U.S., would be any different from what the FSA found in the UK. These findings echo those of Senator Levin's Permanent Subcommittee on Investigations. For over a decade, this subcommittee has conducted investigations which have revealed that PEPs utilize U.S. financial institutions and professionals to circumvent and undermine U.S. anti-money laundering laws and regulations, enabling them to bring massive amounts of funds suspected to be the proceeds of corruption into the U.S.[2] FACT member, Global Witness, has also published multiple reports detailing case studies of banks in major financial centers doing business with corrupt senior officials from Nigeria, Angola, Turkmenistan, Liberia, Equatorial Guinea and Republic of Congo.[3]

These investigations have recommended actions that the U.S. should take to close loopholes in U.S. law in order to minimize the risk of corrupt and other illicit funds being laundered through U.S. banks. To date, many of these recommendations, including requiring financial institutions to identify the beneficial owner of all accounts and state-level registries of the beneficial owner of all companies and trusts incorporated in the U.S., have not been acted upon.

It is also critical that current anti-money laundering laws are robustly implemented and enforced. **U.S. bank regulators must conduct a similar regulatory review of banks in the U.S. to assess how banks are managing corruption risk and to assess the extent to which banks are complying with U.S. anti-money laundering laws.** While we appreciated the effort to analyze suspicious activity reports (SARs) from anti-corruption standpoint in May, the pool of information is limited to those SARs that were actually filed and does not expose where SARs should have been filed but were not, or where clients should have been turned away. FACT's global partners are writing to all other members of the Financial Action Task Force (FATF) to request that they conduct a similar regulatory review of the banks that they supervise and make the results of that review publicly available.

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[1] The report is available at http://www.fsa.gov.uk/pubs/other/aml_final_report.pdf

[2] The report is available at http://hsgac.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=84a812bd-0d26-4014-aa53-c686dcd4d619

[3] See *Undue Diligence: How banks do business with corrupt regimes*, March 2009*; Secret Life of a Shopaholic: How an African dictator's playboy son went on a multi-million dollar shopping spree in the U.S.* November 2009; *International Thief Thief: How British banks are complicit in Nigerian corruption*, October 2010, all available for download at www.globalwitness.org/campaigns/banks

The G20 and its anti-corruption working group have recognized the role of anti-money laundering regulations in helping to prevent corruption, and have focused the work of FATF in this direction. In its previous three rounds of mutual evaluations, FATF has focused on measuring if its members have anti-money laundering laws in place. This ground-breaking FSA review shows how important it is for FATF and its members to focus on ensuring that such laws are effectively implemented and enforced through supervisory action. A new call from the G20 to this effect would be very welcome.

It would also be timely for regulators to include in their thematic reviews supervisory visits to the banks holding frozen Libyan funds and to require a "look back" to ensure that funds have not been diverted from the sovereign investment accounts to the personal accounts of Libyan PEPs or the accounts of companies or trusts that they directly or indirectly control. While sanctions and anti-money laundering are separate areas of policy, they overlap when the country whose funds are sanctioned is renowned for personalized control of the state's resources, and according to the Prosecutor of the International Criminal Court, "Gaddafi makes no distinction between his personal assets and the resources of the country."[4] In such situations, management of state funds is a significant—yet under-recognized—money laundering risk, as Riggs bank found out to its detriment a few years ago after permitting the President of Equatorial Guinea and his family to move money out of the national oil accounts to their personal benefit.

We would be pleased to discuss these issues in more detail with your staff.

Sincerely,

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[4] This statement is available at http://www.icc-cpi.int/iccdocs/doc/doc1073503.pdf

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