

United States Senate

WASHINGTON, DC 20510

February 15, 2023

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

RE: Draft Amendments to Recommendation 25 and its Interpretive Note (R.25/INR.25)

Dear President Raja Kumar,

Thank you for the opportunity to provide our views on the Financial Action Task Force’s draft amendments to Recommendation 25 and its Interpretive Note on the transparency and beneficial ownership of legal arrangements. We are concerned the current draft falls far short of safeguarding against the abuse of trusts and similar legal arrangements. Specifically, we encourage you to strengthen the proposal—in line with last year’s revisions to Recommendation 24 on the beneficial ownership of legal persons—by mandating that all trusts and similar legal arrangements register their beneficial ownership information with a central, public authority.

The international order built on democracy, free markets, and the rule-of-law is under assault from autocracy, kleptocracy, and criminality. This assault has been fueled by opaque legal structures—such as anonymous trusts and other similar legal arrangements—created by the rule-of-law world, which provide sanctuary for the stolen wealth of the world’s worst actors. We have turned a blind eye to this sad truth for decades; now war is on the doorstep of the European Union.

Several journalistic exposés—from the Panama Papers to the Pandora Papers—demonstrate how easy it is for kleptocrats, drug cartels, human traffickers, tax evaders, and other bad actors to move and hide illicit funds in rule-of-law economies with the assistance of opaque structures, including anonymous trusts.¹ For example, the Pandora Papers uncovered more than 200 United States-based trusts that held assets of more than \$1 billion “including nearly 30 trusts that held assets linked to people or companies accused of fraud, bribery, or human rights abuses”.²

¹ See, for example: International Consortium of Investigative Journalists, *The Panama Papers: Exposing the Rogue Offshore Finance Industry*, (2016), <https://www.icij.org/investigations/panama-papers/>; and International Consortium of Investigative Journalists, *Pandora Papers: The largest investigation in journalism history exposes a shadow financial system that benefits the world’s most rich and powerful*, (2021–2022), <https://www.icij.org/investigations/pandora-papers/>.

² Will Fitzgibbon et al., *Suspect foreign money flows into booming American tax havens on promise of Eternal secrecy*, International Consortium of Investigative Journalists (2021, October 5), <https://www.icij.org/investigations/pandora-papers/us-trusts-offshore-south-dakota-tax-havens/>.

Russian oligarchs have made frequent use of trusts to hide their ill-gotten-gains and evade Western sanctions. Last June, the U.S. Department of the Treasury blocked over \$1 billion held in a Delaware trust linked to sanctioned Russian oligarch Suleiman Kerimov.³ Another oligarch, Roman Abramovich, reportedly reorganized ten secretive offshore trusts worth at least \$4 billion weeks before Vladimir Putin invaded Ukraine to blunt the impact of anticipated sanctions.⁴ It's unclear whether authorities would have ever known about Abramovich's trusts, if they had not been reported in *The Guardian*.

There is a straightforward antidote to this opacity: transparency, and we encourage the Financial Action Task Force to strengthen the transparency aspects of this proposal. The Task Force's current proposal allows countries to choose between housing beneficial ownership information of trusts in one of three places: (1) central government registers; (2) other competent public authorities—such as tax authorities; or (3) professional service providers such as “investment advisers or managers, accountants, lawyers, or financial institutions.” The first option is preferred, but the third must be eliminated.

Relying solely on professional service providers to provide authorities with adequate, accurate, and up-to-date beneficial ownership information risks tipping off the subjects of investigations, provides needless barriers to timely access, and creates compliance challenges.⁵ The Task Force recognized that this was a flawed approach last year in your amendments to Recommendation 24 and its Interpretive Note on the transparency and beneficial ownership of legal persons.⁶ While trusts have their own structural nuances, they can be used in a substantially similar manner to legal persons. Introducing transparency to companies while failing to do the same for trusts is an open-invitation to the world's kleptocrats and criminals to continue business-as-usual—after restructuring their holdings into legal arrangements. It's a loophole through which you could sail a superyacht.

As the war in Ukraine demonstrates, the work you are doing is instrumental to defending democracy, the rule-of-law, and free markets. The updates to Recommendation 25 present a once-in-a-decade opportunity to shore up our financial defenses against kleptocracy and criminality. We hope you meet the moment.

³ U.S. Department of the Treasury, *U.S. Treasury Blocks Over \$1 Billion in Suleiman Kerimov Trust*, (2022, June 30) <https://home.treasury.gov/news/press-releases/jy0841>.

⁴ Davies, H., *Leak reveals Roman Abramovich's billion-dollar trusts transferred before Russia sanctions*, *The Guardian* (2023, January 6), <https://www.theguardian.com/world/2023/jan/06/roman-abramovich-trusts-transfer-leak-russia-sanctions>.

⁵ The Financial Action Task Force, *Best Practices on Beneficial Ownership for Legal Persons*, FATF (2019), <https://www.fatf-gafi.org/media/fatf/documents/Best-Practices-Beneficial-Ownership-Legal-Persons.pdf>.

⁶ The Financial Action Task Force, *Revisions to Recommendation 24 and its Interpretive Note - Public Consultation*, FATF (2022), <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Public-consultation-r24.html>.

Sincerely,



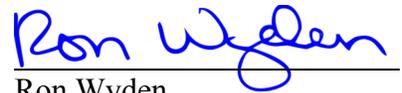
Sheldon Whitehouse
United States Senator



Bill Cassidy, M.D.
United States Senator



Elizabeth Warren
United States Senator



Ron Wyden
United States Senator
Chairman, Committee on
Finance



Benjamin L. Cardin
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Chris Van Hollen
United States Senator



Tammy Baldwin
United States Senator



Robert P. Casey, Jr.
United States Senator



Jack Reed
United States Senator



Jeanne Shaheen
United States Senator



Bernard Sanders
United States Senator



Richard Blumenthal
United States Senator

CC: The Honorable Janet Yellen, U.S. Secretary of the Treasury