Chapter 3
DERISKING: COMPLICATIONS AND CONSEQUENCES

Decisions by financial institutions to terminate or limit relationships due to concerns about risk (derisking) can have significant consequences for a range of clients and countries served. Those most frequently affected include sectors characterized by FATF as vulnerable to terrorist abuse: money service businesses or nonprofits and specific high-risk countries or regions. Correspondent banks are also impacted when one bank closes the accounts or curtails business with another. The following section addresses the regulatory drivers of derisking and its consequences on several sectors and regions, for U.S. and international security, and the implications of derisking for financial inclusion. It also describes the response of the U.S government and NPOs' financial access problems.

Regulatory Drivers of Bank Derisking[78]

The upward trend in enforcement actions and fines against banks, along with the existing regulatory complexity in the AML/CFT/sanctions field, means that banks are facing a significant increase in compliance costs. FIs are reluctant to discuss specific spending on compliance, but some reports place the additional costs at upward of $4 billion annually. One bank reportedly employed 4,000 additional compliance staff in one year, at an additional cost of $1 billion.[79] According to a survey by ACAMS, enhanced regulatory expectations continue to represent the greatest AML compliance challenge, as cited by 60% of respondents (see Figure 3).[80] The trend toward personal liability of compliance officers for regulatory violations further contributes to escalating costs and challenges.

In its 2016 annual survey on the cost of compliance and the challenges firms expect to face in the year ahead, Thomson Reuters reports that compliance officers are experiencing regulatory fatigue and overload in the face of ever-changing and growing regulations, with 69% of firms (70% in 2015) expecting more regulatory burdens in the coming year.[81]

78 While other drivers of derisking have been noted, for example Basel III reforms to strengthen bank capital requirements by increasing bank liquidity, this report focuses only on the AML/CFT/sanctions regulatory compliance issues that have been identified as the primary reasons for derisking.

79 Laura Noonan, "Banks Face Pushback over Surging Compliance and Regulatory Costs," Financial Times, May 28, 2015, https://www.ft.com/content/e1323e18-0478-11e5-95ad-00144feabdc0.

80 Dow Jones & ACAMS, "Global Anti-Money Laundering Survey Results 2016," at 4, http://files.acams.org/pdfs/2016/Dow_Jones_and_ACAMS_Global_Anti-Money_Laundering_Survey_Results_2016.pdf.

81 Stacey English & Susannah Hammond, "Cost of Compliance 2016," Thomson Reuters, at 3, https://risk.thomsonreuters.com/content/dam/openweb/documents/pdf/risk/report/cost-compliance-2016.pdf.

Enhanced regulatory pressures, rising compliance costs and the chilling effect of enforcement actions and fines have resulted in financial institutions that increasingly withdraw from doing business with customers or regions perceived to carry higher risks. Fueled by concerns that "wrong" compliance decisions could result in reputational and regulatory costs, FIs have grown more risk-averse over the past several years. As documented by numerous policy reports and acknowledged by the FATF in October 2015, "de-risking is having a significant impact in certain regions and sectors."[82]

FATF attributes derisking to a complex set of drivers: profitability, reputational risk, the cost of implementing AML/CFT measures, sanctions and other regulatory requirements. To address the problem, FATF issued a statement in 2015 reiterating that regulators and supervisors should use a risk-based approach in supervising financial institutions' compliance with AML/CFT measures. It notes that when failures are detected, governments should take appropriate and proportionate action, stating that the RBA is not a "zero tolerance" approach. Emphasizing that FIs should manage (not avoid) risks, FATF urged banks to prevent the "wholesale cutting loose of entire countries and classes of customer, without taking into account, seriously and comprehensively, their level of money laundering and terrorist financing risk and applicable risk mitigation measures for those countries and for customers within a particular sector."[83]

Figure 3: AML Compliance Challenges*

AML COMPLIANCE CHALLENGES FACED BY ORGANIZATIONS

60% of respondents cite increased regulatory expectations as the greater AML compliance challenge, followed by concerns regarding having enough properly trained staff. Formal regulatory criticism increases by 4% from 2015.

	2013	2015	2016	MAIN CHALLENGE
Increased regulatory expectations & enforcement of current regulations	53%	62%	60%	28%
Having enough properly trained AML staff	36%	49%	50%	19%
Insufficient/outdated technology	31%	38%	41%	15%
Too many false positive screening results	31%	32%	36%	7%
Budget constraints & increased scrutiny of third-party reviews			27%	5%
Additional regulations	25%	26%	22%	3%
Understanding regulations outside home country	22%	23%	25%	4%
Sanctions compliance			24%	3%
Formal regulatory criticism	12%	15%	19% ↑	5%
Fear of personal civil & criminal liability			15%	2%
Lack of senior management/BoD AML engagement	13%	17%	14%	5%
Understanding regulations in home country	10%	9%	9%	1%

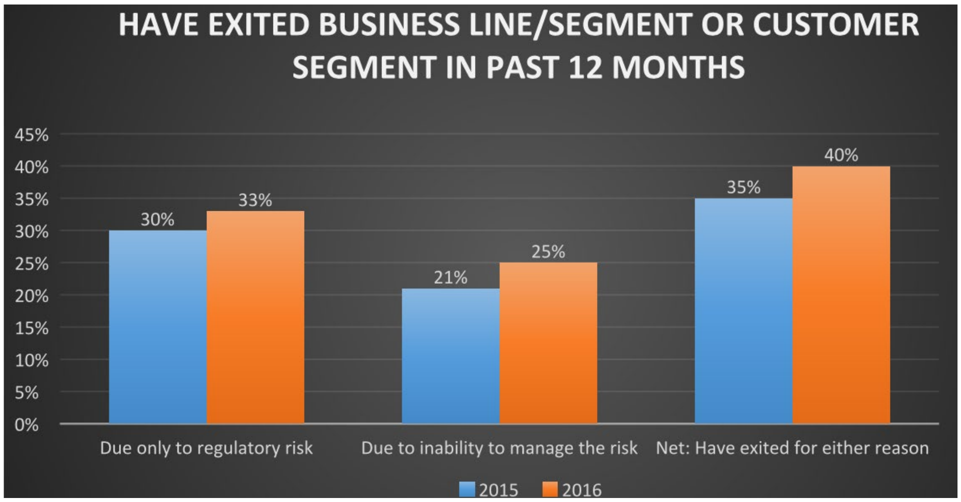
*Source: Dow Jones & ACAMS, "Global Anti-Money Laundering Survey Results 2016"

82 See, for example, Unintended Consequences of Anti-Money Laundering Policies for Poor Countries, Center for Global Development, November 9, 2015, http://www.cgdev.org/sites/default/files/CGD-WG-Report-Unintended-Consequences-AML-Policies-2015.pdf; Tracey Durner and Liat Shetret, Understanding Bank De-risking and Its Effects on Financial Inclusion, Oxfam and Global Center on Cooperative Security, November 2015, http://www.globalcenter.org/wp-content/uploads/2015/11/rr-bank-de-risking-181115-en.pdf ("Oxfam/GCCS Study"); Withdrawal from Correspondent Banking: Where, Why, and What to Do About It, World Bank, November 2015, http://documents.worldbank.org/curated/en/113021467990964789/pdf/101098-revised-PUBLIC-CBR-Report-November-2015.pdf ; Report on the G-20 Survey on De-risking Activities in the Remittance Market, World Bank, October 2015, http://documents.worldbank.org/curated/en/679881467993185572/pdf/101071-WP-PUBLIC-GPFI-DWG-Remittances-De-risking-Report-2015-Final-2.pdf; Report to the G20 on actions taken to assess and address the decline in correspondent banking, Financial Stability Board, November 6, 2015, www.fsb.org/wp-content/uploads/Correspondent-banking-report-to-G20-Summit.pdf; FATF, "FATF takes action to tackle de-risking," October 23, 2015, http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-action-to-tackle-de-risking.html.

83 "FATF takes action to tackle de-risking," October 2015.

While FIs do not discuss issues related to individual accounts and are reluctant to engage on the issue of derisking generally, they readily admit that it frequently happens. According to the 2016 ACAMS survey of FIs, 40% of respondents report that their companies have exited a full business line or segment in the past 12 months due to regulatory risk (see Figure 4). One-third of respondents are planning and/or investigating exiting a business line/segment in the next 12 months.[84]

Figure 4: Financial Institutions Exiting Business*



***Source:** Numbers derived from figures presented in the *Dow Jones & ACAMS Global Anti-Money Laundering Survey Results 2016* http://files.acams.org/pdfs/2016/Dow_Jones_and_ACAMS_Global_Anti-Money_Laundering_Survey_Results_2016.pdf

It stands to reason, from a cost-benefit and risk-assessment viewpoint, that given these conditions, FIs would decide to terminate relationships perceived as higher risk. One of the architects of the post-9/11 AML/CFT regime, Stuart Levey (former Treasury Under Secretary for Terrorism and Financial Intelligence before he joined HSBC) said that by pushing banks to tighten up on financial crime compliance, regulators had ended up driving them to derisk by cutting off high-risk categories of customers.[85] As explained in greater detail in Chapter 6, financial institutions are increasingly concerned about "regulatory risk."

Derisking Impacts Diverse Stakeholders

The impacts of derisking have been felt by specific sectors such as NPOs, MSBs and foreign embassies, as well as specific regions. While the remainder of this report addresses the consequences of derisking on NPOs, other examples are summarized below.

Remittances by Diaspora Populations

Money service businesses, including money transmitters, offer critical services widely utilized bydiaspora communities in transferring remittances back home. They are popular because they charge much lower fees than most FIs and do not require customers to maintain formal accounts.

84 Dow Jones & ACAMS, "Global Anti-Money Laundering Survey Results 2016."

85 Martin Arnold, "HSBC's Levey calls for overhaul of anti-financial crime measures," Financial Times, September 26, 2016, https://www.ft.com/content/408f4022-4171-3d28-a773-805f332bd71e.

For less-developed countries without well-established financial systems or countries suffering from prolonged conflict, MSBs and informal value transfer systems such as hawala are a primary means of moving funds internationally. As U.S. NPOs' difficulties with banking have increased, many have turned to MSBs as an alternative method to transfer funds abroad.

MSBs AND DESRISKING

Since 9/11, MSBs and remittance services have come under greater scrutiny, falling into the category of higher-risk customers for FIs, along with NPOs. MSBs serve large portions of populations in less-developed countries; Dahabshil, for example, an indigenous African-based money transfer business, has operations in 126 countries across the world, 40 of which are in Africa.

Somalia has been particularly affected by remittance derisking.[86] Without a functioning central bank, Somalia relies on remittances from Somalis abroad. The World Bank estimates total Somali remittances to be $1.4 billion, supporting "23% of the [Somali] GDP" in 2015, exceeding the amount it receives in humanitarian aid, development aid and foreign direct investment combined. In 2001, the U.S. government closed down al-Barakaat (the largest MSB serving the Somali community) over suspicions it helped to fund al-Qaida.[87] (It was removed from the list in 2012.) Since then, U.S. and international financial institutions have been reluctant to process payments to Somalia, with sizeable Somali communities in Minnesota and Ohio left without viable means to remit funds home.[88]

In 2011, Minnesota's Sunrise Community Banks, serving a large diaspora community, closed its Somali remittance accounts after two high-profile prosecutions of Somali-Americans for raising money for al-Shabaab. California's Merchants Bank then became the largest bank specializing in Somali accounts, but it announced plans to close its Somali business in 2014. After negotiating a compromise with U.S. regulators, it reversed its decision, but by February 2015, Merchant Bank ceased its Somali remittance business altogether. It was the last remaining FI handling transfers to Somalia, with 80% of remittances from the U.S. to Somalia. The perception of MSBs as inherently risky persists, and some banks have terminated all MSB accounts or refused to open new ones due to regulatory cost and risk concerns. The World Bank confirmed that money transmitters are experienced increased closures of and/or restrictions on accounts between 2010 and 2014.[89] While both the FATF and U.S. have reiterated that FIs should apply a risk-based approach to MSBs since they do not present a uniform and unacceptably high risk of money laundering, it has not reassured FIs. Reports of long-established MSBs losing bank accounts in the U.K., Australia and Canada, as well as the U.S., are increasing, [90]and the lack of access to financial services for MSBs is reaching crisis proportions.

86 Manuel Orozco and Julia Yansura, "Keeping the Lifeline Open: Remittances and Markets in Somalia, 2014, https://www.oxfamamerica.org/static/media/files/somalia-remittance-report-web.pdf.

87 The 9/11 Commission subsequently found no evidence of misuse of MSBs, including al-Barakaat. See John Roth, Douglas Greenberg, and Serena Wille, Staff Report to the Commission, "National Commission on Terrorist Attacks Upon the United States: Monograph on Terrorist Financing," 2004, http://govinfo.library.unt.edu/911/staff_statements/911_TerrFin_Monograph.pdf.

88 See Martin Weiss, "Remittances: Background and Issues for Congress," Congressional Research Service, at 12, May 9, 2016, https://www.fas.org/sgp/crs/misc/R43217.pdf.

89 *Report on the G-20 Survey on De-risking Activities in the Remittance Market.*

90 Faisil Khan, "Can't find MSB Friendly Banks? Go ahead, scream. No one is listening." July 6, 2015. https://www.linkedin.com/pulse/cant-find-msb-friendly-banks-go-ahead-scream-no-one-is-listening-khan?forceNoSplash=true

Geographic Derisking

Derisking also impacts parts of the world that are not under direct sanctions but that are subject to perceptions of risk due to other factors. For example, the Caribbean has been particularly hit by this trend. Because of their small sizes and export-driven economies, Caribbean countries depend on correspondent accounts for revenues generated from abroad.[91] As noted in the 2015 World Bank reports, derisking in the Caribbean poses a serious threat to development in the region.[92]

Similarly, a study by the Arab Monetary Fund, in cooperation with the International Monetary Fund and the World Bank, surveyed 216 banks operating in 17 Arab countries. It found that 39% of banks had seen a significant decline in the scale and breadth of their correspondent banking relationships between 2012 and 2015. The decline in correspondent banking relationships is increasing: the survey found that 63% of banks reported the closure of such accounts in 2015, compared to 33% in 2012. Forty percent of Arab banks said U.S. lenders were most prone to withdraw from correspondent banking relationships, followed by British and German banks.[93]

Even within the U.S., there is evidence of regional derisking along the southwestern U.S. border. Members of Congress have weighed in on the impact of local populations attempting to use credit unions and money remitters. Beyond letters to the Administration expressing concern for the negative consequences of derisking, Congress has called for Inspector General reports and investigations by the Government Accountability Office of the situation.[94]

FIs also refer to “jurisdictional derisking,” whereby certain countries pose such high levels of risk that some banks have decided not to do any business associated with such destinations. Often, these countries are subject to U.S. or UN sanctions (e.g., Iraq, Iran, Syria, Sudan, Somalia, North Korea, Myanmar) and frequently are the very same countries where many humanitarian assistance, peacebuilding and development NPOs seek to provide services to alleviate suffering resulting from ongoing conflict and terrorism. Many FIs noted that jurisdictional risk outweighs all other concerns; lower-risk NPOs that otherwise would be attractive customers will have significant problems if funds are intended for higher-risk destinations.

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91 Naki B. Mendoza, “How banks de-risking can undermine development,” Devex Impact, May 31, 2016, https://www.devex.com/news/how-banks-de-risking-can-undermine-development-88227.

92 Ibid.

93 “Arab banks’ ties to foreign banks under pressure, survey finds,” Reuters, September 5, 2016, http://www.reuters.com/article/us-mideast-banks-idUSKCN11B22R.

94 See letter and statements at website of Senator Jeff Flake, “Flake, McCain Urge Agencies to Address Bank Closures on U.S.-Mexico Border,” Press Release, March 10, 2016, http://www.flake.senate.gov/public/index.cfm?p=press-releases&id=-2F767A64-5510-4364-A5BC-360EAC069D42

EMBASSY DEBANKING

In May 2004, FinCEN and the OCC levied a $25 million fine (the largest civil money penalty against a U.S. bank at the time for BSA violations) against Riggs Bank for failing to maintain an adequate AML system and willful violations of suspicious activity and currency transaction reporting.[95] Having served diplomatic and foreign embassies' banking needs for years, Riggs's reputation was devastated. Riggs closed its embassy bank accounts and ultimately was acquired by PNC Bank in 2005.

The ensuing "Embassy Debanking" predicament left many embassies hard-pressed to find new banks as most major American financial institutions exited or scaled back their operations with foreign missions. AML/CFT regulations, rising reputational risks and severe penalties made banks reluctant to take on embassies as clients. Countries significantly affected included Saudi Arabia, Angola, Equatorial Guinea and Sudan. The State Department reported that nearly 40 countries had been affected by embassy debanking, including 16 African nations.[96]

The embassy debanking crisis escalated to the level of heads of state raising financial access problems in bilateral meetings. As a result of the diplomatic fallout, the U.S. Secretaries of Treasury and State urged banks to resume business with foreign embassies, all while noting that embassy debanking was "a commercial decision" but with "ramifications for diplomatic relations."[97] The American Bankers Association (ABA) responded that the regulatory regime "can make providing routine banking to foreign diplomats almost an impossible task," noting that the Bank Examination Manual required "greater scrutiny and monitoring of all embassy and foreign consulate account relationships."[98]

Ultimately, FinCEN updated its guidance, confirming that financial institutions had the "flexibility to provide banking services to foreign missions while also remaining in compliance with the BSA, and over time banks began to reopen accounts with foreign embassies, but at a premium."[99] However, without the significant political pressure to find a solution, it is unlikely that this situation would have been resolved. Other groups that do not have comparable political support but are experiencing debanking are unlikely to see similar results.

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95 U.S. Department of Treasury, Financial Crimes Enforcement Network, In the Matter of RIGGS BANK, N.A., No. 2004-01, https://www.fincen.gov/sites/default/files/enforcement_action/riggsassessment3.pdf.

96 Matthias Rieker, Joseph Palazzolo, Victoria McGrane, "Banks Exit from Embassy Business: Moves by Largest Lenders Could Strain Relations Between U.S. government and Other Countries," Wall Street Journal, November 20, 2010, http://www.wsj.com/articles/SB10001424052748703531504575625060985983720.

97 Josh Rogin, "37 Embassies in Washington Face Banking Crisis," Foreign Policy, November 19, 2010, http://foreignpolicy.com/2010/11/19/37-embassies-in-washington-face-banking-crisis/.

98 Frank Keating Letter to Hillary Clinton, January 18, 2011, https://www.aba.com/aba/documents/news/ClintonGeithnerLetter11811.pdf.

99 FinCEN, "Guidance on Accepting Accounts from Foreign Embassies, Consulates, and Missions," March 24, 2011, https://www.fincen.gov/sites/default/files/guidance/FFIEC_FinCEN_24_march.pdf; and Juan Zarate, "Treasury's War: The Unleashing of a New Era of Financial Warfare." New York: Public Affairs, 2013.

Security Consequences of Derisking

Derisking can pose significant consequences for U.S. and international security objectives. Experts fear that derisking of correspondent banking, MSBs and NPOs will create a vacuum filled by less-transparent and -accountable financial institutions, which ultimately undermines the integrity of the international financial system as money is driven into riskier channels. Underground banking that is unmonitored or unregulated, and where legitimate money may freely mix with illicit funds before making its way back into the regulated financial system, is not only contrary to AML/CFT objectives but is also actually harmful.[100]

Financial and regulatory policymakers have begun to recognize the potential consequences of reduced access to banking services for illicit finance objectives. David Lewis, executive secretary of the FATF, in discussing derisking noted that, “It’s a concern to us, as it undermines transparency within the financial sector and law enforcement’s ability to follow the money…. We are concerned about that as it reduces transparency in financial transactions, it increases the ML/TF risks we are trying to address.”[101] Comptroller of the Currency Thomas Curry acknowledged the potential danger, commenting that, “Transactions that would have taken place legally and transparently may be driven underground.”[102] Former Treasury Secretary Jack Lew echoed these concerns when he noted that, “Financial institutions around the world have to adhere to high standards to stop the flow of illicit funds. That means anti-money laundering rules really matter. On the other hand, if the burden is so high … that people withdraw from the financial system or are excluded from it, it ultimately raises the risk of illicit transactions.”[103]

According to James Richards, an executive vice president and a top Bank Secrecy Act officer at Wells Fargo, “As banks become more cautious about who they can safely bank, bad actors will migrate to institutions that are not as well equipped to detect them.” Richards goes on to say that, “The ironic result of de-risking is re-risking […] you are just spreading it … you are sending them to banks that probably can’t handle it.”[104]

In addition, derisking can contribute to drivers of violent extremism, undermining the very objectives that AML/CFT measures are intended to support. Key aspects of international strategies to prevent terrorism/counter violent extremism are programs to support local populations where terrorism takes root—initiatives in which NPOs play a vital role. To avoid working at cross-purposes, AML/CFT measures must be consistent and broadly coordinate with national security, foreign policy and economic objectives.[105] In places like Somalia, shuttering legitimate banks and

100 Rob Barry and Rachel Louise Ensign, “Losing Count: U.S. Terror Rules Drive Money Underground,” Wall Street Journal, March 30, 2016.

101 Mark Taylor, “FATF chief talks de-risking dangers and correspondent banking,” March 29, 2016, https://www.linkedin.com/pulse/fatf-chief-talks-de-risking-dangers-correspondent-banking-mark-taylor

102 Barry and Ensign, “Losing Count: U.S. Terror Rules Drive Money Underground.”

103 Lalita Clozel, “Lew on DeRisking: Banks Should Not Be Penalized for Engaging Abroad,” American Banker, October 7, 2016.

104 Ian McKendry, “Banks Face No-Win Scenario on AML ‘De-Risking,’” American Banker, November 17, 2014, http://www.americanbanker.com/news/law-regulation/banks-face-no-win-scenario-on-aml-de-risking-1071271-1.html.

105 Counter-Terrorism Implementation Task Force, “Tackling the Financing of Terrorism,” at 17, October 2009, http://www.un.org/en/terrorism/ctitf/pdfs/ctitf_financing_eng_final.pdf.

money remitters poses a very real impediment, not only to U.S. counterterrorism and illicit finance goals but also for economic growth and development. Indeed, this development is needed to counter terrorist groups like al-Shabab.[106]

Derisking poses complicated policy dilemmas that involve competing interests, and policymakers attempt to navigate between them. An article in American Banker noted, "Those responsible for disrupting illicit activity—such as terrorism, drug trafficking and evading sanctions—hold that banks should exit certain markets where they cannot effectively manage the customer, business line and jurisdictional risks. However, policymakers responsible for promoting global development, trade and investment are alarmed by the prospect of walking back decades of economic progress attributable to financial inclusion and global finance."[107]

Robert Kimmitt, former Deputy Treasury Secretary, Under Secretary of State for Political Affairs and National Security Council Executive Secretary, warned of the unintended consequences of aggressive implementation of AML/CFT standards. He stated, "[A]s we work with U.S. and overseas financial institutions, let us not forget the laws of unintended consequences. If we so harshly regulate banks that they withdraw services from post-conflict and other developing countries that are ideal breeding grounds for terrorists and their financiers, we will drive the work of these financiers into the shadows.… We must expect banks to be held to high standards in this area, but not set the bar so impossibly high that the only rational business decision is to withdraw."[108]

Implications of Derisking for Financial Inclusion

> *Some observers consider derisking to be the "single biggest threat to financial inclusion around the world."*

In recent years, the U.S. and international development agencies have emphasized the importance of extending financial access globally as a way of reducing poverty and boosting prosperity. "Financial inclusion" is defined as individuals and businesses having access to useful and affordable financial products and services that meet their needs—transactions, payments, savings, credit and insurance—delivered in a responsible and sustainable way.[109] Around 2 billion people, or 40% of the world's adults, lack access to basic financial services necessary to protect themselves from hardship. Financial exclusion is greatest among poor people and in emerging and developing countries, including the rural households that account for more than 70% of global poverty.[110] The World Bank has called for universal financial access (access to a transaction

106 Alex Zerden, "Four Pressing Issues in Combating Terrorism Financing," American Banker, August 20, 2015, http://www.americanbanker.com/bankthink/four-pressing-issues-in-combatting-terrorism-financing-1076102-1.html.

107 Matthew Epstein and Howard Mendelsohn, "Here's How to Solve the De-Risking Riddle," American Banker, May 3, 2016, http://www.americanbanker.com/bankthink/heres-how-to-solve-the-de-risking-riddle-1080805-1.html.

108 Statement of Robert M. Kimmitt, Stopping Terror Finance: Securing the U.S. Financial Sector," Report of the Task Force to Investigate Terrorism Financing, Committee on Financial Services, U.S. House of Representatives, at 30, December 20, 2016, http://financialservices.house.gov/uploadedfiles/terror_financing_report_12-20-2016.pdf.

109 See Alliance for Financial Inclusion, http://www.afi-global.org.

110 "The Imperative of Financial Inclusion," Website of the UN Secretary-General's Special Advocate for Inclusive Finance for Development (UNSGSA), https://www.unsgsa.org.

account or electronic instrument to store money and send and receive payments) by 2020, and the UN has identified financial inclusion as an enabler for 7 of the 17 Sustainable Development Goals.[111]

The trend of derisking, however, constitutes a significant challenge to financial inclusion. With FIs terminating or restricting business with remittance companies and smaller local banks in certain regions of the world, money transfers for migrant workers and NPOs have become more difficult. Some observers consider derisking to be the "single biggest threat to financial inclusion around the world. [112]

MSBs and remittances have been severely affected by derisking. People working abroad send about $450 billion a year back to their native countries, representing a major source of income for many developing countries. According to World Bank President Jim Kim, the key to continuing progress toward universal financial access will be to find a way to "mitigate the risks without slowing down financial inclusion."[113] For Mark Carney, Governor of the Bank of England and Chairman of the Financial Stability Board, derisking is akin to "financial abandonment." Federal Reserve Chair Janet Yellen told the U.S. Congress that the trend was causing "a great deal of hardship."[114]

Recognizing the importance of economic progress attributable to financial inclusion and global finance, then U.N. Secretary-General Ban Ki Moon appointed Her Majesty Queen Máxima of the Netherlands as Special Advocate for Inclusive Finance for Development (UNSGSA). In November 2015, she noted:

> "We have recently witnessed some setbacks in the quest for greater financial inclusion. The Financial Action Task Force and the standard-setting bodies housed here at the BIS [Bank for International Settlements] have called for banks to engage in careful risk assessments. But, as many of you are already aware, some banks are engaging in what they call "de-risking"—simply ceasing to engage in lines of business that are seen as potentially high risk relative to their profitability. The term "de-risking" is problematic because, by cutting off certain clients and thereby increasing financial exclusion, de-risking can actually increase the risk of money-laundering and terrorist financing, as FATF has acknowledged. The problem is of particular concern because of its potential impact on cross-border remittances from migrants to family members—sums that in many countries dwarf official aid flows. De-risking, if not addressed in a nuanced fashion, could also negatively impact the ability of small firms to obtain export finance, or other entities to carry out development activities…. The right balance calls for a proportionate, risk-based approach advocated in the standards and guidance of the bodies housed here at the BIS."[115]

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111 World Bank, "Overview of Financial Inclusion, http://www.worldbank.org/en/topic/financialinclusion/overview#1.

112 Center for Financial Inclusion Blog, "Does Global De-Risking Create "Financial Abandonment"? The Background You Need to Know," October 5, 2016, https://cfi-blog.org/2016/10/05/does-global-de-risking-create-financial-abandonment-the-background-you-need-to-know/

113 World Bank, "Powerful panel weighs progress on financial inclusion," October 7, 2016, https://blogs.worldbank.org/voices/powerful-panel-weighs-progress-financial-inclusion

114 CFI, October 6, 2016.

115 Speech by Her Majesty Queen Máxima of the Netherlands, United Nations Secretary-General's Special Advocate for Inclusive Finance for Development (UNSGSA), at the All Governors' Meeting, Bank for International Settlements, Basel, November 9, 2015, http://www.bis.org/review/r151113c.htm.

U.S. Policy/Regulatory Response to Derisking

September 2016 marked 15 years since the 9/11 terrorist attacks, what the Treasury Deputy Assistant Secretary for Terrorist Financing called the "watershed event that fundamentally changed AML/CFT policy in America."[116] Reflecting on the accomplishments over this period, an official noted the essential role that combating illicit finance plays in promoting U.S. security.
She went on to say: "Our terrorist financing risk assessment concluded that our efforts over the past 15 years have pushed terrorist financing out of the banking sector and into other methods, such as cash smuggling…. In the last five years, law enforcement has successfully disrupted more than 100 potential terrorist attacks, in no small part due to critical financial intelligence provided by the private sector and analyzed and disseminated by government agencies."

Notwithstanding the critical role financial intelligence (FININT)[117] plays, recognition of the unintended consequences of AML/CFT regulatory policies by U.S. officials has been measured. It was not until late 2015 that Treasury officials responsible for illicit finance began to acknowledge that certain sectors—correspondent banking and MSBs—are indeed experiencing difficulties in accessing financial services, even while reiterating the appropriateness of current policy: "We believe our risk-based AML/CFT standards are the right ones—for correspondent banking, MSBs and really all cross-border financial services."[118] The gradual recognition by U.S. officials of financial access problems has been limited, however, to certain regions of the world, such as the Caribbean, and to the specific sectors of correspondent banking and MSBs. "Treasury has been focused on this issue for some time now, and over the course of our engagement we have come to understand that some sectors and jurisdictions are affected more than others, but overall, there is no evidence to suggest a global systemic impact."[119] Until November 2016, there was no mention of NPOs in public statements or any recognition of the financial access difficulties NPOs have reported.[120]

The debate as to whether and how much derisking poses a serious concern that requires government intervention continues. Officials object to the use of the term "derisking" as pejorative and inappropriate and remain skeptical as to the degree derisking is in fact a problem. In September 2016, Thomas Curry, Controller of the Currency, stated,

116 Remarks by Deputy Assistant Secretary Jennifer Fowler at the SIFMA Anti-Money Laundering & Financial Crimes Conference, April 6, 2016, https://www.treasury.gov/press-center/press-releases/Pages/jl0409.aspx.

117 Analogous to SIGINT (signals intelligence) and HUMINT (human intelligence), some analysts have recently come to characterize financial intelligence as FININT. See Clare Ellis and Inês Sofia de Oliveira, "Tackling Money Laundering: Towards a New Model for Information Sharing," RUSI, September 2015, https://rusi.org/sites/default/files/201509_op_tackling_money_laundering.pdf.

118 Remarks by Acting Under Secretary Adam Szubin at the ABA/ABA Money Laundering Enforcement Conference, November 16, 2015. https://www.treasury.gov/press-center/press-releases/Pages/jl0275.aspx.

119 Remarks by Acting Under Secretary Adam Szubin at the ABA/ ABA Money Laundering Enforcement Conference, November 14, 2016. https://www.treasury.gov/press-center/press-releases/Pages/jl0608.aspx.

120 Under Secretary Szubin's remarks on November 14, 2016 include a reference to NPOs as part of the stakeholders Treasury is engaged with—the first time NPOs have been mentioned—but there has still been no discussion or efforts to address NPOs problems with financial access.

> "…it is not surprising that some banks have chosen to reduce their risks and shrink their exposure and international business portfolios. That choice is the result of what has been pejoratively labeled 'de-risking.' These withdrawals, particularly in regions subject to terrorism, drug trafficking, and other illicit activity, have been the subject of a good deal of publicity and, in some cases, have caused outcry both here and abroad. The process that has resulted in these decisions is better described as risk reevaluation. It's the process in which institutions review the risks they face on a continual basis and ensure they have systems in place that can identify and adequately address those risks. The actual process of regularly reevaluating risk is a critical and expected part of the BSA/AML regulatory regime.[121]

Treasury Under Secretary Adam Szubin amplified this definitional concern, noting, "The term 'de-risking' has come to mean different things to different people, and is not consistently used by various stakeholders. We prefer to focus the term more precisely on what we view as problematic, which are reports of financial institutions *indiscriminately terminating or restricting broad classes of customer relationships without a careful assessment of the risks and the tools available to manage and mitigate those risks."* (emphasis added)[122] This narrow definition and continuing lack of recognition of the impact of financial access problems on U.S. nonprofits continues.

NPO Response to Narrowing Financial Access

Reports of NPO problems with access to financial services began surfacing a decade ago. For example, on the eve of Ramadan in September 2006, the Federal Bureau of Investigation (FBI) conducted a raid on Life for Relief and Development, a Michigan-based organization that has been delivering humanitarian assistance around the world since the 1990s. Despite the fact that no criminal charges were filed, the publicity prompted Life's local bank to withdraw its services, thereby interrupting their humanitarian assistance programs.[123] With this event on its record, Life has continued to have problems accessing banking services, and more NPOs began reporting similar problems.[124] While the problem initially appeared to mainly impact Muslim charities, over time it has spread to include many types of NPOs.

The serious impacts regarding the loss of financial services generated responses in the nonprofit sector, which began tracking and documenting narrowing financial access for NPOs in 2006. Organizations like Oxfam worked to maintain the remittance services that are so vital to people in need in places like Somalia. As more NPOs experienced problems, the C&SN responded by forming a Financial Access Working Group in 2014 to coordinate research, education and advocacy work on the issue, bringing the issue to the attention of U.S. officials and Congressional oversight committees.

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121 Remarks by Thomas J. Curry at the ACAMS 15th Annual AML and Financial Crime Conference, September 28, 2016, http://www.acamstoday.org/remarks-by-thomas-j-curry/.

122 Szubin remarks, November 14, 2016.

123 Charity & Security Network, "US Muslim Charities and the War on Terror: A Decade in Review," December 2011, http://www.charityandsecurity.org/sites/default/files/USMuslimCharitiesAndTheWarOnTerror.pdf.

124 Charity & Security Network, "Life for Relief & Development v. Bank of America, NA," August 19, 2016, http://www.charityand-security.org/node/1434.

Think tanks also began to address the issue, placing it in the larger context of financial inclusion. Tom Keatinge, a UK-based researcher at the Royal United Services Institute and a former investment banker, wrote, "At the heart of this dilemma is the importance of maintaining proportionality. Research undertaken by the World Bank and the Consultative Group to Assist the Poor (CGAP) concludes that the interaction between the provision of financial services to the poor and the establishment of an effective CFT regime are 'complementary,' because 'without a sufficient measure of financial inclusion, a country's [CFT] system will safeguard the integrity of only [the formal] part of its financial system... leaving the informal and unregistered components vulnerable to abuse.'"[125]

Reports by NPOs of difficulty with financial access have continued to grow; periodic meetings with government representative have been held but not resulted in concrete steps to address the issues. A significant group of NPOs sent a letter in February 2016[126] to the U.S. Departments of Treasury and State asking them to convene a multi-stakeholder dialogue as part of a broader effort to ensure that registered, law-abiding NPOs are able to access the global financial system and calling for a public statement making clear that charities are not by definition high-risk customers.

The letter noted that:

> "It is increasingly difficult for these nonprofit organizations (NPOs) to access financial services that are necessary to keep their operations going. Banks may delay, or refuse to make, transfers between organizations. Sometimes, NPOs are turned away as customers or have their accounts closed. For example, in the spring of 2015, one charity was unable to pay for fuel needed to supply power to a hospital in Syria because of the banks' lengthy delays in transmitting funds… The banks and the U.S. Treasury Department are blaming each other for the problem and to date have done little to solve it." [127]

Treasury and State responded in a May 2016 joint letter stating that, "It is important to emphasize the Treasury Department's view that the charitable sector as a whole does not present a uniform or unacceptably high risk of money laundering, terrorist financing or sanctions violations." The letter adds that banks should take a risk-based approach to conducting due diligence on nonprofit customers but that, "Treasury expects banks to apply their due diligence obligations reasonably—*not that they be infallible in doing so..."* (emphasis added).[128] In a July 21, 2016 response, the group of nonprofits asked the Treasury to update the Bank Examiners Manual section on NPOs that refers

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125 A War of Proportion: Regulating the Financial Sector in the Name of Counterterrorism, September 18, 2013, http://www.charityandsecurity.org/blog/War_Of_Proportion_Financial_Sector_Counterterrorism. Citing Bester, H., D. Chamberlain, L. De Koker, C. Hougaard, R. Short, A. Smith & R. Walker, Implementing FATF Standards in Developing Countries and Financial Inclusion: Findings and Guidelines, The FIRST Initiative, 2008,(Washington, DC: The World Bank) www.cenfri.org/documents/AML/AML_CFT%20and%20Financial%20Inclusion.pdf.

126 Letter to Jacob Lew, Treasury Secretary, and John Kerry, Secretary of State, February 25, 2016, http://www.charityandsecurity.org/system/files/Sign%20on%20Ltr%20Fin%20Access_1.pdf. The 58 NPO signatories to the letter included umbrella groups with more than 300 member organizations combined and represented more than 8.3 billion annually in humanitarian aid and services to the world's most needy.

127 Ibid.

128 Letter to Kay Guinane, Charity & Security Network, from Jennifer Fowler, Deputy Assistant Secretary, Department of Treasury, and Andrew Keller, Deputy Assistant Secretary, Department of State, May 13, 2016, http://www.charityandsecurity.org/system/files/Joint%20Response%20letter%20to%20NPO%20on%20reduced%20access%20to%20financial%20services%20May%20 2016%20signed.pdf.

to the entire sector as “high-risk” to comport to the new FATF R8. Plans have not been announced to move up the timetable for revision of the Manual currently slated for 2018. Progress on the overall issue of derisking of NPOs remains elusive, and many NPOs express frustration with their inability to engage government in a results-oriented process.