**[Organisation] RESPONSE: REVIEWING CANADA'S AML AND ATF REGIME**

**Corporate Transparency:**

- Support. A repository or registry model would be very helpful in meeting obligations.

Additional Recommendations:

- Require the redemption of all bearer shares within 12 mos.
- Require corporations and partnerships to report to the CRA in their annual return, all the names, residential addresses, occupations, and DOBs of all individuals who acted in any of these capacities in the last 12 mos:
    - Directors; Officers; Authorized Officers (ability to bind); owners (no minimum threshold)
        - Exempt publically traded companies from reporting ownership to CRA
- Require trusts to report to the CRA in their annual return, all the names, residential addresses, occupations and OBs of all individuals who acted in any of these capacities in the last 12 mos:
    - Settlor, beneficiary, trustee
- Where an entity is an owner, require the same disclosures relative to that entity, and all subsequent levels, until the natural person is reached, irrespective of the jurisdiction where the entity is registered or operating.
- Have the CRA maintain a public registry of all data collected.
- Make the use of nominees in any of these capacities a criminal offence
- Make the use of corporate structures to obfuscate ownership and control information a criminal offence (Reverse onus – there must be a demonstrable legitimate business purpose for the structure)
- Make the formation and existence of shell entities a criminal offence.

**The Legal Profession in Canada:**

- Support. The exclusion of the legal profession from the AML/ATF framework is a significant gap in the regime and could be undermining the AML/ATF efforts of other Res.

Additional Recommendations:

- Regulate activities, versus professions. Those that conduct certain activities are then subject to the regulations within the scope of those activities.
- Separate advice and litigation activities from financial/business activities.
- Advice and litigation remain subject to privilege.
- Financial transactions and business formation activities are to be entirely subject to the regime.

**Expanding the Scope of the PCMLTFA to High Risk Areas:**

- Qualified support.
    - Not opposed to efforts to align to international standards, though we are concerned with the return on investment relative to the effectivenss of the present regime. We would prefer to see compliance and prosecutorial effectiveness addressed based on the present regime prior to expanding the scope of the Act to include additional REs.
    - The addition of a requirement to determine if beneficial owners are PEPs could potentially increase the industry's costs significantly. We would want to understand the nature and level of the return on this investment for the regime. We would want to see a commensurate reduction in obligations/costs elsewhere in the regime.

**Stronger Partnership with the Private Sector:**

- Support. Greater sharing of information between government and the private sector, and between private sector participants, should improve the efficacy and efficiency of the regime. 314(a) and (b) of the PATRIOT ACT are strong examples for consideration for inclusion in the Canadian regime.

**Professional Money Launderers and Recklessness:**

- Support. Additionally consider a reverse onus standard relative to civil forfeiture; where a conviction has been registered relative to the commission of a predicate offence, or for this new 'professional money laundering' offence, all assets are to be forfeited barring proven legitimate source (including reported income to CRA).

**EFTs:**

- Challenge. This could potentially increase the industry's reporting burden and associated costs significantly. We would want to understand the nature and level of the return on this investment for the regime. We would want to see a commensurate reduction in obligations/costs elsewhere in the regime.

**Bulk Cash:**

- Support. Recommend the removal of their legal tender status after a period of notice to force their removal from circulation/storage.

**Geographic Targeting Orders:**

- Challenge. This could potentially increase the industry's record keeping, monitoring, and reporting activities and their associated costs significantly.
    - REs are presently required to obtain 'the' (singular) address of the individual or entity; requirements defining what address is to be captured are poorly defined (i.e. Residential? Operating? Registered?), and are not enforced by registering authorities (i.e. government-run business registration agencies). Clients may also maintain multiple residential or operating addresses. Record-keeping requirements would need to be updated to enable the maintenance of records sufficient to act upon any such order.
    - We would want to understand the nature and level of the return on this investment for the regime. We would want to see a commensurate reduction in obligations/costs elsewhere in the regime.

**Addressing the issue of Money Services Business (MSB) De-risking:**

- Clear guidance on compliance expectations across regulating bodies would be helpful. For example, DICO issued an Operational Advisory imposing materially more requirements than are presently articulated by FINTRAC/OSFI.
- Re. "know your customer's customer" – this is a welcome clarification that should be specifically addressed in guidance. Note that this position would deviate from international standards. Clear guidance relative to what, when, and how it should be applied would be helpful.

**Strengthening Money Services Business (MSB) Registration:**

- Support. Where "conviction" is the threshold included in the consultation, we recommend that a lower threshold be applied relative to registration ineligibility given the high-risk nature of MSBs.
- Additionally, expand registration requirements and regulatory scrutiny to all owners, directors, authorized officers (ability to bind) and officers of any entity.

- We would like to be able to rely on an entity's 'good standing' with FINTRAC as sufficient due diligence at on-boarding.

**Enhancing and Strengthening Identification Methods:**
- Support. Technological solutions that are presently available but are ineligible for use today could provide far greater assurance than some options that are presently acceptable.
- Additionally, expectations should be established relative to the auditability of any method utilized. As an example, the present 'original electronic document' standard is indefensible form an audit perspective; as an institution, we have chosen not to make this method available, putting us at a competitive disadvantage to those that would accept this level of risk.

**Exemptive Relief and Administrative Forbearance:**
- Qualified support. There should be clear and robust principles established to ensure competitive fairness across the market.

**Administrative Monetary Penalties (AMP):**
- Challenge.
    - Reputational damage cannot be quantified and therefore careful consideration should be given to the continued inclusion of 'naming' in the penalty regime. Decisions need to be consistent, commensurate to the severity of the offence, and public education needs to be a part of any disclosure; reviewing public commentary relative to FINTRAC's failure to name Manulife, many public comments expressed a misunderstanding that Manulife themselves had been complicit in money laundering rather than reflect the actual nature of their administrative failure.
    - Confidentiality in Court Proceedings should continue until a specific decision to 'name' an entity has been made.
    - A public penalty calculation formula is necessary. It should include provisions for aggravating and mitigating factors. Penalties should be calculated as a percentage of sales by the entity, and the assigned percentage should escalate based on prior findings on non-compliance.

**Mitigation of Money Laundering and Terrorist Financing Commensurate with the Risks:**
- Challenge. This could potentially increase the industry's record keeping, monitoring, and reporting activities and their associated costs significantly. We would want to understand the nature and level of the return on this investment for the regime. We would want to see a commensurate reduction in obligations/costs elsewhere in the regime.

**Creation of Uniform Reporting Schedule:**
- Qualified support. Care should be taken not to unintentionally increase record-keeping, monitoring, and reporting obligations.

**Removal of the Alternative to Large Cash Transaction Reporting (Section 50):**
- Oppose. The applicability of this should be expanded, to reduce compliance obligations in lower-risk scenarios.
- Additionally, guidance should be amended to remove the obligation to report a single cash deposit multiple times under the 24hr rule. See FINTRAC Interpretation Notice no. 4, example 3; this should be 1 report to include either only the first two transactions, or all three transactions in a single report.