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DELIVERED VIA ELECTRONIC MAIL
To: fin.fc-cf.fin@canada.ca

Ms. Lisa Pezzack
Director General
Financial Systems Division
Financial Sector Policy Branch
Department of Finance Canada
James Michael Flaherty Building
90 Elgin Street
Ottawa ON K1A 0G5

Dear Ms. Pezzack,

Re: Reviewing Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime, discussion paper dated February 7, 2018

The statutory review of important pieces of legislation such as the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)* provide an excellent opportunity for both government and private sector to take stock of what works well under the framework and where improvements could be made. Thank you for the opportunity to comment on these proposals for amendments to the PCMLTFA.

As the national trade association for Canada's 251 credit unions and caisses populaires outside Quebec, the Canadian Credit Union Association (CCUA) is making this submission on behalf of its member financial institutions. Collectively, these institutions control over $216 billion in assets and serve more than 5.6 million credit union member/owners through 1,800 branch locations. CCUA consents to the disclosure and attribution of our comments in whole.

Credit unions, which CCUA often characterizes as the "small businesses" of the Canadian financial sector, are individual Reporting Entities ("REs") under the PCMLTFA, and as such, are pleased to see clear recognition in the review paper that the anti-money

laundering/anti-terrorist financing (AML/ATF) framework must strive to strike a balance between capturing financial activity and the effort and cost of doing so.

Money laundering and terrorist financing are an inescapable reality and credit unions recognize that they, along with many other sectors and professions, have a role to play in fighting these criminal activities. However, the nature and extent of that role seems to be consistently expanding. While we accept that it is incumbent on financial institutions to know who they are doing business with, the level of due diligence, information gathering and verification, recordkeeping, and reporting required for anti-money laundering purposes can be both hugely onerous and distracting from our core business purpose of serving our members. This is an important fact from a small business perspective as there are few avenues through which material relief from AML/ATF obligations can currently be obtained and our research has repeatedly found that regulatory compliance, especially AML/ATF obligations, imposes a disproportionately heavy burden on smaller credit unions.

With the proposed expansion of the PCMLTFA to cover new sectors, it would seem this hefty load will spread to even more entities. While it is difficult to argue against the logic behind moving purposefully towards greater "functional regulation," it is hard to imagine how further expansion of information capture (reporting) alone will positively alter the value for money argument that has been the topic of much discussion regarding Canada's AML regime. Simply put, we do not believe that increasing the volume of information captured will necessarily lead to a more successful AML/ATF result, if there is no concomitant increase in capacity and resources for FINTRAC to turn this information into actionable intelligence, and for the other AML/ATF regime agencies, law enforcement and the judicial system to act on it in a consistent and coherent manner.

In this regard, we think emphasis should be placed on agencies within the AML framework more fully embracing technology options. The review paper proposes digital upgrades to Canada Border Services Agency's reporting of cross-border movements of currency and we offer some suggestions for changes to FINTRAC processes that could lead to efficiency gains in compliance examinations and information reporting.

First, we suggest FINTRAC consider embracing electronic document exchange with REs more fully, perhaps through a secure channel similar to the ones used by some other government agencies to securely communicate with the private sector.

Although FINTRAC guidance states that recordkeeping requirements may be met by keeping records "in a machine-readable or electronic form", this is only permissible "so long as a paper copy can easily be produced." This is a significant inefficiency within the AML framework as paper-based systems are giving way to digital ones and many in the financial industry have already embraced this option. For example, electronic versions of on-boarding procedures are the norm in many institutions. These digital documents allow front-line staff to find information faster and dive as deeply as necessary into a variety of scenarios that may arise during the account opening process. Having to recreate such documents in paper, or even in PDF format, is not only a labour-intensive

exercise, but also one that does not allow FINTRAC to efficiently see the full breadth of information available to credit union staff. Therefore, we believe it would be a benefit to the large number of RE's that are digitally enabled—as well as, FINTRAC examiners and data analysts—to put in place measures that will facilitate the secure electronic exchange of materials with FINTRAC.

Second, FINTRAC should have the capacity to update its mandatory reporting forms to reflect the way in which REs currently do business. For example, forms for reporting Large Cash Transactions, Suspicious Transactions, etc. have remained largely unchanged over time, even though how RE's do business has changed drastically over the same period. The result is that, regardless of how the forms are submitted, they are time-consuming and cumbersome to complete and we suspect, also to review by FINTRAC. Single suspicious transaction reports can sometimes take tens of hours to complete. Improving the efficiency and effectiveness of this administrative piece would be of benefit to both REs and FINTRAC alike.

Third, we suggest that Finance Canada and FINTRAC consider a different model where the onus for fulfilling obligations under the AML/ATF regime is more equitably shared between the public and private sectors, and where achieving the desired balance between effort and cost is given tangible form with the adoption of a "simplified due diligence" structure for use in situations where there is little risk of services or customers becoming involved in money laundering or terrorist financing. Such due diligence frameworks have already been adopted in other jurisdictions and doing so would, in our opinion, limit increases to, or even reduce, the administrative burden imposed by the PCMLTFA on the private sector, with little or no impact on the value or quality of the intelligence generated.

Fourth, since detecting money laundering often hinges on observations regarding the flow of value between parties, to the Government should also consider leveraging the largescale changes being proposed by Payments Canada under its Payments Modernization initiative to make the AML/ATF framework more robust. While reporting entities will always have to supply the context that is so important in fighting money laundering and terrorist financing, machines can be an invaluable aide in recognizing connections between value flows. By incorporating anti-money laundering considerations at the design phase of new payments systems[1] perhaps a form of "straight through processing" for AML purposes could be enabled?

We understand that these suggestions are bold and will not be easy to act on in the short term. But if we hope to achieve some semblance of a balance between costs and benefits, and truly embrace a risk-based approach to AML/ATF, simplification and streamlining of requirements to provide regulatory relief, more equitable sharing of responsibilities between the private and public sectors, and greater convergence with the

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[1] *We suggest that both the functionality of the new systems, as well as, the message formats to be used in the transfer of value, be considered from an AML/ATF perspective.*

payments industry should be core themes to be followed going forward so that we can collectively ensure a robust, but minimally burdensome framework.

Our comments and suggestions on specific proposals outlined in the discussion paper follow.

Theme 1—Legislative & Regulatory Gaps

Corporate Transparency

Credit unions *strongly support the development of a central registry of beneficial ownership information*. The requirement to collect beneficial ownership information for corporations, trusts and other entities and then take reasonable measures to confirm the accuracy of that information is a complicated and time-consuming task. Credit unions and other REs can add the greatest value by providing context to a client's activities, not by gathering routine, factual data about the client. By relieving them of such activities, perhaps through the creation industry-wide "utilities" or "information clearing houses" run by the public sector, greater efficiencies and insights can be achieved.

For example, by utilizing new technology that assigns unique identifiers to corporations, trusts, legal arrangement, etc, beneficial ownership data could be collected by the public sector in a standardized manner—perhaps through annual tax reporting or other mandatory information filings—and held in one or more centralized locations under that identification number. To ensure the greatest degree of privacy and security, access to this data could limited to groups with a legitimate need to know, such as law enforcement, government, REs, etc.

By limiting a reporting entity's obligations to obtaining this unique number from their client, their compliance burden regarding beneficial ownership information could be meaningfully reduced and the inefficiency and duplication of effort inherent to requiring each RE to gather this information for themselves from an accountholder would be eliminated. It would also be less time consuming and repetitive for the client, who may hold accounts at several reporting entities, each of whom will be asking for the same information. Importantly, such a system could also offer crucial assurance that the information held is consistent, verified, and accurate, and can therefore confidently be used by stakeholders for a variety of purposes, including assessing the risk presented by the client.

The agreement in principle reached in December 2017 by Canada's Finance Ministers to pursue legislative amendments to federal, provincial and territorial corporate statues to (i) ensure accurate and up-to-date beneficial ownership information will be available to law enforcement, tax and other authorities; and (ii) eliminate use of bearer shares, is a positive first step that will lay the groundwork for such an initiative. However, we are

concerned that there may be undue delays due to achieving even this much due to no more than a "best efforts" commitment to completion of this work.

The Legal Profession in Canada

The *credit union system supports the government's intention to develop constitutionally compliant legislative and regulatory provisions that would subject legal counsel and legal firms to the PCMLTFA*. The services offered by lawyers in many cases involve financial institutions and these dealings are often accompanied by an air of legitimacy simply because of the legal firm from which they originate. Including the legal profession within the AML/ATF regime would lend confidence to these dealings.

Expanding the Scope of the PCMLTFA to High Risk Areas

The credit union system is generally supportive of expanding PCMLTFA coverage to the proposed sectors on the premise that regulation should address risk and be based on function, rather than form. It should, however, be noted that additional PEP inclusions or expansion to cover new sectors will have an impact on the deposit-taking institutions that bank these individuals and businesses as well, since inclusion under the PCMLTFA may result in changes to the institution's policies and procedures, including, amongst other things, on-boarding processes, risk assessments, staff training, and ongoing monitoring.

Our comments on some specific proposals follow.

- **Expand PEP/HIO determination and beneficial ownership information to include DNFBPs**.

  PEP and HIO determinations, and identification of their family members and close associates, can be a time-consuming, highly manual process, even with the use of software to help identify these individuals. *We suggest that FINTRAC make publicly available a list of domestic PEPs in machine-readable language.* This would assist REs captured under this requirement to correctly identify target individuals.

- **Expand the definition of HIO to include international bodies that control significant financial resources and have considerable political influence in society and on the global economy**. E.g. the International Olympic Committee and the Fédération Internationale de Football Association

  Recognition of corruption in international bodies is a growing issue, however, not one that generally impacts credit unions at the HIO level. It is more likely that an HIO's family or close associates will seek membership in a domestically-focused financial institution, such as a credit union. As these individuals are typically more difficult to identify than the HIO, *we suggest development of a publicly available list of these*

international bodies, their heads and family members. In its absence, at a minimum, a clear definition of what constitutes an "international body" will be needed.

- **Clarify the definition of a domestic PEP and the categories within it.** e.g. include positions equivalent to those of a "Mayor" such as a Reeve, Warden, etc. As well, explicitly include First Nations Chiefs in the list of domestic PEPs.

  Greater clarity on all issues related to the identification of domestic PEPs is welcome.

- ***Include White Label ATMs in the ambit of the PCMLTFA.***

  We support bringing White Label ATMs into the PCMLTFA's domain. However, since clearly defined compliance requirements assist in risk assessments, *we suggest that FINTRAC publish these requirements—and any others that may be added in the future—on its website*. This will allow any financial institution wishing to offer services to these businesses to more effectively evaluate how well the business is complying with regulatory requirements prior to establishing a relationship and/or as part of on-going monitoring efforts.

- **Leverage real estate sector information by expanding the list of real estate entities covered by the PCMLTFA to include others that play an integral role in the sector** (e.g. mortgage insurers, land registries and title insurance companies)

  We support this proposal and *suggest that real estate sector reporting requirements include information sharing with the impacted financial institution*. For example, a land registry should be mandated under the PCMLTFA to notify any impacted financial institutions of suspicious title activity, in addition to reporting this information to FINTRAC and law enforcement.

- **Expand the sectors under the PCMLTFA to cover non-federally regulated Mortgage Lenders.** E.g. mortgage finance companies, real estate investment trusts (REITs), mortgage investment corporations, mutual fund trusts, syndicated mortgages or individuals acting as private lenders.

  While we are notionally supportive of this proposal on the basis of "functional regulation," based on the description provided, we question the nature, quality and value of the information some of these entities could provide to FINTRAC. For example, it is unclear how "syndicated mortgages" and "individuals acting as private lenders" could be regulated.

- **Make it a criminal offence for an entity or individual to structure transactions and specifically prohibit reporting entities from conducting transactions in such a way as to avoid transaction reporting**.

  "Specifically prohibiting" reporting entities from conducting transactions in such a way as to avoid transaction reporting suggests that REs would have to be able to prevent

their clients from making structured deposits. In practice, *the structuring of deposits may be very difficult for REs to identify in the course of normal business* as differentiation between legitimate deposits and the intentionally structured deposits that mirror them would, in many cases, be a subjective assessment. While AML software employed by many credit unions is capable of flagging for further review "suspicious" transactions or those that exceed the $10,000 daily limit for large cash transactions, this capability may not necessarily be conducive to detecting sophisticated cases of structuring.

Our concerns hinge on how an RE might be expected to effectively differentiate between structuring situations and a business's normal behaviour, especially when due diligence conducted by the FI confirms that the transactions are in-line with the nature of that business. For example, a gas station/convenience store that deposits between $3,000 & $4,000 every day based on their sales, versus a gas station/convenience store that deposits similar amounts in order to evade AML/ATF reporting. Small businesses in particular may gear their deposits to availability of time and staff. It is not uncommon for businesses to come into a branch weekly and make five separate deposits—one for each of their business days—for their own accounting and/or cash management purposes.

Even if a "reasonable grounds" benchmark were to be used in the identification process, clear guidance will be needed regarding the criteria for an identification of structuring, including clarity around the time period over which the alleged structuring took place; the number of transactions that would need to have taken place for a structuring identification; and whether the assessment applies to cash deposits only, or to EFTs as well. For example, is structuring considered to have taken place once three transactions are conducted over a 3-day period that total more than $10,000, *or* once cash deposits/EFTs are made every day over the course of five consecutive business days, regardless of their total amount, *or* when a deposit/EFT amount is between $9,000 & $9,999 and a second deposit/EFT occurs just outside of the 24-hour period?

In addition, we have some practical concerns regarding deposits made at ATMs. How would an RE be expected to confirm ATM envelope contents for deposits conducted at other financial institutions? Would all ATM acquirers be expected to send listings of envelope contents for all cash deposits (regardless of amount) to card issuers in case structuring may be taking place?

Banking system development that could even attempt to effectively navigate such complexities would be intricate and costly, with no guarantee of success, and likely beyond the reach of smaller institutions. In the face of such costs and potential legal implications of allowing deposit structuring to take place, REs could refuse deposits creating even more complex structuring and layering involving multiple institutions.

- **Standardize recordkeeping and client identification obligations.**

  Standardizing recordkeeping and client identification obligations could result in simplification and reduction of the administrative burden on REs, ultimately resulting in greater compliance. But this is only true, if the threshold on which standardization takes place is not lower than the individual and varied ones specified in the current scheme.

  Credit unions are strong proponents of the risk-based approach. Standardizing on a lower threshold in our view would be contrary to this concept and may actually increase the volume of transactions for which records must be kept, or clients identified, creating additional compliance burden with little, if any, added value in the detection and prevention of ML/TF.

  We suggest REs be consulted in arriving at the standard to be adopted to ensure obligations can continue to be met without undue hardship.

- **Expand the PCMLTFA to cover the armoured car industry**.

  We acknowledge the potential risks outlined in the discussion paper and generally support the inclusion of the armoured car industry on this basis. However, we caution that the majority of pick-ups and deliveries made by the armoured car industry are in support of the Bank of Canada's bank note distribution system and are made among financial institutions that operate under the PCMLTFA.

  Imposing broad, unqualified AML/ATF obligations on this industry may only serve to increase administrative costs for both the industry and its customers, such as credit unions, with little impact on detecting or deterring of money laundering.

  We suggest a categorized approach be considered, if the Act is expanded to cover this industry.

- **Expand the PCMLTFA to cover high-value goods dealers and jewellery auction houses.**

  In moving forward with this proposed expansion, *at a minimum, a robust definition of a "luxury good" and an associated dollar threshold will be required*. Views on what constitutes "luxury" items may vary greatly from one region of the country to another. E.g. a $2 million home in the Vancouver or Toronto markets may be "average", but in northern Ontario could be considered "luxury." Also, what percentage of a business's product offering would need to be considered "luxury" for these new regulations to apply?

While we acknowledge the use of high value goods to store value or the proceeds of crime, and likely already consider these types of businesses "high risk," the distinction being made regarding the purchase of a "luxury" item versus multiple "regular" items amounting to the same dollar value seems arbitrary from a money laundering perspective. It may be no less money laundering if five $400,000 condos are purchased versus the purchase of one luxury house worth $2 million. The AML risk resides in the source of down payment, beneficial ownership of the items, and any (overly) early payout of any loans without concern for penalties (layering), etc. As is the case in many real estate markets in Canada, foreign ownership of luxury goods that have been purchased by nominees is a challenge. It is unclear how the proposed changes would address this issue.

Theme 2: Enhancing the Exchange of Information While Protecting Canadians' Rights

More Effectively Sharing Information within Government
Stronger Partnership with the Private Sector
Strengthening our Partnerships Internationally

Credit unions support greater sharing of information between government agencies as it would make the regime more efficient, and possibly reduce reporting obligations for REs by avoiding duplicate reporting requirements. Similarly, we would like to see greater sharing of information both between government and private sector, and between private sector entities, especially in cases where such sharing could help in detecting and deterring financial crime. Fighting financial crime needs to a be collaborative effort, if it is to be successful. Otherwise we risk bad actors simply moving from entity to entity, jurisdiction to jurisdiction.

However, we are cognizant of the privacy implications of such sharing and in this regard, *would like to have some legislative clarity that by doing so, there would be no violation of privacy provisions,* providing that the sharing is only between designated staff and appropriate safeguards are in place.

Theme 3: Strengthening Intelligence Capacity and Enforcement

Bulk Cash

In Budget 2018 the government proposed to initiate a process of removing the legal tender status of bank note denominations no longer issued by the Bank of Canada (i.e., $1,000, $500, $25, $2 and $1). *We agree that this direction will be beneficial in curtailing the movement of illicit cash*.

On the issue of placing limits on the amount of cash a business in Canada could accept, we conceptually agree, as we can report on the business making the deposit on a Large

Cash Transaction Report, but cannot report on the person that brought that cash to the business in the first place. As a result, there is some logic in having a parallel limit on the amount of bulk cash a person can carry in Canada without a legitimate purpose. That said, we caution that instituting low limits on the amount of cash a business can accept could drive purchasers to secondary and black markets thereby having a negative effect on both economy and tax collections/revenue.

However, on a practical level, we are unclear as to the intended meaning of some of the terms being used in this proposal, and consequently, question how the proposals could be enforced. For example, what amount constitutes "bulk cash"? What would constitute a "legitimate purpose" under this proposal? Those who worked in the financial industry during Y2K may recall that some individuals cashed out their accounts, and anecdotes of young oil and gas workers carrying large sums of cash are almost legendary. And how is enforcement envisioned, as it could demand considerable resources to accomplish at both RE and government levels?

There are many lawful cash intensive businesses and we do not see this changing, even with emerging technology. Consequently, *a business registry for cash intensive businesses* may be beneficial to authorities and financial institutions as a reference point that would help with onboarding and ongoing monitoring of high risk entities. However, care will need to be taken to restrict access to this information as such a registry could be used by criminals and money launders to target cash-intensive businesses for corruption or robbery.

Geographic Targeting Orders

This is an issue that could have varying impact on credit unions, depending on the nature of their information systems. Geographic location is already part of the risk assessment process at credit unions, so the added benefit of such targeting orders needs to be carefully considered. *We suggest more in-depth consultation on this matter before making a final decision*.

Theme 4: Modernizing the Framework and its Supervision

Strengthening Money Services Businesses (MSB) Registration

To date, credit unions have generally had few dealings with MSBs*. A robust registration process could benefit MSBs* by making them potentially more attractive as clients to all financial institutions.

Enhancing and Strengthening Identification Methods

Credit unions are strongly supportive of a principles-based approach to regulation in this area and welcome changes to identification methods that will better leverage technology solutions. However, we also think there needs to be greater flexibility in identification

methodologies. Some of the members credit unions deal with come from communities—such as indigenous groups and seniors—that face challenges obtaining identification. These members either do not utilize the services that can be used in the identification process (e.g. they do not have two pieces of government issued identification or a credit bureau record) and/or do not have the resources to obtain them.

As a result, *we suggest greater involvement of REs and technology solution vendors in developing the revised framework*.

Exemptive Relief and Administrative Forbearance

We support granting temporary exemptive relief for pilot projects that test products, services or applications in a live environment. It is a sound strategy for encouraging new product and service development. However, to ensure fairness, *there should be clear and robust processes to ensure that there is exit from this "sandbox" at a specific point*.

Consultation Process on the Development of Guidance

Recent involvement of the credit union system in the development of guidance has been strong, and we much appreciate this inclusion in the process. However, this has not always been the case. As a result, *we would very much like to see adoption of a formalized consultation process so that the views of all players, large and small, are consistently solicited.*

Administrative Monetary Penalties (AMP)

- **Public Naming**

The reputational damage of naming can be severe, so a consistent and transparent approach needs to be followed. To date, there has been a perception that this has not been the case, leading some to suggest that a "name everyone, or name no one" policy be adopted. In addition, there is a perception that large banks are favoured under the current policy, as smaller institutions are unlikely to be viewed as "affecting the stability of Canada's financial system" and therefore more likely to be named.

The majority view within the credit union system, however, seems to be that *if naming is to occur, it should consistent and be based on a clearly stated and publicly available standard*. Importantly, it should only be pursued when there is severe and/or repetitive non-compliance and only once all proceedings, including appeals, are exhausted. For further clarity, *it is suggested that the FINTRAC AMP framework make clear the connections between violations and their consequences, including naming*.

- **Confidentiality in Court Proceedings**

The right to appeal an AMP is fundamental to the framework. The proposal to eliminate the ability to obtain a confidentiality order when conducting such an appeal seems

contrary to the discretionary stand on naming. *The credit union system does not support this proposal* as there are legitimate reasons for wanting confidentiality given the potential reputational damage of a FINTRAC violation becoming public.

- **Penalty Calculation for AMPs**

Penalty calculations are also an area where greater transparency and clarity would be of benefit. However, *credit unions appreciate the flexibility and discretion FINTRAC currently uses by taking into account factors such as size of the institution, number of employees and ability to pay. Any formula included in regulations should include these variables*.

Theme 5: Administrative Definitions and Provisions

Clarify the EFT or "Travel Rule"

Credit unions do their best to comply with all reporting requirements, however, our ability to report is restricted to the information available and originator information is not always accurate or even available from the intermediary institution. Stringent rules regarding this information that cannot be met would require financial institutions to reject the incoming transaction, although it is our understanding that doing so does not abrogate the obligation to report it to FINTRAC. This would be a disproportionate reaction since the majority of transactions are not related to money laundering or terrorist financing.

We suggest this issue be considered further before being implemented.

Mitigation of Money Laundering and Terrorist Financing Commensurate with the Risks

Credit unions do not support the creation of an obligation to mitigate all assessed risks. It would defeat the purpose of employing a risk-based approach, if all assessed risks needed to be mitigated. Risk mitigation places a substantial demand on financial and human resources. Lower assessed risks may be acceptable to the RE and within its stated risk appetite. With limited available resources, mitigation efforts must be focused on the highest risks, with effective oversight of controls being used on moderate and lower rated risks.

Creation of a Uniform Reporting Schedule

The *credit union system supports adoption of a uniform reporting schedule* as it would simplify compliance. However, concern has been expressed that in doing so should not result in adoption of a short reporting timeframe, as this could be very challenging to meet with available resources.

Removal of Alternative to Large Cash Transaction Reporting

Although not all credit unions take advantage of this alternative, *the small but significant number that do, attest to its significant time saving potential. We, therefore, are not in support of removing this option*.

Thank you for the opportunity to provide this feedback. We would be pleased to meet with you to further discuss our responses.

Yours sincerely,

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& Corporate Secretary

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