Canadian Finance & Leasing Association
Association canadienne de financement et de location

BY EMAIL fin.fc-cf.fin@canada.ca

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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:

The Canadian Finance & Leasing Association (CFLA) is pleased to have this opportunity to comment on the Department of Finance Canada's discussion paper: 'Reviewing Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime' released February 7, 2018.

Who is the CFLA?

The Canadian Finance & Leasing Association represents the interests of the asset-based finance industry and leasing in Canada. It is a federally-incorporated not-for-profit corporation established in 1973. The CFLA currently has approximately 225 corporate members ranging from large multinationals to national and regional domestic companies, spanning the financial services spectrum from manufacturers' finance companies and independent leasing companies, to banks, insurance companies, and suppliers to the industry. A list of members is attached. I also attach a list of the current members of the CFLA Board of Directors.

The CFLA has worked directly with the Department of Finance on a number of occasions. Most notably, we worked closely with Jeremy Rudin, then an Assistant Deputy Minister of Finance, on the Canadian Secured Credit Facility (presented in the 2009 Budget) and its successor program, the Vehicle and Equipment Financing Partnership (Budget 2010). In fact, the National Post praised the Canadian Secured Credit Facility as "one of the federal government's key emergency responses to the global credit crisis," and one that "may be the most financially successful government program in recent history." Moreover, for the past 21 years, CFLA has submitted an annual survey of companies that provide fleets of vehicles to businesses and governments to the Business Income Tax Division at Tax Policy Branch to assist in the Department's annual determination of automobile deduction limits and prescribed rates for determining the taxable benefit on automobile operating expenses

What is asset-based finance?

The asset-based finance and leasing industry complements the work of conventional lenders and stands alone as a distinct form of financing. As its name suggests, it is the financing and leasing of a specific assets of a business, secured by collateral (assets). Payment for the asset purchase comes directly from the Asset-Based Lender to the supplier, dealer or distributor. The Lender in turn facilitates the financing of the asset to the end user ("customer") on a lease, loan, conditional sales contract or line of credit secured by the underlying equipment and or other balance sheet assets. The assets are the principal collateral for the customer's obligation to make regular prescribed payments (by cheque, electronic funds transfer, pre-authorized payment) to the Lender. At the end of the defined term the customer either owns the asset free and clear if it is financed on a loan, buys the assets, or returns them if they are financed on a lease.

The Discussion Paper references finance, lease and factoring companies on page 28 in the context of a discussion of the potential of expanding the scope of the current legislation. By including a reference to these businesses, the implication is that further consideration should be given to making these businesses subject to the legislation. The paper offers as the basis for extending the regime to them, the observation that these businesses accept payments in the form of cash, electronic funds transfers, money orders and cheques thereby offering opportunities for their services to be used in the placement, layering and integration stages of money laundering. The exact extract from the discussion paper is set out below.

Excerpt from *Reviewing Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime*

Finance, Lease and Factoring Companies

The financing and leasing sector in Canada is large, consisting of large domestic and international lessors and small independent ones. This sector provides a range of leasing services to individuals and businesses across Canada and internationally. The factoring sector in Canada supplies loans to businesses to address short-term cash flow needs.

These companies allow a variety of payment methods such as cash, electronic funds transfers (EFTs), money orders and cheques, thereby offering opportunities to be used in the placement, layering and integration stages of the money laundering process. In Canada's FATF Mutual Evaluation, the absence of coverage of finance, leasing and factoring companies was noted. In addition, these sectors have been identified as a money laundering risk in the *Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada.*

Asset-based financing is inherently a low-risk transaction

With respect, the payment methods listed in the discussion paper are essentially exhaustive of the typical payment methods used in any type of business. However, a closer analysis demonstrates that the risk of money laundering transactions being executed through an asset-based finance transaction is extremely low.

Payment method is not a money laundering risk

A recent informal poll by CFLA found that none of its members in their normal course of business accept or receive down payments, security deposits, or installment payments of cash. Member companies typically accept and receive cheque, bank draft, electronic funds transfers, wire transfer or direct debit through financial institutions already subject to the AML regime.

On the vehicle financing vertical, a recent survey by the *Canadian Auto Dealers Association* confirms that transactions involving large sums of cash are not only exceedingly rare but are consistently tracked by current banking practices when they do occur. Their research indicates that cash transactions in excess of $10,000 represent less than 1% of sales. Critically, when they do occur, such transactions are fully documented at the dealership and at the dealer's financial institutions. Consequently, there is virtually no risk that an asset-based financing transaction could be used for the placement of cash.

Similarly, when payment is accepted by electronic money transfer, money orders and cheques, the borrower/lessee has already been screened by the financial institution that facilitates these payment methods at the time the current account was opened and as part of the Canadian Financial Institution's account opening and ongoing AML due diligence programs and processes. It is not typical under the current legislation that recipients of these types of payments as payee report them to FINTRAC. Rather, it is the financial institution that facilitates the payment item that will complete the required FINTRAC reporting. These financial institutions are much better placed to determine whether a transaction is a layering or integration transaction. Consequently,

Balancing the economic costs of new regulations with meaningful AML protection

The CFLA firmly believes that implementing new regulatory oversight should be proportional to functional risk; if a particular function's failure is unlikely to pose a risk to the system, it need not be as strict as in the case where failure puts the system in jeopardy.

Given that only a fractional portion of transactions made by leasing and finance companies may potentially include cash transactions and these limited transactions are already included under the financial scope of the Canadian Financial Institutions, we believe that it is worth pausing to ensure that any new regulations will actually deliver results before targeting new sectors of the economy to be covered by the AML and anti-terrorist financing regime.

Consequently, CFLA would urge the government not to include the asset-based financing and leasing industry as it presents little if any risk to the system and if included would merely duplicate the current AML due diligence programs and processes already in place at all Canadian Financial Institutions. Nevertheless, if AML and anti-terrorist financing regime were to be extended to finance, lease and factoring companies, it should only be insofar as they accept and receive large cash payments over $10,000.

Regardless of the direction the government takes in this regard, CFLA is prepared to be a value-added partner should AML controls be extended to our members and the non-banking sector. Thus, should the Department of Finance decide to move forward in this regard, please reach out to us to discuss working together in this regard.

Yours very truly,

President and CEO, CFLA

Attachments
List of CFLA Members
List of CFLA Directors