Canadian Jewellers Association™
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Jewellers Vigilance Canada

To: Director General
Financial Systems Division
Financial Sector Policy Branch
Department of Finance Canada
James Michael Flaherty Building
90 Elgin Street
Ottawa ON K1A 0G5
Email: fin.fc-cf.fin@canada.ca

From: Canadian Jewellers Association (CJA)
27 Queen St. East
Suite 600
Toronto, Ontario
M5C 2M6
Email: carla@canadianjewellers.ca

Re: *Reviewing Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime*

Re: Dealers in Precious Metals and Stones (DPMS)

May 15, 2018

The Canadian Jewellers Association (CJA) is the national trade association representing the jewellery sector since 1918. CJA liaises with all levels of government to ensure fair and equitable treatment and build consumer trust, awareness, and understanding of Canadian jewellery products. We are the traditional voice of the Canadian jewellery industry providing leadership in promoting ethics, education and communication, and assisting its members in following best business practices. Our members consist of retailers, suppliers (manufacturers), wholesalers and goods and service provider organizations with an interest in the jewellery industry. Over 1,000-member locations

situated in every region across Canada proudly display their membership decal with the CJA logo and slogan. In 2017 the CJA acquired Jewellers Vigilance Canada (JVC), a non-profit organization with a mandate to advance ethical behaviour in the Canadian jewellery industry and provide a crime prevention program.

The CJA consents to the disclosure of these comments in whole or in part.

The CJA, along with our wholly owned subsidiary Jewellers Vigilance Canada (JVC), remains committed to assisting the Canadian government in combatting money-laundering and terrorist financing through engagement with the Department of Finance and FINTRAC. We are also committed to the education of our membership in their compliance obligations under the *Proceeds of Crime (Money-laundering) and Terrorist Financing Act* (PCMLTFA) and Regulations.

It is worth noting that Canada has one of the more onerous AML/ATF compliance regimes for the DPMS sector compared to some other countries, one of which is our largest trading partner.

The following are the CJA comments on the discussion paper, *Reviewing Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime*.

Page 22- Expanding Requirements for Designated Non-Financial Businesses and Professions (DNFBPs) in relation to Politically Exposed Persons (PEPs), Head of International Organizations (HIOs) and Beneficial Ownership

It appears from the text on PEPs, HIOs and Beneficial Ownership that the government's intention here is to expand the requirements to include DNFBPs to undertake measures to determine if their clients are PEPs, HIOs or have Beneficial Ownership.

For the DPMS sector this could be problematic. If indeed the intention is to expand these requirements then we would suggest that for the DPMS sector it should only be required in instances where there has been a Business Relationship established in order to avoid further undue burden to achieve compliance. This would be aligned with other compliance related activities, including risk rating and transaction monitoring, which are conducted only once a business relationship has been established.

Page 27/28- Prohibiting the Structuring of Transactions to Avoid Reporting

From the review document:
"The PCMLTFA requires reporting entities to report financial transactions that are prescribed in the Regulations, including large cash transaction, international electronic funds transfers and casino disbursement reports. There is also an obligation to report if multiple smaller transactions equal $10,000 or more within a 24-hour period. However, there is no explicit prohibition against reporting entities structuring their business models and delivery channels or mechanisms for conducting transactions in such a way as to avoid triggering reporting requirements. Also, it is not illegal for clients to structure their financial transactions in order to avoid scrutiny and financial transaction reporting. In other countries, such as the United States and Australia, it is a criminal offence to structure financial transactions in this way.
The Department is considering the creation of a criminal offence for an entity or individual to structure transactions and to specifically prohibit reporting entities from conducting transactions in such a way as to avoid transaction reporting."

It is unclear whether the intent here is to apply the creation of a criminal offence if there was a willful objective on the part of the customer or reporting entity to avoid transaction reporting. As an example it is common for a customer to pay a cash deposit (not wanting it to appear on a credit card statement for instance, common with the purchase of engagement rings and jewellery purchased as a gift) for a custom piece of jewellery and when the item is ready for pick up to pay the balance in cash as well. Custom pieces often would exceed a cost of $10,000 in total. There is no willful intent by either the customer or reporting entity to avoid transaction reporting. It would need to be very clear under what circumstances it would be considered a criminal offence otherwise this would be very problematic for the DPMS sector.

Page 28- Standardize Record Keeping and Client Identification

From the DPMS perspective any lowering of the $10,000 CAD threshold would be an additional compliance burden, significantly lowering the identification threshold, and with it the threshold for the creation of a business relationship. The creation of a business relationship in particular triggers additional ongoing compliance burdens for DPMSs.

It should be noted that FATF has a cash transaction threshold for DPMS of USD/EURO 15,000.

From FATF's *GUIDANCE ON THE RISK-BASED APPROACH TO COMBATING MONEY LAUNDERING AND TERRORIST FINANCING*:

"10. Recommendation 12 mandates that the requirements for customer due diligence, recordkeeping, and paying attention to all complex, unusual large transactions set out in Recommendation 5, 6, and 8 to 11 apply to dealers in precious metals and dealers in precious stones when they engage in any cash transaction with a customer equal to or above USD/EUR 15 000."

Page 29- High-Value Goods Dealers

The inclusion of High-Value Goods Dealers as a Reporting Entity would certainly help level the uneven playing field in which DPMSs do business.

Using the UK as a model, this definition and explanation is taken from this UK government web site: https://www.gov.uk/guidance/money-laundering-regulations-high-value-dealer-registration

> *A high value dealer under Money Laundering Regulations is any business or sole trader that accepts or makes high value cash payments of €10,000 or more (or equivalent in any currency) in exchange for goods. This includes when a customer deposits cash directly into your bank account, or when they pay cash to a third party for your benefit.*
>
> *HMRC considers a high value payment to be:*
>
> - *a single cash payment of €10,000 or more for goods*
> - *several cash payments for a single transaction totalling €10,000 or more, including a series of payments and payments on account*

- *cash payments totalling €10,000 or more which appear to have been broken down into smaller amounts so that they come below the high value payment limit*

Should High-Value Dealers be captured under the PCMLTFA we would suggest that the Department of Finance consider re-defining the DPMS sector into two categories.

1. Retail jewellers who do not engage in high-risk business practices and meet other designated criteria would have a lower compliance AML burden, including simplified AML compliance regime and reporting requirements.
2. High-Value Dealers and those DPMSs who do not qualify for the first category would be required to meet the full AML obligations.

By re-defining the DPMS sector into higher risk businesses and lower risk businesses would alleviate some of the compliance burden on small businesses, in particular retail jewellers.

Page 29/30- Jewellery Auction Houses

It would appear that auction houses of both jewellery and luxury items, such as art, have potential as a means to launder money. It is important to consider **not just jewellery auction houses** but all high-value auction houses for AML/ATF compliance.

Online platforms would need to be considered. In addition, if parameters for dealers in high value goods are established, auction houses may fit into this framework as well.

Page 36- Bulk Cash

"In thinking about issues surrounding bulk cash, consideration could be given to whether it is appropriate to place a limit on the amount of bulk cash a person could carry in Canada without a legitimate purpose, whether Canada should develop a business registry for those businesses that deal in high volumes of cash and whether there should be a limit on the amount of cash a business in Canada could accept and/or report on. These types of mitigation measures to deal with the issue of bulk

cash have all been implemented in some form by other countries such as the United States, France and the United Kingdom."

Please refer to our comments for section- **Page 29- High-Value Goods Dealers.** A registry for high-value dealers regardless of industry/service/products would make bulk cash transactions traceable and level the playing field for all. However, there are concerns that such a registry could create strain in banking relationships under certain conditions. Where any such registries are created, we would recommend a prohibition against de-risking based on membership in such registries.

Page 37- Geographic Targeting Orders

Consolidated Canadian data related to high risk areas/regions within Canada in the update would be useful for DPMS sector risk assessment. The High Intensity Financial Crime Area (HIFCA) model used by the United States may be helpful in informing a strategy of risk assessment. Consolidated data specific to financial crime is useful in helping reporting entities to determine whether a location should be considered to be high risk for money laundering and/or terrorist financing.

Where there are time limited geographic targeting orders (where a specific issue is transient or solved by law enforcement) notices should include the termination of the targeting order. This would allow businesses to re-assess the risk associated with the geographic area that was the subject of the targeting order.

Page 37/38- Definition of Monetary Instrument

The suggestion that diamonds, gold and other precious metals be declared monetary instruments is problematic specifically for diamonds and coloured stones. In the case of gold or other precious metals value is a black and white determination. One gram of gold is one gram of gold. However when it comes to diamonds and even more so with coloured stones the per carat value (which is the measure used) is extremely variable (less than $100/ct to more than $100,000/ct) and very difficult to determine reliably. **Diamonds are a store of wealth but not a currency**. It is an offence to take diamonds across borders without declaring them, however, including them as a momentary instrument is very problematic.

Page 38- Trade Fraud Intelligence

"The Department is seeking views on how to address the money laundering and terrorist financing vulnerabilities at the border."

Enforcement issues are likely outside of the purview of the PCMLTFA. However, it has been noted that trade-based money laundering, including over-valuing or under-valuing items may be an issue in the DPMS sector where there are bad actors. In this regard, the best defense is education and ongoing collaboration between industry and law enforcement/border services. While the valuation of some items (gold, silver, etc.) may be relatively straightforward, other types of item valuation could be described as being "more art than science." Nonetheless, we would be happy to continue the dialogue in this regard, as well as to connect the Department with additional resources that may be of assistance.

Page 39- Addressing the Issue of (Money Services Business) De-Risking

Although this section references Money Services Businesses and the challenges this Reporting Entity has in maintaining accounts with financial institutions as a consequence of the global de-risking trend, the de-risking trend also affects the DPMS sector.

Anecdotally jewellers have faced this challenge with some large Canadian banks. In some cases the financial institution has required far more than what FINTRAC has detailed as necessary compliance. The DPMS sector in particular has varying risks according to the size, type of business, location of the business and the types of products the business buys/sells. Not all jewellers are inherently in an ML/TF high-risk business. The DPMS sector is very diverse and encompasses a variety of business models. This is a growing concern for the DPMS sector.

Page 45- Mitigation of Money Laundering and Terrorist Financing Commensurate with the Risks

"Section 9.6 of the PCMLTFA requires reporting entities to self-assess the money laundering and terrorist financing risks of their business activities and to take special measures to mitigate that risk only if that risk is considered high. There is no explicit

obligation to mitigate any risks that are assessed as being lower than the high benchmark according to their risk level."

Given that the majority of jewellers in Canada are small businesses the cost of developing, implementing and maintaining an AML/ATF compliance regime can indeed be onerous. For a small business the responsibility usually falls entirely on the owner/operator.

In a Risk Based program (with a finite amount of resources), addressing the High Risks would seem to make sense. Requiring non-High Risks to be mitigated would significantly increase the compliance burden, while having diminishing returns by definition.