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Commission des
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Director General
Financial Systems Division
Financial Sector Policy Branch
Department of Finance Canada
James Michael Flaherty Building
90 Elgin Street
Ottawa, ON
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Dear Ladies and Gentlemen:

Re: Proposal to Eliminate the Commission's Role in Monthly Reporting for UN Suppression of Terrorism and Canadian Sanctions Requirements

We are writing on behalf of the Ontario Securities Commission (the **Commission**) regarding the Department of Finance's consultation paper *Reviewing Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime* dated February 7, 2018. The Commission supports the objectives of Canada's anti-money laundering and anti-terrorist financing regime (the **Regime**) to combat money laundering and terrorist financing to protect Canadians, the integrity of the capital markets and the global financial system. We welcome the opportunity to submit our suggestions to improve the collection of data and reduce the burden of collection on reporting entities and the regulators participating in the Regime.

We consent to the public disclosure of our comments.

Summary

Our proposal is that a single Federal authority be given a statutory mandate to collect monthly reports pursuant to UN suppression of terrorism and Canadian sanctions legislation (the **Monthly Reports** or **Monthly Reporting**) from Securities Dealers and where appropriate to take action in response to the Monthly Reports and to supervise and enforce Monthly Reporting obligations.

The suggested legislative amendments would eliminate the role of the Commission and replace it with a single Federal authority as set out in Schedule A to this letter.

For the Federal authority that takes on this role, we have suggested opportunities to assess and rationalize the information required in the Monthly Reports and strengthen the Regime.

For the firms that the Commission registers and oversees, namely securities dealers (**Securities Dealers**) as defined in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the **PCMLTFA**), we believe these changes would mean that their resources currently required to comply with Monthly Reporting could be redeployed on more impactful and effective Regime requirements.

We submit that it would be appropriate for Monthly Reporting changes to be implemented as soon as possible (on a pilot basis if necessary) through guidance issued by the Department of Finance, a directive or other expedited means pending the legislative amendments required to make this a permanent change.

Monthly Reporting in Practice

Currently, Securities Dealers file more than 2800 monthly reports for UN suppression of terrorism and Canadian sanctions requirements (the **Monthly Reports** or **Monthly Reporting**) with provincial securities regulators across Canada including 1900 Monthly Reports filed with the Commission alone. Included in the overall total, Monthly Reports are also filed by the 170 Securities Dealers who are members of the Investment Industry Regulatory Organization of Canada (**IIROC**).

In the Commission's experience, nearly all filed Monthly Reports are *Nil* reports and these remain in the Commission's records. A Monthly Report where a Securities Dealer positively identifies a Designated Person (defined below) is forwarded by the Commission to the Office of the Superintendent of Financial Institutions (**OSFI**). This has occurred at the Commission twice in over ten years since Monthly Reporting commenced¹. We understand that the information contained in any such positive Monthly Report would also have been provided by the Securities Dealer in greater detail to other regulators, namely the Royal Canadian Mounted Police (**RCMP**), the Canadian Security Intelligence Service (**CSIS**) and the Financial Transactions and Reports Analysis Centre of Canada (**FINTRAC**) pursuant to other legislative requirements.

Overall, the burden on Securities Dealers and the Commission to produce, file and collect this high volume of data is significant and yet we submit there is a minimal regulatory outcome achieved for this effort. It also appears that even this minimal regulatory outcome is superseded by other Regime requirements to provide more timely and comprehensive data to other regulators.

Multiple Reporting Obligations

Monthly Reports to Provincial Securities Regulators and IIROC

Canada's legislative measures against terrorists, terrorist groups and other listed and sanctioned individuals and entities are contained in various other Canadian statutes and regulations listed in Schedule A to this letter (the **Federal Provisions**). These laws require Securities Dealers to review their records on a continuing basis to determine whether they are in possession or control of property owned or controlled by or on behalf of a certain entity or person (a Designated Person). Securities Dealers are required to consult the UN Suppression of Terrorism List and

¹ Once a positive report is made, subsequent Monthly Reports with the same information continue to be provided to OSFI on a monthly basis.

several other lists to identify Designated Persons. Furthermore the Securities Dealers are generally required to report their findings on a monthly basis including reporting a *Nil* response.

The Federal Provisions mandate that Securities Dealers send the Monthly Reports to the “provincial agency … that supervises or regulates it under … provincial law.” The Commission has interpreted this to mean that Securities Dealers send the reports to their “principal regulator” for securities law purposes. As noted previously, *Nil* reports are maintained in the Commission’s records. Positive reports are filed by the Commission with OSFI. No request has ever been made to the Commission to provide *Nil* reports.

Terrorist Property Reports to FINTRAC

Under the PCMLTFA, Securities Dealers are required to submit terrorist property reports to FINTRAC (pursuant to section 7 of the PCMLTFA). Reports must be submitted “without delay” when the Securities Dealer has property in its possession or control that it knows is owned or controlled by or on behalf of a terrorist or a terrorist group. Identification is by way of reference to the UN Suppression of Terrorism List, among other things. This includes information about any transaction or proposed transaction.

The terrorist property report differs from the Monthly Report in that it is more comprehensive. It requires all of the information required by the Monthly Report as well as (i) more detail regarding the suspected terrorist or criminal in question, (ii) why the filer is suspicious or believes the property is tied to a particular listed entity, and (iii) details with respect to certain financial intermediaries. Even though the terrorist property report is more focused on transactions or attempted transactions than the Monthly Report, it does not include a *Nil* report concept.

Reports to CSIS and the RCMP

The Federal Provisions usually contain a reporting requirement applicable to any person in Canada or Canadian outside Canada, which would include Securities Dealers, to forthwith report to either the RCMP or CSIS or both any property held for any Designated Person and any information about transactions with respect to that property. This reporting requirement also differs from the Monthly Report in that it does not include a *Nil* report concept. We understand anecdotally from Securities Dealers that the information provided with these reports is also more comprehensive than the Monthly Reports in that it must be specific enough to provide a basis for RCMP and CSIS to obtain a search warrant or other production order.

In summary, Securities Dealers are obligated to make reports on the basis of similar triggering information in three different ways to potentially five different regulators, namely the Commission or IIROC (in both cases, forwarded to OSFI when there is a positive report), FINTRAC, RCMP and CSIS². In addition to these overlapping obligations, Securities Dealers must also file *Nil* Monthly Reports whether or not the Securities Dealer has property in its

² Securities Dealers reporting pursuant to Canadian sanctions laws such as the Special Economic Measures (Venezuela) Regulations and the Sergei Magnitsky Law are unique to the Monthly Reporting obligation and are not repeated (to our knowledge) in Terrorist Property Reports or Reports to CSIS and RCMP. We submit for the same reasons set forth in this letter that this information should be provided to a single Federal regulator with appropriate statutory authority to take action in response to a positive Monthly Report and to require compliance with the Monthly Reporting obligation.

possession or control that is owned or controlled by or on behalf of a Designated Person. As noted previously, Securities Dealers file more than 2800 Monthly Reports with provincial securities regulators and with IIROC.

Reasons to eliminate the role of the Commission

The Department of Finance and Regime partner regulators could achieve the goal to advance the efficiency of the Regime and better align private and public sector resources by eliminating the role of the Commission in Monthly Reporting. In this regard, we note that the Commission has no legal authority to evaluate the information nor to enforce the reporting obligations on Securities Dealers. In practice, the Commission aggregates information, reminds Securities Dealers of their obligations under the Federal Provisions if they fail to file *Nil* reports and acts as a conduit. This activity is not formally within the Commission's statutory mandate. We respectfully note that this also appears to be an inefficient use of public sector resources to engage a separate regulatory regime when the appropriate Regime departments and agencies already have this mandate.

We are concerned that the current Monthly Reporting obligation is not effective. No single entity considers the information collected and any positive Monthly Report would have also been reported on a more comprehensive and timely basis to FINTRAC, CSIS and the RCMP. Moreover, it is extremely rare for a positive Monthly Report to be made to the Commission. The Commission has received two positive reports in over 10 years since reporting commenced. The Commission has never had a follow up request from the Regime authorities in relation to either the positive reports or the *Nil* reports. With this minimal outcome and where more detailed reporting on the same matter would have also been made to appropriate Federal authorities in real time, it appears the Monthly Reports have been superseded by more targeted reporting to appropriate Federal regulators and are no longer an effective risk-mitigation tool. We submit that it would be appropriate to remove this duplicative regulatory burden from Securities Dealers.

Opportunities to streamline Monthly Reporting requirements

Our proposal is that a single Federal authority be given a statutory mandate to supervise and enforce the Monthly Reporting obligation in addition to taking action when receiving a positive Monthly Report.

The suggested legislative amendments would eliminate the role of the Commission and replace it with the single Federal authority as set out in Schedule A to this letter. We are mindful that legislative amendments take time and that there are a number of important issues to be considered in the overall Parliamentary review of the Regime. We submit that it would be appropriate for Monthly Reporting changes to be implemented as soon as possible and could be done on a "pilot" basis. This might be achievable through guidance issued by the Department of Finance, a directive or other expedited means pending the legislative amendments required to make this a permanent change.

For the Federal authority that takes on this role, we have identified the following opportunities to assess and rationalize the information required in the Monthly Reports and strengthen the Regime. For example,

- Amendments could be made to change the frequency or threshold for requiring the reports, eg. on a triggering event rather than on a *Nil* basis
- Amendments could be made to specify the required information in the reports so that it is actionable by the receiving Federal authority e.g. to obtain a search warrant or production order
- Amendments could be made such that positive reports received by the Federal authority could be shared with appropriate Regime partner regulators
- Amendments could be made to provide exemptions in appropriate cases for international Securities Dealers who are exempt from registration with the Commission. This might be, for example, where the receiving regulator is satisfied that there is an appropriate substituted compliance regime in the Securities Dealers' home jurisdiction. The Commission has received complaints from exempt international dealers and advisers that the Monthly Reporting obligation should not apply to them and requests for an opinion from the Commission in this regard. We have declined to do so, since the Commission has no authority to interpret the Federal requirements, grant an exemption or engage with international stakeholders to make a substantive assessment regarding other international AML regimes
- A Federal authority with the appropriate mandate could create a uniform list of Designated Persons and be a "one stop" recipient for reporting entities, including Securities Dealers

We think these changes for Securities Dealers would mean that the human and other resources currently required to comply with Monthly Reporting could be redeployed to implement more impactful and effective Regime requirements.

The Commission would be pleased to be an independent information source through a Memorandum of Understanding or otherwise for the appropriate Federal authority to share information identifying Securities Dealers based on the Commission's registration information.

In conclusion, the Commission supports the objectives of the Regime to combat money laundering and terrorist financing to protect Canadians, the integrity of the capital markets and the global financial system. In the intervening years since UN terrorist reporting was implemented, there have been enhancements to the Regime which appear to now render the Monthly Reporting obligations ineffective in meeting these objectives. We submit that a single Federal authority with a statutory mandate over Monthly Reporting could rationalize the reporting obligations on Securities Dealers and eliminate the Commission's unnecessary role. This is an important opportunity for the Department of Finance and its Regime partners to strengthen the Regime and reduce the burden of data collection on Securities Dealers.

If you have any questions regarding this letter or wish to discuss our comments, please do not hesitate to contact us.

Yours truly,

ONTARIO SECURITIES COMMISSION



Maureen Jensen
Chair & Chief Executive Officer

Schedule A - Requested Amendments

The Federal Provisions listed below set out suppression of terrorism and Canadian sanctions reporting obligations that require Monthly Reporting. Our proposal is that the Federal Provisions be amended such that the Monthly Reporting would be provided to a single Federal regulator with appropriate statutory authority to take action in response to a positive Monthly Report and to require compliance with the Monthly Reporting obligation. By way of example, this could be to the Department of Finance or any of the Regime departments and agencies. For the purposes of an example for this chart, we identify the same regulator that already receives Terrorist Property Reports pursuant to section 7 of the PCMLTFA, namely the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)

Regulation (Act)	Section to be Amended
Criminal Code of Canada	Section 83.11(2) Replace “the principal agency or body that supervises or regulates it under federal or provincial law” with “FINTRAC”
Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism (United Nations Act)	Section 7(2) Replace “the principal agency or body that supervises or regulates it under federal or provincial law” with “FINTRAC”
United Nations Al-Qaida and Taliban Regulations (United Nations Act)	Section 5.1(2) Replace “the principal agency or body that supervises or regulates it under federal or provincial law” with “FINTRAC”
Regulations Implementing the United Nations Resolution on the Democratic People’s Republic of Korea (United Nations Act)	Section 11(2) Replace “the principal agency or body that supervises or regulates it under federal or provincial law” with “FINTRAC”
Regulations Implementing the United Nations Resolution on Iran (United Nations Act)	Section 8(2) Replace “the principal agency or body that supervises or regulates it under federal or provincial law” with “FINTRAC”
Special Economic Measures (Venezuela) Regulations (Special Economic Measures Act)	Section 6(2) Replace “the principal agency or body that supervises or regulates it under federal or provincial law” with “FINTRAC”

Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)	Section 7(1) Replace “the principal agency or body that supervises or regulates it under federal or provincial law” with “FINTRAC”
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