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May 18, 2018

Director General
Financial Systems Division
Financial Sector Policy Branch
Department of Finance Canada
James Michael Flaherty Building
90 Elgin Street
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Delivered via Email: fin.fc-cf.fin@canada.ca

Dear Sirs and Mesdames:

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

Overview

The Portfolio Management Association of Canada (**PMAC**), through its Industry, Regulation & Tax Committee, is pleased to have the opportunity to provide the Department of Finance Canada (**Finance**) with comments on the consultation paper titled, Reviewing Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime (the **Consultation**).

General Comments

As background, PMAC represents over [250 investment management firms](#) that collectively manage over \$1.8 trillion in assets under management, all of whom are registered as portfolio managers with one or more of the Canadian Securities Administrators (**CSA**). PMAC members manage investment portfolios for private individuals, institutions, foundations, universities and pension plans¹.

PMAC's members are financial entities that generally fall under the definition of "securities dealers" and are required to comply with specific obligations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (**PCMLTFA**), including anti-money laundering and anti-terrorist financing (**AML**)-specific know your client identification requirements, training staff on AML issues, implementing and maintaining a AML compliance program, and maintaining records in connection therewith.

PMAC is supportive of Finance's focus on reviewing Canada's AML laws to ensure that they continue to fulfil international commitments, espouse best practices, and safeguard Canada's capital markets by enhancing integrity and stability. PMAC applauds Finance for its commitment to ensuring that this review of AML laws will also take into consideration the

balance between compliance burden and compliance costs, as well as Finance's focus on the need to safeguard investors' rights and privacy concerns.

PMAC appreciates the efforts of Finance to give full consideration to potential unintended consequences, including increased compliance challenges, that reporting entities could face as a result of the measures in the Consultation as well as those that may be caused by the timing of the implementation of such measures. In particular, in the body of this letter, PMAC has highlighted what we feel to be a negative unintended consequence of new beneficial ownership reporting requirements proposed in Budget 2018 that would unfairly impact investors in pooled funds that do not qualify as mutual fund trusts for purposes of the tax statute. This is important because, according to a 2017 report by Strategic Insight, Canadians invest \$65 billion in pooled funds, and the main source of this investment is employer-sponsored defined contribution pension plans.

PMAC believes that standardizing and centralizing AML reporting through an on-line, federal database is an important way to reduce regulatory burden and to improve AML reporting, as we view the current system of monthly reporting to the various members of the CSA as inefficient. We also believe that FINTRAC should provide up-to-date, online, searchable AML reporting lists to increase clarity, improve compliance, and reduce regulatory burden for the benefit of the AML regime.

PMAC's comments on certain of the Consultation topics and questions that are most relevant to our members, as financial entities, are set out below for your consideration.

Corporate Transparency

The Department is seeking views on how to improve corporate ownership transparency and mechanisms to improve timely access to beneficial ownership information by authorities while maintaining the ease of doing business in Canada. This includes considering different beneficial ownership registry models and whether information should be made public.

PMAC would like to raise the important issue of fairness regarding new beneficial ownership reporting requirements for certain types of trusts that were proposed in Budget 2018.

Federal Budget 2018 proposes beneficial ownership reporting requirements for certain trusts for 2021 and subsequent taxation years. These reporting measures require that certain trusts provide additional information about beneficial ownership by filing a T3 return where such a reporting obligation does not currently exist. The measures apply to express trusts resident in Canada and to non-resident trusts that are currently not required to file a T3 return. The [supplementary information](#)² in respect of Budget 2018 notes that the new reporting is designed to determine taxpayer liabilities, as well as to counter money laundering and other criminal activities. Budget 2018 also proposes the introduction of monetary penalties for the late filing of such T3 returns. Importantly, however, Budget 2018 exempts a number of types of trusts from the proposed reporting requirements. Included in the list of exempted trusts are mutual fund trusts (**MFTs**) and segregated funds. Unit trusts (commonly called "pooled funds" in the industry), however, have not been carved out and, as such, would be required to report the identity of all trustees, beneficiaries and settlors of the trust, as well as the identity of each person who has the ability to exert control over trustee decisions regarding the appointment of income or capital of the trust.

We believe that these reporting measures, as currently drafted, would adversely impact the ease of doing business in Canada to the detriment of the many Canadian savers that are

² At page 15.

invested in pooled funds. We have set out below some background on the utility and cost-effectiveness of pooled funds to explain the importance of the negative consequences that the new reporting requirements applying to pooled funds but not to MFTs and segregated funds, will have on Canadian investors.

A pooled investment vehicle offers Canadians, particularly the middle class, with access to various asset classes on a cost-effective basis given the ability to find economies of scale by pooling investments and sharing costs. Canadian individual investors and pension plans invest in these pooled funds as retirement savings vehicles. As referenced above, according to a Strategic Insight report from 2017, Canadians have \$65 billion invested in pooled funds and the majority of these investments are funds being in employer sponsored defined contribution pension plans.

Many portfolio managers offer pooled funds which are investment funds that are very similar to mutual funds but which are offered pursuant to exemptions from the prospectus requirements under securities laws. The prospectus-exempt investors in these pooled funds are not necessarily high net worth individuals, instead, they can be managed accounts of a portfolio manager and/or various retirement and other savings vehicles that are eligible to invest in them. This is important because pooled funds are typically offered at substantially lower costs than mutual funds and give access to different asset classes to middle class Canadians.

PMAC has been engaged in advocacy with Finance for a number of years with respect to the need to provide investors in pooled funds with the same treatment and benefits as investors who are invested in MFTs, based on the very technical differences between the two types of investment vehicles. For tax purposes, PMAC has consistently taken the position that pooled funds and MFTs ought to be treated similarly for the benefit of investors.

PMAC is generally supportive of Finance's efforts announced in Budget 2017 to collaborate with the provinces and territories on a national strategy to strengthen the transparency of legal persons and legal arrangements to improve the availability of beneficial ownership information. We are similarly supportive of the 2016 Mutual Evaluation Report recommendation from the Financial Action Task Force regarding the need for access to accurate and current beneficial ownership information. However, the reporting requirements proposed in Budget 2018 would unfairly impact pooled funds, vehicles through which many Canadians are invested for their retirement savings through defined contribution pension plans and group registered retirement savings plans, without any policy rationale articulated for the difference in treatment between MFTs and pooled funds.

If there is a principled policy reason to exclude MFTs and segregated funds from this type of beneficial ownership reporting, the same policy principle must also extend to pooled funds which are, in essence, the same type of trust. We believe that any undue compliance burden on pooled funds in this respect is unwarranted and is likely an unintended negative consequence that should be corrected well in advance of the coming into force of these reporting requirements.

Expanding the scope of the PCMLTFA to high risk areas

PMAC supports the expansion of the application of AML law to high risk areas. This is particularly so because of the interconnectedness of the financial system and the size of the Canadian market. Allowing gaps in the AML regime to continually exist invites regulatory arbitrage and incentivizes criminals to interact with those entities that are exempt from AML requirements. We agree with the statement in the Consultation that increased reporting requirements and compliance obligations should be carefully measured against the potential benefit of preventing or identifying money-laundering or terrorist financing activity.

In the same vein, members have noted that certain types of clients of a securities dealer are exempt from the AML reporting requirements by virtue of being lower risk as a result of their nature or by virtue of how they are otherwise regulated. Members believe that, in order to focus on high risk areas and to reduce regulatory burden elsewhere, FINTRAC should consider exempting additional clients that are akin to those that are currently exempt. For example, while Canadian pension plans are exempt from AML reporting, Canadian health and welfare plans are not. PMAC is unclear on the policy rationale that would support exempting one but not the other. Similarly, though U.S. pension plans are highly regulated, they, unlike Canadian pension plans, trigger AML reporting requirements. PMAC queries whether the following types of client could be exempt from AML reporting: health and welfare plans, foreign pension plans and foreign registered advisers. In the alternative, PMAC requests that FINTRAC provide an explanation as to why these types of entities are not exempt, so as to assist securities dealers in understanding the scope of their AML reporting obligations, as well as to help them communicate the reason for AML information collection and reporting to these types of clients.

Definition of Head of an International Organization (HIO)

PMAC does not believe that the definition of HIO should be expanded to include non-governmental organizations that are international bodies. While it is true that there have been recent corruption and bribery scandals linked to non-governmental organizations, such as football clubs, the resulting reporting obligations, compliance burden and cost would not likely be commensurate with the benefit of expanding the definition of HIO. However, should Finance determine the need to expand the definition of HIO to include non-governmental organizations, it should do so with very clear guidance and/or a current electronic list of international bodies that form a part of the HIO definition. The definition, as it exists today, is insufficiently clear to allow reporting entities to ascertain who truly falls under the definition of HIO.

Clarify the definition of Politically Exposed Domestic Person (PEP)

PMAC welcomes additional clarification and specificity around the PEP definition, with the caveat, that the more individuals that are considered to be PEPs, the greater the reporting obligations and compliance costs. We respectfully submit that a domestic PEP's sphere of influence or corruptibility may not be commensurate with the increase in compliance burden.

PEPs and HIOs – Guidance and Use of Searchable Lists

We would like to express our support for the recent release of FINTRAC's Frequently Asked Questions in relation to domestic PEPs and HIOs. While we believe that resources of this nature are helpful and can contribute to reducing uncertainty and promoting AML reporting compliance, we reiterate our comments above with respect to the need for additional clarity as to the scope and meaning of such terms in the AML legislation.

Additionally, we strongly believe that the availability of up-to-date online, searchable lists could increase clarity, improve compliance and reduce regulatory burden for the benefit of the AML regime. We provide, by way of example, the [official list of Section 13\(f\) securities](#) maintained by the U.S. Securities and Exchange Commission. PMAC strongly encourages the creation of such lists and sees them as relatively straightforward and beneficial tools for FINTRAC to offer.

Members have requested additional guidance as to which individuals associated with an entity account should be screened against the various applicable sanctions list in order to provide more clarity as to whether all beneficial owners, control persons, authorized signatories, trustees, settlors or others, are also to be screened. There does not seem to be a consensus amongst industry and service providers on this point and clarity would be helpful.

Standardized Record Keeping and Client Identification

PMAC is supportive of efforts by Finance to streamline and harmonize record keeping and client identification requirements so as to eliminate complexities caused by varied dollar threshold amounts for reporting, where such streamlining makes sense from a policy perspective. For instance, PMAC would support the harmonization of similar dollar threshold reporting requirements but would have concerns about streamlining such requirements to capture smaller dollar amounts, thus creating additional reporting and/or record keeping burdens.

Additionally, while not strictly within the purview of Finance, PMAC is concerned about the impact of differing client identification requirements imposed by various Self-Regulatory Obligations (**SROs**). While PMAC members are regulated by the CSA, there nevertheless can be impact from regulations imposed by certain SROs. The August 2017 proposal from the Investment Industry Regulatory Organization of Canada (**IIROC**) with respect to amending client identification and verification requirements (the **IIROC Proposal**)³ is a good example of this concern. By way of background, registered portfolio managers are required to comply with a variety of client identification requirements found in National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registration Obligations* (**NI 31-103**), as well as AML requirements. Additionally, in instances where an IIROC-registered custodian has delegated client account opening and AML client identification and verification requirements to the portfolio manager (which is almost always the case in these relationships), the portfolio manager firm must also comply with the IIROC rules in this respect, including, if implemented, the IIROC Proposals. There are slight differences between the obligations in NI 31-103, AML requirements and the IIROC Proposal, none of which are accompanied by a policy rationale that justifies such differences and none of which seem to acknowledge the resultant administrative complexity and increased compliance costs.

Standardize and Centralize Reporting to Reduce Regulatory Burden

We urge Finance to work collaboratively with the CSA and SROs to create harmonized client identification and verification requirements, as well as harmonized exemptions from such requirements. We do not believe that there should be three or more sets of client identification obligations and thresholds for reporting entities to comply with, when one, harmonized and well-articulated set of rules could instead satisfy all purposes.

With respect to the creation of uniform PCMLTFA reporting schedules, PMAC supports streamlining such reporting schedules to eliminate the need for duplicative information reporting in order to reduce confusion and regulatory burden.

We strongly believe that the Federal Government should centralize the collection of monthly AML reports from securities dealers (and others with AML reporting obligations) by allowing for on-line, federal filing of such information. We believe that an online filing approach with the federal government would make sense from a work-flow perspective, since this reporting is being made in respect of federally legislated requirements. Not only does the current system of monthly reporting to the various members of the CSA create regulatory burden for the CSA and for entities that are required to file these reports, we believe that duplicative reporting that does not serve the intended policy goal of the AML regulations.

Information Sharing and Privacy Legislation

³ A copy of PMAC's submission on the IIROC Proposals setting out the impact of the IIROC Proposals of portfolio managers' compliance obligations is linked [here](#).

AML and privacy laws should be necessarily and inextricably connected in order to protect personal information. PMAC agrees that it would be beneficial for Finance to develop circumstances and protocols surrounding the effective and appropriate exchange of information with government institutions, as well as with private sector organizations, with a view to ensuring clarity for all stakeholders. We believe that such protocols can help to protect investors' personal information and, where they have acted appropriately, to help protect reporting entities from criminal or civil liability.

PMAC also requests additional clarity from FINTRAC and/or the Privacy Commissioner on record keeping obligations in respect of client identity verification. We believe this would help ensure that reporting entities are meeting both their AML and privacy law obligations and following best practices.

We understand that some privacy experts take exception to the retention of photocopies of client identification for AML client identification purposes, despite reporting entities having an obligation to maintain a record of client identification information. Clarity as to the acceptability of retaining photocopies of client identification and/or an explanation as to why retaining copies of client identification differs from retaining a copy of all of the important information on client identification would be useful in promoting best practices.

Enhancing and Strengthening Identification Methods

PMAC welcomes greater flexibility to responsibly leverage digital technology solutions for efficiency and client convenience, including the use of secure know-your-client (**KYC**) procedures. PMAC believes that the use of advanced technology to assist in the KYC process can be beneficial in bolstering AML client verification. PMAC strongly supports the statement in the Consultation about the need for KYC procedures to remain flexible and adaptive in an environment of rapid technological development and emerging tech, such as blockchain, identification using biometrics, and other advanced KYC methods.

We believe that the rapid pace of technological change, including technology that can assist in the anonymous transfer of assets, on the one hand, and technology that facilitates the accurate, efficient and cost-effective verification of client identity, on the other hand, present both a challenge and opportunity for those tasked with meeting AML requirements. In order to preserve the adaptability of future technological developments, we urge Finance, where possible, to push for principles-based AML laws as opposed to more prescriptive regulations.

Principles-based regulation tends to be more flexible, practical and less prone to technical work-arounds than does overly prescriptive regulation. PMAC therefore also supports the ability for reporting entities to take a risk-based approach vis-à-vis the use of new KYC technologies in order to enhance the ability to conduct efficient and reliable KYC.

Other Comments

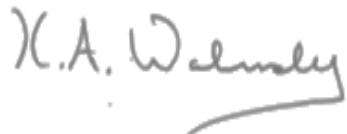
PMAC has long been an advocate for a national securities regulator. We believe that fragmented securities regulation is bad for investors, promotes regulatory arbitrage, increases complexity and, ultimately is harmful to the efficiency of the Canadian capital markets and our economy. The Canadian Capital Markets Regulator should be heavily involved in any amendments to AML laws and we believe there needs to be coordination between FINTRAC, CSIS, the RCMP, CRA, Privacy Commissioners, the CSA and SROs concerned with the articulation and enforcement of AML and client identification laws to ensure maximum efficiency and harmonization of approach and enforcement.

Conclusion

Thank you for the opportunity to participate in this consultation. We would be pleased to continue the dialogue on this important issue and discuss the recommendations included in this submission in more detail.

If you have any questions regarding this submission, please do not hesitate to contact Katie Walmsley (kwalmsley@portfoliomanagement.org) at (416) 504-7018.

Yours truly;
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