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Re: Telpay Submission on the discussion paper “Reviewing Canada’s Anti-Money Laundering and Anti-Terrorist Financing Regime”

Telpay Incorporated is a Canadian payment service provider (PSP) that has been providing payment services to its customers for over 32 years. Focused primarily on business payments to suppliers and employees we would define our payment transactions as low risk activity. However as a result of recent inquiries from our banking partners who were defining Telpay as an MSB. Telpay began a process to review the legislation. Prior to these inquiries, Telpay did not consider itself a money service business as all funds handled come from a bank account in Canada and move to a bank account in Canada (Telpay does not accept cash). All reporting and know your customer requirements would have already been performed by the customers Canadian Financial institution. Subsequently, we sought an opinion from FINTRAC directly; the conclusion was that we were a reporting entity under the legislation. Our experience and opinion has been that the current legislation is vague and difficult to navigate, especially for low risk PSPs like ourselves. As a result we are taking this opportunity to provide feedback to the Department of Finance’s discussion paper released on February 7, 2018 titled “Reviewing Canada’s Anti-Money Laundering and Anti-Terrorist Financing Regime” on some areas of concern.

The Canadian landscape that is impacted by anti-money laundering and anti-terrorist financing is as diverse as the risks that these activities present. Ensuring that Canada meets its global responsibilities to eliminate and thwart activities associated with money laundering and terrorist financing activities is a huge challenge. An even bigger challenge is to ensure that regulation does not impede legitimate economic activity and that rules and regulations are applied equally using a risk-based approach as opposed to being applied based on an industry sector or business type.

Under the current regime it appears that there is a potential of a significant amount of reporting duplication and effort. Defined reporting entities outlined in current Proceeds of Crime (Money Laundering) and Terrorist Financing Act or PCMLTFA could result in a single transaction being reported multiple times as it passes through Canadian payment and financial systems. In addition some transaction “types” may attract greater risk than other types of transaction methods. For example cash



is significantly more difficult to track and identify the source and destination of funds than a domestic EFT or international FT.

Financial institutions in Canada are on the front lines of the majority of financial transactions that occur daily in Canada – they act as gate keepers for virtually all electronic transactions since they have been granted exclusive access to perform banking functions including the exchange, clearing and settlement of payments in Canada. As the center of control for these transactions they are uniquely placed to monitor and report on both sides of the transaction. Bank account opening procedures that require financial institutions to know who is establishing an account solves one of the major objective of PCMLTFA. Because banks fiercely protect access to their customer information, including information used to establish an account, Banks and Credit Unions are well positioned to be responsible for reporting of all transactions that may move through the financial systems. A centralized approach would ensure effective measurement and significantly reduce any duplicate reporting. This approach is especially effective with EFT type transactions – transactions originating from a Canadian bank account and destined to a bank account. Where a bank does not have a direct relationship with either end of a transactions information provided in the payment file supplied to them could provide any missing gaps for reporting purposes. A truly centralized approach is the most effective and efficient way to battle terrorist and money laundering activities.

An additional consideration for the legislative review is the unintentional bias that the reporting regime may create. The stigma assigned to an organization that is labeled a “Money Service Business” can result in a significant reputational and operational risk for that organisation. For example, businesses defined as a “Money Service Business” do face de-risking behavior from the banks who bank them or being denied banking services at the outset. It is well known that Canadian banks have and continue to participate in de-risking activity; this was a major finding of the recent report issued by the Competition Bureau. Telpay, and many other PSPs, have faced this behavior 1<sup>st</sup> hand. In 2013, HSBC, without ample warning had closed Telpay’s trust account that our customers used to fund payments that it processed on their behalf and also removed Telpay Incorporated from its biller list, an additional funding mechanism for our customers. These anti-competitive actions significantly affected our customers who banked with HSBC. More recently two other financial institutions have threatened to eliminate access to banking services, which would ultimately impair our ability to provide our competitive service to our customers. The ability of Banks to withdraw services from PSPs must be justified on normal commercial consideration and not on the activities/services provided by the PSP.

Banks withdrawing financial services for PSP’s is a significant issue which adversely affects Payments Canada, the Department of Finance and the Competition Bureau’s goal of a competitive and innovative payments landscape. This de-risking behavior can be traced, in part, to the legislative framework surrounding PCMLTFA. The PCMLTFA review should examine this issue and consider the following remedies:



- Establish a national utility that uses the information payment service providers provide to banks to determine if a transaction is violating the PCMLTFA regime. A decentralized approach which is the current structure of reporting results in duplicate reporting and places the liability on the reporting entities which ultimately encourages de-risking behaviour of the banks.
- Or requiring financial institutions to provide access to validate banking – source and destination of funds used in a transaction to assist in the onboarding of customers by PSPs.

Banking information used to establish an account is information that can be utilized to identify money laundering or terrorist financing activities. An additional tool that could be used to identify business transactions is the Business Number or BN. An accessible central registry, possibly part of a national utility, could be utilized to validate business numbers and to ensure that the information travels with the transaction.

PCMLTFA currently uses more of an industry approach for determining if a business is a reporting entity. Businesses who are defined as Money Service business's for example are required to register under current FINTRAC guidelines. However "Money Services" can be businesses who operate as cash stores and deal with cash transactions all the way to bill payment service providers who transact for the purpose of processing payments to suppliers. Outside the MSB definition and noticeable absent from registration requirements are payroll companies. Payroll transactions, when done electronically, as most are in 2018, are essentially a funds transfer. These transactions are exempt from reporting. However a transaction paid to a supplier that does not fit the narrow definition of bill payment (insurance, utility payment, tuition payment, etc.) may be subject to reporting by FINTRAC. It is necessary for the definition of bill payment to be expanded beyond payments for mortgage, rent, payroll and commission, utility and tuition payments, to be more inclusive of business payments in general. In fact the definition could be sufficiently broadened to be inclusive of any payment made to a business with a valid business number. At one time payments with an invoice number qualified as an exempt transaction however this was removed in past legislative changes as regulators felt that invoices were easily generated for a payment. The payments to a company with a BN is a sufficiently strong mechanism to be able to define as a legitimate business payment.

The PCMLTFA's focus is the legitimate movement of money domestically and internationally. However related to the movement of funds is the proper handling of funds provided to a PSP. An oversight framework is being currently considered by the Department of Finance which will address the oversight of PSPs including requirements like holding customer funds in trust.

To summarize Canada's anti-money laundering and anti-terrorist regime effectively functions to allow Canada to meet its global responsibilities in this area. Equally important to consider is that this regime does not unnecessarily impair productive legitimate economic activity. To do this we would like the following points be considered when reviewing the PCMLTFA framework:

- A centralized approach be used to maximize the efficiency of the regime while reducing reporting duplication



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- Additional tools be implemented to strengthen transaction identification; use of a Business number and/or access to information needed to confirm banking information.
- Redefined what is defined as bill payment to include any payment made to a supplier using a BN and view other Funds Transfers in a similar light to payroll transactions.
- Ensure that any legislative changes appropriately deal with de-risking behavior that Canadian banks engage in.

Regards,



John Zajic

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