THE CANADIAN MONEY SERVICES BUSINESS ASSOCIATION
ASSOCIATION CANADIENNE ENTREPRISES DE SERVICES MONÉTAIRES

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Submission of Comments by the Canadian MSB Association Addressing the "Reviewing Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime" Consultation Paper

Document Sharing: We consent to the disclosure of our comments in whole or in part;
About the CMSBA: The Canadian MSB Association is a national organized group of MSBs and partners of the MSB industry that provide AML training to members and advocate on behalf of the industry participants.
Scope: This report aims to shed light on the proposed changes as they relate to the MSB industry.
Responses to Review Points: The following constitute the Association's comments with respect to each of the following proposed changes. Sections that have no comment from the CMSBA have been omitted from this document.

Chapter One : Legislative and Regulatory Gaps

The Legal Profession in Canada

The legal profession in Canada poses a significant and demonstrated risk of money laundering in the form of accepting large amounts of cash without reporting requirements. We believe that a balance could be achieved that would see lawyers under increased reporting requirements for certain types of transactions, while preserving attorney-client privilege and privacy.

Beneficial Ownership

The current obligation (as stated on page 19) is that MSBs must collect AND confirm beneficial ownership details. Without an accessible central registry, this obligation is impossible to meet. We support the proposed plan which includes first requiring businesses to update their ownership registry on a regular basis and second, to standardize and combine the existing federal and provincial registries. Once these two essential steps are completed, we assert that either an accessible registry must be created and made available to reporting entities, OR the current obligation to confirm beneficial ownership must be repealed. It is not logical that an MSB be held to a higher standard than the bodies that govern us.

Expanding the Requirements for Non-Financial Businesses related to PEP/HIO and Ownership

While expanding these requirements wouldn't affect MSBs (as we currently have obligations to identify and collect information related to ownership and PEP/HIO status), the CMSBA supports this expansion. Given the availability and relative low cost of technology and service providers that exist to aid in the identification of PEP/HIOs, this is a relatively easy obligation to meet. Given the governments stated commitment to improve our access to beneficial ownership information, it would be logical to expand the requirements to non-financial reporting sectors as soon as the ownership details are organized and made available to the public.

Clarify the Definition of Politically Exposed Domestic Person (PEPs)

Given the availability of services that screen PEP an d HIO status, it is a very reasonable suggestion to expand the obligation to collect PEP/HIO status beyond the transactional limits currently in place. We agree with the addition of First Nations Chief to the list of domestic PEPs.

Expanding the Scope of the PCMLTFA to High Risk Areas

The Association agrees with extending the scope of the PCMLTFA to the business listed:

- White Label Automated Teller Machines (WLATMs)
- Pari-Mutuel Betting and Horse Racing
- Leveraging Information in the Real Estate Sector
- Non-Federally Regulated Mortgage Lenders
- Designated Non-Financial Businesses and Professions (DNFBPs) Non-Transactional Based Activities
- Company Service Providers
- Finance, Lease and Factoring Companies
- Armoured Cars
- High-Value Goods Dealers
- Jewellery Auction Houses

However, the CMSBA feels that the MSB sector has disproportionately borne the responsibilities of the PCMLTFA with respect to the fact that the logical measure to impact the placement of criminal proceeds into the Canadian economic system would be to make qualifying activities and transactions apply to any organization or designated individual who conducts them at the thresholds already established for large cash and electronic fund transfer reporting.

Prohibiting the Structuring of Transactions to Avoid Reporting

The CMSBA supports the intent of this proposed change but struggles with a few points. First one is innocent until proven guilty in our current legal system. We trust that when/if modified, this will read that the entity will be prohibited from KNOWINGLY conducting transactions in such a way as to avoid transaction reporting. Second, consideration should be made regarding the financial investment required by the MSB to achieve real-time structuring monitoring. The wording in this section implies that the entity would have to have knowledge of the structuring in real time. These types of transactions are often identified in post-trade transaction monitoring. Currently, structuring is not illegal. Concealing the proceeds of crime is already illegal. We believe that it should remain this way.

<u>Chapter Two – Enhancing the Exchange of Information While Protecting Canadians' Rights</u>

Standardize Record Keeping and Client Identification

We concur with the view that varied amount thresholds can create complexity and a barrier to compliance. We have seen many MSBs have responded by voluntarily using the lowest threshold ($1000) as their own across-the-board threshold. This is presumably done to provide a consistent threshold. We caution the department of finance to consider this new threshold amount carefully, as not to further stifle the development of Canada's fintech sector. FINTRAC has made a concerted effort to create room for the fintech sector to flourish with their new revisions to non face-to-face identification procedures, and we would hate to see this progress reversed with a very low client ID threshold.

Information Sharing and the PIPEDA

The CMSBA applauds this effort and has three discussion points on the subject:

- We have witnessed a successful 'information sharing' system that was developed through the Project Protect initiative. A zero proof disclosure would allow information sharing to exist without compromising the promise of privacy to law abiding clients.
- The CMSBA would like to make itself available as a contact point to/for MSBs such that requests could funnel through the single point of contact and reach all registered members of the CMSBA
- It has been well communicated to our industry that in scenarios where/when there is a conflict between PIPEDA and the PCMLTFA, that the PCMLTFA trumps the PIPEDA. It would be valuable to have a document that summarizes which Acts take precedence over which other Acts so that our membership can make educated decisions when trying to navigate conflicting regulation.

Privacy Review of the PCMLTFA

The CMSBA takes exception to the notion that FINTRAC (being a federal department/agency) would have difficulty performing a bi-annual audit of its handling practices given that the entities that report to FINTRAC (MSBs) have a similar obligation to conduct bi-annual reviews of their own AML Effectiveness.

This review often includes (but is not limited to) the handling practices of private information. This bi-annual review is a costly, burdensome and often disruptive process. The CMSBA respectfully suggests that if the frequency of reviews by the Privacy Commissioner be changed to every 4 years, then so too should the obligation of MSBS to perform reviews be changed to a four year cycle.

Chapter Three – Strengthening Intelligence Capacity and Enforcement

Professional Money Launderers and Recklessness

FINTRAC defines money laundering to be: "… the process used to disguise the source of money or assets derived from criminal activity". If the requirement to prove the criminal act is removed, then the action is no longer money laundering. There are many legitimate types of transactions that could appear to be money laundering. Take for example the reality that many MSBs face. MSBs have been almost entirely de-risked. Without a bank account, transactions can only be settled through cash payments. By loosening the requirement to prove a criminal offence, the PCMLTFA would cast suspicion on many legal and rational transactions. MSBs have been forced into transacting in a reckless manner due to de-risking.

Bulk Cash

As stated earlier, due in large part to the de-risking reality imposed on MSBs, carrying large volumes of cash across borders is a reality that many MSBs rely on for the continuation of their businesses.

The mitigation measure suggested, of removing legal tender status for large banknotes is irrational. No criminal is going to be deterred from criminal activity due to the extinction of 1000 dollar banknotes.

Cash declaration forms exist at our borders for a reason. Before considering limiting the movement of cash across borders, consider first the option of worsening the penalty for lying on the cash declaration form.

In its most basic form, a banknote is an IOU issued from a central government. Grounding the movement of these IOUs would essentially render these IOUs valueless.

Suggesting that cash movement should be halted or limited would necessitate a dependable alternative method of moving value. This function is presumably provided by banks. If there is an expectation that money is to be stored in and moved through banks, then banks should be financial utilities, and access to banks should be guaranteed to all, including MSBs.

As technology advances, the CMSBA wonders why the Department of Finance is placing such focus on cash, and little or no acknowledgement of the new preferred currency of criminals; cryptocurrency.

Cross Border Currency Penalties

If the goal of the PCMLTFA is to deter and detect money laundering, then the CMSBA asserts that the Department of Finance would be further ahead by increasing the penalties associated with under-declaring the movement of monetary instruments across borders than it would to limit or restrict the movement of money across borders (as suggested in a previous section).

Chapter Four – Modernizing the Framework and its Supervision

Addressing the Issue of Money Services Business De-Risking

This section does a very accurate job of summarizing the reality faced by MSBs. We have been almost entirely de-risked. Banks, Credit Unions and service providers (including POS Merchant Services) have in many cases, completely de-risked all clients that are MSBs and/or agents of MSBs. Other FIs may have decided to continue to service existing clients, but have refused to onboard any new MSBs.

While the CMSBA appreciates this honest summary, it does not address a possible solution.

The PCMLTFA requires that FIs identify and manage the risk – they should be taken to task on this requirement.

The PCMLTFA requires that risk be evaluated in a case-by-case format – and there should be consequences when an FI demonstrates action that is contrary to this directive. There should be consequences when FIs are found to apply blanket de-risking to an entire industry.

OSFI and FINTRAC should also be held accountable for the language used related to MSB accounts during the audits performed on FIs. It has been reported to that the message coming to FI's from OSFI and from FINTRAC is that it is negative to have any MSB accounts. When there are no MSB accounts on file, this is met with encouragement.

There have been countless instances when a particular FI has exited ALL MSB accounts, and this directly violates the intention of the PCMLTFA and the risk-based approach. The CMSBA suggest that perhaps OSFI and/or FINTRAC would like to develop a reporting requirement of Financial Institutions whereby they are required to report all de-risking decisions to their regulator. Doing so would allow OSFI /FINTRAC to monitor the de-risking decisions and to monitor the risk based approach being applied.

The CMSBA suggests that the Department of Finance could direct OSFI to establish a program for banking MSBs such that all MSBs are banked. If no MSB goes unbanked, no MSB goes unmonitored. MSBs that are banked are often subject to intensive monitoring programs, which generally results in greatly improved reporting.

The CMSBA appreciates the noted misconception regarding the perceived requirement to "know your customer's customer". It is thought that this might be the root of some de-risking in the industry. OSFI and FINTRAC are both encouraged to communicate statements to FIs that directly communicate that there is NO obligation for the FI to know their client's clients and that de-risking that has stemmed from a focus on knowing your client's clients is a misdirected understanding of the guidelines.

Many of the "cash" problems outlined earlier in this paper have been created and worsened by the financial industry's de-risking actions.

The de-risking actions and policies of FIs, that have been justified by "managing risk" have resulted in an MSB population that has shrunk from 2400+ MSBs to now approximately 800 MSBs in 5 years. Further, these policies and actions have stifled the growth and success of new FINTECH start-ups. Canada is falling behind in the FINTECH innovation space, and not for lack of domestic talent, rather for lack of a true risk-based approach in banking.

Whistleblowing

The CMSBA appreciates that FINTRAC has a whistleblowing framework in place. When recently asked specifically about enforcement of whistleblowing disclosures, FINTRAC explained that there is an inadequate budget of funding and time allocated to following up on whistleblowing incidents. The CMSBA encourages FINTRAC to allocate time and financial budget to this enforcement.

Administrative Policies

The CMSBA finds it outrageous that the participants most often deficient in AML Audits, are also the group least often AMPed and also happened to be the group with the largest capacity to pay fines.

Public Naming

Legal firms have recently outlined the current practice of public naming to the CMSBA. Essentially, when assigned an AMP, an MSB can elect to use legal representation to negotiate the amount of the fine, and most often can successfully negotiate to have the MSB unnamed. The irony is compelling. The MSBs best positioned to afford the burden of an AMP are also the ones that can afford a lawyer to negotiate them out of a fine. The smaller MSB, with a very limited budget is unable to afford a lawyer to fight the fine, but sadly also unable to pay the assigned AMP. Their business would suffer greatly by public naming, yet they can't afford to "buy silence" from FINTRAC. It's a very unlevel playing field when the system allows for "hush money" to be paid (to lawyers) and this in turn results in no negative press for the richest participants in our industry.

Chapter 5 – Administrative Definitions and Provisions

No discussion necessary in this section

The Canadian MSB Association would like to thank the Department of Finance for the opportunity to provide feedback on the proposed changes to the PCMLTFA. Should you require further comment on these or any other proposed changes, we welcome your contact through our association website or individually through our office contact information.

Sincerely,

Michael Smith, Co-Chair

Carinta Mannarelli, Co-Chair