

April 7, 2017

VIA EMAIL: fin.fc-cf.fin@canada.ca

Ms. Leah Anderson

Director, Financial Sector Division
Department of Finance
140 O'Connor Street
Ottawa, Ontario
Canada
K1A 0G5

Dear: Ms. Anderson:

Re: Parliamentary Review of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act ("PCMLTFA") and Canada's Anti-Money Laundering and Anti-Terrorist Financing (AML and ATF) Regime

The Investment Industry Association of Canada ("IIAC") welcomes the opportunity to provide comments on the Parliamentary Review on behalf of our members and as a member of the Department of Finance's Advisory Committee on Money Laundering and Terrorist Financing. The IIAC's mandate is to promote efficient, fair and competitive capital markets in Canada. To this end, the IIAC supports the objectives of the PCMLTFA and Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime. A robust and effective anti-money laundering regulatory regime acts to deter criminal activities and to enhance the overall credibility of our Canadian capital markets.

We have formulated our response based upon both some general and specific themes identified by our members that we hope will help to inform the scope of the review.

Information Sharing, Disclosure and Transparency

Penny Stocks/Microcap

While FINTRAC collects and analyses vast amounts of data and shares intelligence with law enforcement agencies when that information might be relevant to a money laundering or terrorist financing offence, the IIAC believes that there are further opportunities for information sharing to help reduce financial crime and honour our international commitments.

For example, trading practices in penny stocks/microcap could be improved to identify issuers being manipulated and used as vehicles for fraud. In the U.S., numerous regulators have recognized the issue and work cooperatively. The IIAC believes that there needs to be a coordinated effort among regulators and continued communication among CDS, IIROC, the OSC, FINTRAC and others to meet regularly and discuss red flags, trend analysis and efforts to identify manipulative and deceptive practices. It is important that investigations are coordinated and information is shared among these various groups which would be helpful in the penny stock/microcap space.

Duplicative Roles

Another example of the need for improved information sharing relates to FINTRAC's dual role as a center for gathering financial intelligence and as a regulatory body enforcing the PCMLTFA. As FINTRAC's role includes financial institutions, this has resulted in a duplication of efforts of other regulators and government bodies such as CRA, OSC, IIROC, etc. Given this duplication, we would suggest greater communication between the relevant organizations to improve coordination.

STRs and SATRs – Not Retained

It would also be helpful if FINTRAC was required to respond back to financial institutions to indicate which STRs/SATRs are not retained as a result of not meeting FINTRAC's determination of the STR definition. Currently, reporting entities are required to submit transactions to FINTRAC and are unable to receive a confirmation as to whether the transaction will be retained. For transactions which are not retained, FINTRAC destroys the record to protect the privacy of the party; however, the reporting entity is not informed and will have the requirement to continue to send subsequent transactions as per the requirements. These additional transactions repeat the privacy concern and require additional resources for FINTRAC.

If reporting entities receive these notices, a supplementary review could be performed to improve the understanding of applicable STRs/SATRs. This would assist in reducing subsequent reviews for similar transactions by FINTRAC for behaviours already deemed to not meet the definition of a suspicious transaction under the Act. It would also reduce subsequent reviews and monitoring by reporting entities for transactions determined by FINTRAC to not meet the definition of a suspicious transaction under the Act.

Distribution Lists – Proceeds of Crime/Threat to Security

The IIAC further suggests that FINTRAC amend section 55 of the PCMLTFA in order to provide secure disclosures and detailed notices to reporting entities. A list (including name and date of birth) of persons holding the proceeds of crime or listed as a threat to the security of Canada would be extremely helpful to reporting entities. Currently, financial institutions require specific intelligence to efficiently respond to persons guilty of a money laundering offence or a threat to the security of Canada. Unfortunately, the legislation today is overly broad and the interpretive guidance far-reaching in that it may imply that financial institutions are to act on media monitoring which may have incomplete information on the party. Furthermore, FINTRAC can only perform a disclosure to law enforcement and select government agencies or for the purposes of media awareness of past confirmed cases with the Act.

The media awareness campaigns do not provide the relevant information needed to combat money laundering, such as the name and date of birth to adequately identify an individual.

If FINTRAC provided the information directly to reporting entities, the entities would be able to review the information on file for any related parties to assess if any applicable activities for that party are deemed to be a suspicious transaction. This would reduce the efforts currently used for media monitoring and ineffective research today. This is similar to the practice used in the United States where a targeted list is sent by the Department of the Treasury's Financial Crimes Enforcement Network. To protect the privacy of the convicted person, technology tools can be utilized to limit the access by financial institutions to this list to only present data when it matches a known customer.

In the alternative, we would recommend that the *Personal Information Protection and Electronic Documents Act* be amended to permit information sharing for the purposes of deterring money laundering and terrorist financing.

Publication of Decisions

Finally, it would be helpful for FINTRAC to publish on its website written decisions of violations to the Act. This helps to inform all reporting entities of the issue and improve their own procedures and practices to ensure they avoid similar issues within their respective organizations. For privacy purposes, such decisions can be anonymized where necessary.

Beneficial Ownership

Taxation Records

The IIAC suggests that the government allow reporting entities to rely on information provided for taxation purposes as an adequate confirmation record within PCMLTF Regulations (PCMLTFR).

Reporting entities are currently required to collect and confirm the name and address of the beneficial owners of directly or indirectly 25% (10% for securities) or more of the shares of a legal entity. Under section 11.1 of the PCMLTFR, reporting entities are required to take measures to confirm the accuracy of the information provided by clients.

The reliance on taxation records, which have been expanding over recent years is recommended as an adequate record for this purpose (i.e. CRA forms/Corporations T2schedule50/equivalents forms for Partnerships/Trusts). Currently, the government relies on the information of clients related to their private corporations through taxation reporting. It seems reasonable that those same documents should be used for beneficial ownership requirements under the PCMLTFR.

Relying on existing official records produced by the client which are provided to the Government of Canada, would assist in relieving the burden on reporting entities and likely result in more accuracy as the records provided by the client are typically reviewed the client's auditors and therefore less error-prone than collecting unique records.

Confirming Accuracy of Beneficial Ownership

Our members have stated that they have obtained a signed certification, attestation or statement from a person authorized to act on behalf of the client with respect to the beneficial ownership information which also establishes ownership, control and structure as set out in section 11.1 of the PCMLTFR. Furthermore, as required under subsection 11.1(3,) members have retained a copy of the certification, attestation or statement to demonstrate that reasonable measures were taken to confirm the accuracy of the beneficial ownership.

However, FINTRAC has indicated that an attestation is not sufficient and that further steps must be taken to confirm the accuracy of the information as required under subsection 11.1.

The IIAC supports the Canadian Bankers Association's (CBA) recommendation for the creation of a central register that contains current and accurate information with respect to beneficial ownership. This measure will not only reduce the burden on our members but improve the accuracy and transparency with respect to beneficial ownership information.

We further support the CBA's recommendation that given the challenges of collecting the names and addresses for known beneficiaries of certain types of trusts, an exemption should be provided for publicly traded trusts including mutual fund trusts, REITs and income trusts which do not fall under paragraph 62(2)(m) dealing with corporate entities.

Exemption from Ascertaining Identity of Authorized Signers

The IIAC would like to reiterate our suggestion outlined in numerous submissions over the years to extend the current exemptions under section 62(2) of the PCMLTFR to equivalent foreign regulated entities that are subject to a comparable regulatory regime in their home jurisdiction or through the stock exchanges on which they are listed in order to "level the playing field" and to permit our members to compete in the global capital markets. The exemption for authorized signing officer verification of foreign public bodies is not aligned with the United States or the EU.

The underlying rationale for the exemptive relief currently provided in section 62(2) for Canadian regulated entities is, at least in part, due to the regulatory oversight of these entities provided by a government regulatory body or an industry-specific self-regulatory organization. Regulated entities are less likely to pose AML risks relating to identity, identity verification of its authorized officers and record-keeping because they are already subject to significant registration requirements, disclosure, audit and reporting obligations and enhanced regulatory scrutiny over their business conduct and operations. Foreign regulated entities that are subject to similar regulatory regimes in their home jurisdictions should be eligible for comparable exemptive relief under the *PCMLTFR*. As a result, if, for example, an entity were regulated by the Financial Services Authority (FSA) in the U.K or the Securities and Exchange Commission (SEC) in the U.S., Canadian dealers would be able to verify the identity by confirming and documenting the entities registration status and rely on the regulatory review by that home jurisdiction.

Client Identification

Credit File Verification

With respect to the use of a credit file in identity verification, the IIAC is pleased that a credit file can now be used on a stand-alone basis but we are of the view that, as previously recommended, the required time frame should be reduced from three years to six months. The requirement that a new customer have a three-year Canadian credit file will mean that some individuals, such as those who are new to Canada or students, will not be able to satisfy the requirement nor avail themselves of online account opening. These clients would therefore be forced to provide client ID via the Dual Method. Other countries do not prescribe the length of the credit record that can be used for customer identification purposes and we suggest a similar approach be applied in Canada.

Client Identification and Copies

Regarding the client identification measures that now allow us to accept various other forms of documents (i.e. CPP statements, Notices of Assessments, utility bill, divorce documentation, credit card/loan account statements, etc.) under the Dual Method, the new Regulations and FINTRAC Guidance states, "Original documents do not include those that have been photocopied, faxed or digitally scanned." This appears to be a deviation from prior guidance on the Confirmation of a Deposit Account method that allowed "a copy of a client's bank statement, a legible fax or scanned copy of a bank statement, or an original or electronically issued bank statement addressed to the client that contains all of the information". This causes significant issues for some firms, impacting up to 33% of already automated processes that will now need to be mailed in.

For reporting entities that operate in a purely online environment or for reporting entities that may have clients located in remote regions of the country where a bricks and mortar location is not accessible to the client, allowing scanned, fax, digital/electronic copy or picture image (by smart device) of documents that support client identification in the Dual Method allows firms the ability to service these clients that do not want to send original copies of documents into the reporting entity. Part of the reluctance to send originals include lost or damaged mail that contains original documents (for example, sending birth certificates), longer wait times to receive and process documents, and liability to the reporting entity if anything happens to originals that are not received back to the client. However, enabling clients to submit electronic copies provides them with additional choice with respect to the kind of firm with which they wish to do business (for example, online firms or firms that have the flexibility to ascertain identity in a non-face-to-face situation). It would also allow the Guidance to be in line with previous interpretations, such as for Confirmation of a Deposit Account, that have already been implemented by reporting entities.

The IIAC acknowledges that a possible disadvantage may be potential risks associated with fabricated documents. However, we note this also exists with documents provided in physical format. Reporting entities would have the ability to use discernment when accepting documents and should be able to reject documents where they feel its validity or authenticity is questionable.

The changes in the PCMLTFR and FINTRAC Guidance requires the mailing of physical documents vs. accepting electronic, scanned or faxed copies; we understand that was not the intention and appears to be an unintended consequence.

The IIAC suggests that the Department of Finance and FINTRAC amend the language of the PCMLTFR and FINTRAC Guidance so that scanned, fax, digital/electronic copy or picture image (by smart device) of documents that support client identification in the Dual Method can be accepted.

Accepting Facial Recognition Technology as a Single Method

Facial recognition technology, in conjunction with databases provided by federal, provincial or governmental bodies should be accepted as single method of identification, similar to how meeting clients face-to-face is accepted as a single method.

There have been significant advancements in technology that give us the ability to ‘recognize’ hundreds of facial markers in a video image of a person to a secondary source, for example, drivers’ licenses in several provinces have already been equipped with digital identification technology. Additionally, we note that the Canada Border Services Agency has already implemented facial recognition technology in border screening through the use of live images taken at the point of entry to Canadian passports. The legislation and FINTRAC Guidance should be written to embrace technology and catch up with current technological advancements that are already in place within our country and globally around the world. We also note ministries that govern driver’s licenses and the office that issues passports are government bodies.

Every face has numerous, distinguishable **landmarks**, the different peaks and valleys that make up facial features (called nodal points). Each human face has approximately 80 nodal points. In facial recognition technology, these nodal points are measured creating a numerical code, called a **faceprint**, representing the face in the database. *The chances of sharing just eight dimensions with someone else are less than one in a trillion.* The accuracy of this technology is far superior to some of the client identification methods that exist today.

The IIAC suggests that the Department of Finance and FINTRAC revise the language of the PCMLTFR and FINTRAC Guidance so that facial recognition technology, specifically, can be used as an accepted single method. The current language in the FINTRAC Guidance states in the Government-issued photo identification method, “You must view the original document while in the presence of your client in order to compare your client with their photo.” We believe this can be achieved through facial recognition.

We propose the current language, “It is not acceptable to view photo identification online, through a video conference or through any virtual type of application. You cannot accept a copy or a digitally scanned image of the photo identification” *be removed and modified to state*, “In the online environment, legible and verifiable photo identification can be viewed online only if the information can be independently verified by a federal, provincial or territorial governmental body, through a video conference or through any virtual type of application. A copy or a digitally scanned image of the photo identification will only be acceptable if verified by these independent government bodies.”

Updating the FINTRAC Guidance and providing greater clarity would better line up with PCMLTFR section 64(1)(b) that states, “by referring to information concerning them that the person or entity that is ascertaining their identity receives, on request, from a federal or provincial government body — or an agent or mandatary of such a body — that is authorized in Canada to ascertain the identity of persons, and by verifying that either the name and address or the name and date of birth included in the information are those of the person.”

This amendment would also have the additional benefit of allowing the PCMLTA and FINTRAC to align with our current Prime Minister’s agenda to support high-tech innovation and allows Canada to ‘catch up’ in implementing new technologies. It would also further align with comments from a recent Financial Action Task Force (FATF) Consultative Forum (March 22, 2017) in which discussions included the use of biometric technology and centralized databases as a means of verifying customers’ identities. Participants noted the potential for technological innovation to assist the public and private sectors in meeting the FATF’s objectives of combating money laundering, terrorist financing and other related threats to the integrity of the international financial system, and suggested that all stakeholders consider how best to take advantage of useful developments in this field.

The changes would also be more client-centric with respect to opening accounts for those individuals interested in working with online firms vs. the traditional face to face relationship, as well as providing clients with a wider choice of options for client identification.

Reasonable Measures

As in previous submissions, the IIAC has raised concerns with respect to section 67.3, under which a person or entity must keep a record that sets out the what reasonable measures were taken and why they were unsuccessful. We find this requirement serves no useful purpose and it seems quite onerous to set out the reasons why certain measures undertaken were unsuccessful. It will require extensive training and amendments to policies, systems and procedures. As such, we suggest this section be removed. At the very least, should this provision remain, the procedures used by a firm should stand as the record of the reasonable measures taken and not require firms to record any additional information.

Thank you for considering our submission. The IIAC would be pleased to respond to any questions that you may have in respect of our comments.

Yours sincerely,



Michelle Alexander
Vice President