INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

April 12, 2007

The Honourable James M. Flaherty
Minister of Finance
Department of Finance Canada
140 O'Connor Street
Ottawa, Ontario
K1A 0G5

Dear Mr. Flaherty:

Re: Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations

We are writing to express certain concerns of the investment industry in relation to the above noted regulations. The Investment Industry Association of Canada ("IIAC") is the professional association representing over 200 investment dealers which employ 39,000 Canadians. Our mandate is to promote efficient, fair and competitive capital markets for Canada and assist our member firms across the country.

The IIAC supports the objectives and general content of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* ("Regulations") in that they assist in the detection and deterrence of money laundering and the financing of terrorist activities. There are, however, a number of provisions that we have concern with and would like you to consider amending. If you are not able to amend the Regulations we ask that you advise as to what is the rationale is behind the provisions as they are becoming more and more difficult for our members to implement and will create more resistance from their clients.

The Regulations as currently drafted are very prescriptive in nature and do not contemplate the risk-based approached taken in other FATF jurisdictions. We strongly believe that an effective regime, designed to detect and deter money laundering and terrorist financing, must be balanced, and not impede the legitimate business of Canadians. While the regime must provide effective deterrence, it is also essential that stakeholders not be overburdened with unnecessary, and possibly duplicative or confusing rules and regulations. We respectively request that consideration be given to adopting a more flexible risk-based approach, which in some instances would provide more clarity and accuracy.

It is with this in mind that we are writing to you on behalf of our members in regards to the need for changes with respect to the following:

1) Foreign Financial Institutions

a) Expand of section 23(2) to lift the requirement for obtaining corporate information regarding any financial institutions exempted under the section (i.e. add subsections (b) and (c) to subsection (a) in the section 23(2) exemption).
b) Include domestic insurance companies and investment funds regulated under provincial legislation, i.e. mutual funds, in the section 23(2) exemption.
c) Extend the exemptions under sections 23(2) and 62(k) and (with respect to public bodies) to include similar institutions in FATF Member countries.

2) Public Companies

The exemption currently available in section 62(1) (d) for listed companies is limited by an asset test. The test appears to relate to a similar test in the eligibility requirement for filing of a short form prospectus under section 2.2(3) of National Instrument 44-101. However, the test was removed in amendments to the National Instrument in late 2005. The test now relates to the availability of current disclosure and listing on an eligible Canadian exchange. Public companies are subject to general disclosure requirements. Most such disclosures in advanced countries are now available on-line, for example through the SEDAR system in Canada and the EDGAR system in the United States. In addition to government filing requirements, stock exchanges impose additional requirements and frequently add asset or other tests, as well as making listed company disclosures available on-line. We recommend the removal of the asset test from the exemptions in subsection 62(1) (d). The subsection would then read:

> (d) the opening of an account where there are reasonable grounds to believe that the account holder is a public body or a corporation whose shares are traded on a Canadian stock exchange or a stock exchange that is prescribed by section 3201 of the Income Tax Regulations and operates in a country that is a member of the Financial Action Task Force.

3) Use of Account

It is unclear what value the information required under Section 23(a.1) provides. It would be more useful to ask for source of funds, especially since it is an OSFI expectation and not required of independent dealers.

4) Politically Exposed Persons (PEP)

The definition in section 9.3(3) is too broad. We have concerns about what will be considered reasonable efforts to ascertain whether an individual is a PEP. List of PEPs within Worldcheck is approx. 500,000 names. This is unrealistic for members to create and maintain their own PEP lists. As well, because the list is so large there will be a lot of false positives that will need to be researched and this could have an impact on client service and member resources. We are concerned from the standpoint of false positives in the scrub process and how everyone will cope with that. We also request clarification on what "senior management" approval means.

5) Directors or Partners or Persons who own greater than 25% or more of a Corporation

Section 11.1 regarding obtaining address, occupation and employer for Directors and Partners will be problematic as this information is not publicly available. At a minimum the same exceptions for identity verification and third party information should be applicable to this requirement. It appears this section is confusing the concept of beneficial owner. Partners and Directors do not necessarily own the entity, but they are involved in management. With respect to addresses, typically public filings only refer to their city and province of location, not geographic address. This should be a privacy concern for the regulators.

The use of the 25% threshold appears to be contrary to the provincial regulatory authorities' efforts to harmonize securities legislation. It would be beneficial if the Federal Department of Finance made efforts to harmonize legislation with existing domestic securities legislation. We recommend that the Department of Finance reconsider the threshold to be consistent with National Instrument 45-106 (20% - Control Persons) or the definition of insider in the Securities Acts of Ontario, Alberta or B.C. (10% - Insider). Dealers are already subject to IDA Regulation 1300.1 which has a threshold of 10%, therefore dealers are subject a higher benchmark, but it if threshold was harmonized with Insider or Control person, and we could harmonize our processes, which would be more efficient.

6) Non Face-to-Face Methods

Unfortunately, the proposed amendments to section 64(1) do not improve current difficulties in verifying identity for institutional clients. The alternative methods appear to be only beneficial for individuals. It is unrealistic and impractical for any entity required to comply with this legislation to perform bank reference checks or clear a personal cheque for authorized persons of an entity, such as corporations. Consequently, exemptions for identity verification should be broader to avoid having to identify authorized signing officers personally when they work for a large institutional-type organization.

The proposal would allow for an agent or mandatary to meet with a client face-to-face. However, if there is no face-to-face meeting with clients, a dealer would be required to complete **two** identification methods as opposed to just one. Most dealers would not undertake to complete two methods and would rather use the agency route. However, hiring an agent in another county can be an expensive method to use on a regular basis.

In addition, the new list requiring two methods is too restrictive. Dealers have indicated that an authorized signing officer acting in their employment capacity would be loathe to provide dealers with a personal bank reference or a cheque to be cleared or a credit check.

Furthermore, the provisions for attestation only permit Canadians in certain occupations to provide the attestation (such as a Canadian notary or Canadian commissioner of oaths). This method would never be used as it makes no sense to use a Canadian official when the client is

offshore. We would recommend that the provision be amended to consider using reputable banks or laws firms offshore.

In addition, we support the Investment Dealers Association's proposed new section 64(1)(1.3) which allows that even if there is a difference in names provided from two identification methods, the dealer can make a determination that the names are in fact consistent. The IIAC would suggest guidance be provided around this provision for when two verification methods yield inconsistencies, but are reasonably explained. For example, to address slight misspellings in one of the names, change from maiden name to married name, for foreign names situations or if nicknames are used. Differences in names should be considered and the provision should focus on inconsistencies which cannot be explained or resolved.

7) Education

The public needs to be educated about this legislation. It is becoming more and more difficult to obtain personal information from clients because of the sensationalizing of identity theft and public awareness of Privacy Act.

8) Verification

Verification of identity has been reduced to seven days under section 64(2) but confirmation of existence is at 30 days under section 65(2)(d). The IDA currently requires Dealers to take positive action on any missing documentation at 25 days and most firms are set up to restrict an account at 30 days, it would be beneficial if both of these were harmonized to 30 days.

We respectfully request that appropriate consideration be given to the issues discussed above as well as comments and examples put forth by the Investment Dealers Association of Canada. We would be pleased to meet with you and your colleagues to discuss these matters further.

Thank you in advance for you time. We look forward to hearing from you.

Yours sincerely,

M. Alexander

Michelle Alexander
Director, Policy