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Lisa Pezzack
Director General
Financial Systems Division
Financial Sector Policy Branch
Department of Finance
James Michael Flaherty Building
90 Elgin Street
Ottawa, Ontario
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Dear Ms. Pezzack:

Re: Regulations Amending Certain Regulations Made Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, 2018 and the Proceeds of Crime (Money Laundering and Terrorist Financing Regulations (the “Proposed Regulations”))¹

The Investment Industry Association of Canada (“IIAC”) welcomes the opportunity to provide comments on the Proposed Regulations published in the Canada Gazette on June 9, 2018 on behalf of our members and as a member of the Department of Finance’s (the “Department”) 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 *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (“PCMLTFA”) and Canada’s Anti-Money Laundering and Anti-Terrorist Financing Regime (“Regime”). A robust, efficient and effective anti-money laundering/anti-

¹ For greater clarity, the term “Proposed Regulations” used in this submission refers to both the provisions as part of the amending regulation as well as the substantive provisions that would be in effect following the proposed amendments.

terrorist financing regulatory regime acts to detect and deter criminal activities and to enhance the overall credibility of our Canadian capital markets.

The Proposed Regulations provide some positive changes for our members, including the requirement for an “authentic” document to verify customer identity instead of requiring an “original” document for this purpose. We also appreciate that the Department listened to our concerns regarding the challenges surrounding the current requirement to keep a record of unsuccessful reasonable measures taken when meeting certain obligations. Notwithstanding these positive changes, the IIAC has identified a number of operational and/or implementation challenges that the Proposed Regulations give rise to which are outlined below.

Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations (“PCMLTFR”)

1. Record-keeping for accounts

The IIAC notes that the records that a securities dealer is required to keep for each account that it opens have been expanded under the Proposed Regulations. Specifically, paragraph 29(b) of the Proposed Regulations would require detailed personal information in respect of any person who is authorized to give instructions in respect of an account. This is a significant expansion of the current record-keeping requirements and we would like clarification as to how far this provision is interpreted to extend. In the view of our members, requiring this detailed information in respect of those authorized to give instructions on an account does not seem to recognize that for entity accounts, the client of the securities dealer is the legal entity itself and not the individual person acting on behalf of the legal entity. Requiring extensive personal information on each individual that is authorized to transact on an entity, fails to recognize this fundamental principle.

This information is not currently collected by our members. Not only would this new provision require changes to a securities dealer’s systems, forms, and policies and procedures in order to capture personal information on an unlimited number of authorized persons, but additional training and education of staff who are accustomed to requesting information on a maximum of three authorized signers.

Furthermore, keeping this information up to date will create operational challenges when one considers the frequency with which an organization appoints and removes authorized persons. We note that the number of authorized individuals (beyond the three who sign a signature card) could be large in number and it would be burdensome (for clients as well as for reporting entities) and intrusive (for the individuals required to provide their personal information) to collect this information and keep it updated. This is especially challenging when one considers the frequency of updates that may be necessary. This burden seems unwarranted in light of the questionable intelligence value that this information would provide.

Additionally, our members question how this new requirement might intersect with the European Union’s General Data Protection Regulation (“GDPR”). The GDPR enacts stringent privacy protection obligations and the penalties can be quite severe with cross-border implications. Thus, this is another hurdle for securities dealers to address if there is an expansion in the records that a securities dealer is required to keep under paragraph 29(b) of the Proposed Regulations for an account located in Canada.

We would also like to point out that paragraph 29(b) of the Proposed Regulations reflects a departure from a principled, risk based approach to a more prescriptive regime. A true risk based approach is predicated on the concept that the measures taken by reporting entities should be commensurate with the risks posed by the client. The proposed change to require personal information of all persons who are authorized to provide instructions on an account be obtained and records maintained thereof is contrary to these principles, and unnecessarily prescriptive. The risks associated with transactions conducted by a non-personal entity should be rightfully addressed through existing requirements, such as the ongoing monitoring of transactions.

Moreover, requiring detailed personal information on every person authorized to provide instructions on an account does not recognize the use of newer technologies and new systems and platforms that securities dealers use. We note that the way our members interact with their clients has increasingly become more automated as they implement new technologies and systems are to deal with the faster real time transaction environment demanded by clients. In this regard, we note that many large businesses that have accounts with securities dealers use direct access systems to provide instructions and typically provide access to many employees and authorized individuals. The record-keeping requirement proposed would require updating the list of employees (or other authorized individuals) of an entity every time a new authorized person is added to the authorized list. It would also require information to be retained in respect of employees removed from the list to comply with the record retention requirements of the Proposed Regulations. Even with processes and systems that are designed to capture such information, the employees of a legal entity often regularly share or reassign access to systems which makes it especially difficult for our members to fully and accurately collect information about specific employees providing electronic trading instructions.

We respectfully submit that record-keeping obligations in respect of every person authorized to give instructions on an account should be reconsidered. While collecting information about the authorized individual who manually provided instructions to a securities dealer may have been practical when the Regulations were introduced, such an approach is not workable in the current automated environment of providing financial services.

We also note that following the June 17, 2016 amendments to the current PCMLTFR, securities dealers are required to consider the impact of new technologies when conducting an assessment of money-laundering and terrorist-financing risks related to their activities and business relationships. This expressly requires securities dealers to identify emerging risks related to advances in technology and implement effective mitigation measures that are commensurate with the nature of their businesses and their customer base.

The Regulations as currently drafted therefore provide the framework necessary for securities dealers and other reporting entities to integrate new technologies, such as employee-initiated direct-access platforms for the provision of instructions, into their existing anti-money laundering and anti-terrorist financing programs.

Given the challenges outlined above and the fact that the focus should be on the “client”, we recommend that the existing requirement to verify the identity, collect and record the information of up to three individuals for whom a signature card is created be maintained and that the record-keeping obligations

not be extended in the manner contemplated. Not only is this requirement unnecessarily onerous, it does not focus on the client of the securities dealer. In this regard, and consistent with the foregoing, we note that the definition of a “client” in the PCMLTFA was amended in 2017 to eliminate the concept that a client includes “a person or entity on whose behalf the person or entity that engages in the transaction or activity is acting”. This amendment is consistent with a “client” being viewed as the legal party with whom a securities dealer has a relationship; not its employees or authorized persons.

The IIAC would also like to comment on the new paragraph 29(f) of the Proposed Regulations, which would require a securities dealer to keep a record of every account operating agreement that they create or receive in respect of the account. The IIAC notes that the requirement to keep this type of historical documentation for five years from the date the account is closed is a very onerous and costly record-keeping exercise, especially when one considers how frequently account operating agreements change and are updated to address constantly changing regulatory requirements². It is difficult to see the intelligence value of retaining standard form account operating documentation.

2. Frequent and extensive ongoing monitoring

Section 160 of the Proposed Regulations provides that for high risk clients ongoing monitoring of business relationships must be conducted on a “frequent and extensive” basis. In this regard, we note that the current Regulations require regulated entities to engage in ongoing monitoring on a periodic basis based on the risk assessment undertaken in accordance with the PCMLTFA.

As a result, it is clear that the PCMLTFA and the PCMLTFR require that high risk clients be monitored on a more frequent basis. It is therefore difficult to understand why the Proposed Regulations now introduce the concept of “frequent and extensive” ongoing monitoring. A risk based approach to anti-money laundering allows regulated entities the ability to adopt proportionate controls and exercise a degree of subjective judgement. Requiring ongoing monitoring and the updating of identification information to be conducted on a frequent and extensive basis is not in keeping with this approach. Moreover, the terms “frequent” and “extensive” lack clarity and give rise to regulatory uncertainty. We do not understand the practical expectations of frequent and extensive monitoring.

Given the foregoing, the IIAC suggests that these provisions be removed from the Proposed Regulations. Any guidance FINTRAC wishes to provide in respect of the frequency and sufficiency of ongoing monitoring for high risk clients in the context of the existing regulatory framework can be included in FINTRAC Guidance.

3. Record of identity verification of person or entity that conduct or attempt to conduct a transaction

The IIAC appreciates that the Department has removed the previous requirement to keep a record of unsuccessful reasonable measures taken. As stated the Department’s Regulatory Impact Analysis

² These constantly changing requirements encompass not only those related to the PCMLTFA, but other regulatory requirements that IIAC members are subject to, including securities regulatory requirements both from provincial securities commissions and self-regulatory organizations, which are frequently revised and amended.

Statement (“RIAS”) accompanying the Proposed Regulations, it was determined that these measures are too onerous and impose a significant administrative burden on regulated entities.

Consequently, we were somewhat surprised by the proposed addition of subsection 85(2) in the Proposed Regulations. Proposed subsection 85(2) requires a securities dealer that does not verify identity in the context of a suspicious transaction report (“STR”) because of concerns of “tipping off”, to keep a record of the reasons for their belief that doing so would inform the person that the transaction would be reported. In our view, this is somewhat akin to the removed unsuccessful reasonable measures record-keeping requirement, which not only seems contrary to the Department’s intent (as stated in the RIAS) to reduce regulatory burden but also seems to suggest that the Department is reluctant to rely on the compliance practices of regulated entities.

As such, we would recommend that this proposed subsection be removed which would ensure consistency regarding the approach on the reasonable measures provisions.

4. Verifying person’s identity

The IIAC appreciates the amendments made to the Proposed Regulations from the previous requirement that documents used to verify customer identity be “original, valid and current” to now require that documents be “authentic, valid and current”.

From our recent discussions with FINTRAC, we look forward to the guidance accompanying this requirement, which we understand will set out that regulated entities can outline in their policies and procedures how they will satisfy themselves that a document is “authentic” and that will clarify that regulated entities can make “authentic” determinations independently without any accompanying prescriptive requirements.

Under the dual source method, we are pleased to see that the Proposed Regulations would no longer prohibit scanned or photocopies of documentation. These two points were areas that the IIAC has raised in numerous submissions to the Department, most notably in our May 18, 2018 submission relating to the Department’s Discussion Paper: Reviewing Canada’s Anti-Money Laundering and Anti-Terrorist Financing Regime (the “Discussion Paper”). We look forward to additional enhancements to modernize the methods by which to verify the identity of clients.

5. Verifying person’s identity by relying on measures taken by affiliated or other entities

We understand the Department’s intent with respect section 107 of the Proposed Regulations was to provide the ability for a securities dealer to rely on customer identification performed by other entities with the aim of increasing flexibility for reporting entities and decreasing duplication of efforts. Unfortunately, in practice, our members believe the conditions set out in the Proposed Regulations in order to rely on this method of customer identification are so onerous that these provisions will rarely, if ever, be used.

From recent discussions with the Department, we understand that these provisions were intended to facilitate introduced business and particularly, as it relates to foreign affiliates. However, given the

unworkability and impracticality of the conditions imposed, it is unlikely to provide regulated entities with any assistance in this regard.

Specifically, under paragraph 107(2)(a) of the Proposed Regulations, an entity may not rely on measures taken by a foreign entity to verify a person's identity unless the entity applies policies that establish requirements similar to those in sections 6, 6.1 and 9.6 of the PCMLTFA. Section 6.1 of the PCMLTFA refers to verifying the identity of a person or entity in accordance with the PCMLTFR. These provisions would therefore require the foreign entity to satisfy the identification measures that are based upon the Canadian context, meaning the entity would still have to undertake steps to verify the identity of clients, including foreign authorized signers using the prescribed Canadian methods.

As we set out in more detail below, the requirement to verify the identity of foreign authorized signers has been challenging for Canadian securities dealers and one that we have been seeking an exemption from for over ten years.

In general, the prescriptiveness of the requirements for a foreign entity to keep records and verify the identity in accordance with (or similar to) Canadian regulations, will result in section 107 of the Proposed Regulations being of little, practical use.

This condition would be less onerous (and therefore section 107 more likely relied upon) if paragraph 107(2)(a) of the Proposed Regulations was revised to allow an entity to rely on measures taken by a foreign entity if that entity operates in a country that is a member of the Financial Action Task Force ("FATF"), the foreign entity is an affiliate or regulated entity similar to those referred to in the PCMLTFA, and has undertaken identity verification measures.

An area where we would request some clarification is the requirement under paragraph 107(3)(a) of the Proposed Regulations that in order to rely on the information, it must be "valid and current". Does this mean that the information must be valid and current at the time that the securities dealer relies on it? Or must it have been valid and current when the identity was originally verified. For example, when the person or entity verifies the identity of an individual by using a valid and current driver's license, can the securities dealer rely on that driver's license if at the time of the subsequent reliance, the license has expired?

In our recent discussions, the Department had indicated that paragraph 107(3)(a) of the Proposed Regulations requires identity information to be valid and current at the time it is relied upon by the other person or entity, so as to allow securities dealers to utilize this exemption for portfolio purchases and acquisitions. In order to clarify that intent, we have set out some proposed revisions to the first part of subsection 107(3) of the Proposed Regulations in Schedule A. We believe that these changes are critical to provide greater clarity, as without this interpretation, the use of this exemption would be effectively negated, as this would require due diligence to be performed on each and every account to be acquired, requiring the individual review of thousands, if not hundreds of thousands of documents.

With respect to paragraph 107(3)(b) of the Proposed Regulations, the IIAC generally supports clause (i) which as part of a written agreement or arrangement in order to rely on measures taken by another person or entity, the other person or entity must provide within three days all the documents or other

information that the other person or entity referred to in order to verify the person's identity. Clause (i) is reasonable given the member has the obligation to keep records and it is a best practice to get the information for many reasons, including if the other person or entity may cease to exist. However, we find clause (ii), "any other information that relates to the person's identity and that is in the other person's or entity's possession or control", to be overly broad and unworkable for our members to properly implement. As such, we would recommend that the proposed clause be removed.

6. Simplified method for verifying corporation's identity

While the IIAC commends the Department for introducing a new simplified method to verify the identity of a corporation where a securities dealer determines that there is a low risk of money laundering or terrorist financing under section 111 of the Proposed Regulations, in practice, we believe this provision will be of little utility. We note that section 111 only waives the requirement to confirm the existence of the entity or corporation, and not the more onerous requirements relating to verification of beneficial ownership and signing officers. From a client risk management perspective, securities dealers generally take steps to confirm the existence of a corporation or other entity as a matter of good practice to ensure the entity with which they are dealing legally exists. As such, we do not believe this exemption provides any appreciable benefit for our members.

As we have suggested over the years, it would be more useful for securities dealers if subsection 157(2) of the Proposed Regulations included exemptive relief from certain provisions relating to record-keeping and verifying the identity for foreign regulated entities that are subject to comparable regulatory regimes in their home jurisdiction as compared to Canadian regulated entities and that operate in a country that is a member of the FATF.

The underlying rationale for exemptive relief currently contained in proposed subsection 157(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 ML/TF risks related to identity verification of authorized officers and record-keeping because they are already subject to significant registration requirements, disclosure, audit and reporting obligations and enhanced regulatory scrutiny of 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.

If, for example, an entity was regulated by the Financial Conduct Authority ("FCA") 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 entity's registration status and rely on regulatory review by that home jurisdiction.

As the IIAC has outlined in earlier submissions, where a securities dealer outside of Canada opens an institutional account for a Canadian regulated entity, it is not required to obtain copies of corporate documents and identity information regarding authorized officers, nor is it required to verify such identity information through face-to-face meetings with its employees or agents or other means. Foreign dealers are permitted to rely on information posted on SEDAR, EDGAR, and other government and regulatory sources and public databases in conducting due diligence in order to satisfy AML requirements relating to

identity and record-keeping. As a result, when our members ask a foreign regulated entity for its corporate documents, detailed information and a face-to-face ID verification meeting, many of these entities balk at the request, electing instead to take their business elsewhere because of the inconvenience to them. They can easily open an institutional account with a SEC or FCA registered securities dealer, for example, without similar onerous requirements.

Our purpose in seeking the proposed amendments to subsection 157(2) is to address this disparity and to enable our members to compete more effectively and on an equal footing to other securities dealers in the global capital markets for foreign investments from foreign regulated entities.

Further, given the fact that these entities are generally seen as low risk with respect to money laundering or terrorist financing, there would be no issues regarding potential threats to the integrity of the financial system or to the security and safety of Canadians and would not weaken the strength of our current Regime.

The Department itself has recognized that extending the exemption to foreign regulated entities does not pose a ML/TF risk as it contemplated such as exemption in 2014 during industry consultations. In its review of simplified customer due diligence, it recognized that subsection 62(2) of the PCMLTFR (now subsection 157(2) of the Proposed Regulations) permitted exceptions from customer due diligence in cases that have been deemed to be of inherently lower ML/TF risk. These exceptions were limited to domestic clients, products and activities that are generally subject to significant regulation or oversight from federal or provincial authorities. However, at the time, the Department discussed extending these exceptions to include foreign clients. The IIAC believes that the same rationale exists today as long as that business account has been opened is for a client that is a foreign financial entity, securities dealer or life insurance company undertaking activities similar to those set out in paragraphs 5(a) to (g) of the PCMLTFA and has been assessed as low risk in accordance with the reporting entity's own risk based assessment.

7. Opening an account – Politically Exposed Foreign Persons (PEFPs)

The IIAC recognizes that subsection 121(1) of the Proposed Regulations would be expanded to require securities dealers to not only establish the source of funds deposited in an account but also to establish the person's sources of wealth. This requirement would apply to each of the PEFP's family members and persons closely associated with a PEFP.

The IIAC acknowledges that the PEFP's sources of wealth should appear to be reasonable and consistent with the information provided and any doubts about the origin of such wealth should be resolved before entering into a relationship or permitting transactions to occur. However, we question the utility of expanding this requirement to close associates and family members as, in our view, the risk lies directly with the PEFP; close associates and family members do not pose a risk independently of the PEFP. As such, and in our view, the sources of wealth of a close associate and family member seem somewhat removed and unconnected from the real risk pertaining to corruption that the Regime is attempting to address. Given the foregoing, requiring information in respect of a close associate or family member's source of wealth that accumulated over a period of time previous to the PEFP holding a position or office seems unnecessary and excessive.

As a viable alternative, we would recommend that any requirement to inquire into a PEFP's close associate or family member's source of wealth should be based on a proportionate and risk based approach (e.g. where the PEFP held office for a significant length of time prior to the account opening date). Regulated entities should be able to use their judgement to determine if a PEFP family member or close associate poses a higher risk of money laundering or terrorist financing and only in those circumstances should a source of wealth determination be required. We note that the paragraph 121(1)(c) of the Proposed Regulations takes this judgement away from regulated entities.

8. Determination of beneficial ownership

Under paragraph 141(1)(a), a securities dealer is now required to obtain the name of all directors of a trust. Generally speaking, "trusts" from a legal perspective do not have directors; they generally have trustees. Because of this, we would recommend that the requirement for directorship information in respect of trusts, should be modified to provide that this information is only required "if applicable".

We note a new requirement in subsection 141(2) that, for the purposes of ongoing monitoring, not only does beneficial ownership information need to be updated, but the accuracy of the information must be reconfirmed as well – appearing to create a new requirement to continually re-paper beneficial ownership information.

We understand from discussions with the Department, that taking reasonable measures to confirm the accuracy of beneficial ownership information in the course of ongoing monitoring is only meant to apply when the beneficial ownership information changes and that a perpetual requirement to reconfirm the accuracy of beneficial ownership information was not intended. Consequently, we suggest that the language in subsection 141(2) be revised to reflect this intention. Our suggested language is set out in Schedule A to this letter.

9. Exempted entities

The IIAC reiterates its previous request to remove the \$75 million minimum asset threshold for corporations (and now trusts) in order to benefit from the exemption to verify identity or to keep records when conducting transactions with public bodies or corporations whose shares are traded on a Canadian or other designated stock exchange. The IIAC has argued in the past that the \$75 million minimum should be removed given that listed corporations whose shares trade on a Canadian stock exchange or a stock exchange designated under subsection 262(1) of the *Income Tax Act* and operate in a country that is a member of the FATF, are subject to stringent listing, reporting, transparency and other regulatory requirements. Disclosure regarding listed companies is readily available through SEDAR, EDGAR or equivalent regulatory sources, stock exchanges, news wires and other public media sources. As a result, the current \$75 million minimum net asset threshold for exemption should be removed from the exemption contained in paragraph 157(2)(m) of the Proposed Regulations.

As part of the 2011 Consultation, the Department had contemplated removing the threshold, indicating that "listed corporations are considered to be at lower risk for money laundering and terrorist financing as they are subject to stringent disclosure obligations outside of the *PCMLTFA*." That argument still holds true today.

The IIAC is of the view that given the stringent requirements these low risk, public bodies are subject to, removing the asset threshold would greatly enhance Canada's ability to compete internationally.

This would also greatly reduce the burden for our members, especially for publicly traded trusts where investors change frequently thereby making it operationally difficult and impractical to collect the required "all known beneficiary" information.

10. 24-Hour Rule and Electronic funds transfer (EFTs)

Given that these provisions do not directly apply to IIAC members, but there is some direct impact for securities dealers, as well as the fact that many of our securities dealers are subsidiaries of financial institutions, the IIAC supports the recommendations and drafting suggestions set out in the submission of the Canadian Bankers Association relating to the 24-hour rule and EFTs.

11. Virtual currency

The IIAC has a few concerns in respect of the virtual currency provisions of the Proposed Regulations. As a starting point, the concept of "virtual currencies" set out in the Proposed Regulations is not clearly articulated. In that regard, the definition of "virtual currency" as set out in the Proposed Regulations is as follows:

(a) a digital currency that is not a fiat currency and that can be readily exchanged for funds or for another virtual currency that can be readily exchanged for funds; or

(b) information that enables a person or entity to have access to a digital currency referred to in paragraph (a).

This definition does not provide sufficient clarity into what in fact a digital currency is. Consequently, we suggest that "digital currency" be defined. In keeping with the foregoing, section 154 of the Proposed Regulations excludes certain transfers from the definition of virtual currency. As such, while certain transactions are excluded from the definition of virtual currency, the essence of the definition of a virtual currency, that being a digital currency, is not a defined term.

In addition, we believe that the use of the phrase "that can readily be exchanged for funds" in the definition of virtual currency should be clarified. Does "readily exchangeable" include a virtual currency that can only be obtained by only an accredited investor? Is the ability to exchange it on a secondary market the standard to make it "ready exchangeable"?

The IIAC encourages the Department to consider providing more clarity to the definition of "virtual currency" by defining what in fact a "digital currency" is; as opposed to what it is not, to provide regulatory certainty to the Regime.

Secondly, in our discussions with the Department, it was indicated that if a securities dealer was seen to be "dealing in virtual currency" in respect of an initial coin offering that constituted a virtual currency or in any other similar activity, then in such circumstances, in addition to being regulated as a securities

dealer under the PCMLTFA, the securities dealer would also be required to register as a money services business under the PCMLTFA.

The IIAC and its members have some concerns with this position. Specifically, this interpretation is inconsistent with FINTRAC's discussion in Interpretation Notice no. 1 *Criteria for "Engaged in a Money Services Business"*, where it states the following:

"You are not considered a money services business ...if you carry out money services business activities as part of other activities for which you are already subject to the PCMLTFA and regulations."

FINTRAC has consistently taken the view that if you are a regulated entity under the Regime, you are not subjected to duplicative requirements that apply to money services businesses.

In addition, the requirements of the Regime that apply to securities dealers are different and distinct from those that apply to money services businesses. By way of example, money services businesses are not required to obtain signature cards; securities dealers are. Securities dealers need to verify the identity of up to three signing officers; money services businesses do not. Securities dealers are entitled to rely on the exemptions set out in subsection 157(2) of the Proposed Regulations; money services businesses are only allowed to do so to a very limited extent. Given the foregoing, it will be difficult to navigate the conflicting regulatory requirements that apply when a securities dealer is onboarding customers that may be receiving services from different parts of a securities dealer's business. As such, it is submitted that this interpretation should be revisited given the difficulty of implementation and the fact that securities dealers are already regulated under the PCMLTFA in respect of their products and services so having an additional layer of regulation is not warranted given that AML risk and mitigation measures are already addressed by securities dealers as part of the Regime.

12. Exception from record-keeping requirement when opening an account

As discussed in sections 6 and 9, we request removal of the \$75 million net asset minimum for designated corporations and trusts and the inclusion of an exemption for foreign authorized signers in section 157 of the Proposed Regulations.

In addition, the IIAC notes that the previous exemption under paragraph 62(1)(b) of the PCMLTFR relating to the opening of an account for the sale of mutual funds where there are reasonable grounds to believe that identity has been ascertained by a securities dealer, does not appear in section 157 of the Proposed Regulations. We query whether this was an intentional removal of this provision or was an omission made in error. Assuming the removal was in error, we suggest that the provision be added back into the Proposed Regulations.

Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transaction Reporting Regulations (“PCMLTFSTRR”)

1. Timing for filing a suspicious transaction report

The IIAC accepts, subject to the comments set out below, the shortened timeframe within which a suspicious transaction report must be filed, but given that the timeframe has been shortened to three days after the day on which a securities dealer took measures to establish that there are reasonable grounds to suspect that a transaction (or attempted transaction) is related to money laundering or terrorist financing, we would strongly urge the Department to amend this section to refer to three “business” days. Our members would face challenges meeting the three-day requirement, for example, over the course of a weekend. Moreover, given the increase in data that is proposed to be contained in suspicious transaction reports (“STR”), meeting the shortened timeframe will be even more challenging for our members to satisfy.

The IIAC supports the expectations that FINTRAC laid out in its proposed Preliminary Guidance, which sets out the minimum measures that dealers would undertake before submitting an STR. These measures include:

- 1) Identify suspicious transactions by implementing a process for detection
- 2) Assess the facts, context and indicator to determine reasonable grounds to suspect
- 3) Articulate the grounds for reasonable suspicion related to ML or TF.

For greater clarity, the language in the proposed Preliminary Guidance, which states that the three-day deadline would only begin once a reporting entity completes the required measures, should be incorporated into subsection 9(2) of the of PCMLTFSTRR (which as currently proposed states that the three-day window starts when “measures taken by the [reporting entity] enable them to establish [...] reasonable grounds”). This language is also included in the RIAS which states that the “report would be filed three days after completion of the analysis”. By including such language, members would be able to better understand when the timeframe begins. We attach for your consideration, in Schedule A, proposed revised language to the PCMLTFSTRR to reflect this.

This language is especially important when one considers the large number of transactions that must be considered and that there may be several STRs from different locations (including online) for a particular client. Thus, it can take longer to make the report in such circumstances. Furthermore, the language will make it clear that a report is only sent when the entity has completed taking all measures – including completion of the investigation and populating the information (i.e. inputting the transactions) required.

In the alternative, if the Department does not accept a three business-day deadline, we understand that they may be contemplating incorporating language such as “promptly” or “without delay”. The IIAC wishes to make clear that such language in the legislation would be difficult to operationalize, especially given the subjective nature of the language. An objective measure is required in order to ensure a clear understanding and certainty, both from an industry perspective and when examinations occur. We would

suggest the Department consider the U.S. approach whereby an early warning/preliminary report with some key details is filed immediately and a more fulsome STR follows thereafter.

Reporting Schedules

1. Reporting schedules and record-keeping requirements

Our members have significant concerns in respect of the expanded record-keeping and more detailed reporting requirements set out in the Proposed Regulations.

As a starting point we note that the Proposed Regulations and the related reporting schedules contain a new catch all record-keeping/reporting requirement, that being “every other known detail that identifies remittance” or “every other known detail that identifies the transaction or attempted transaction”.

This focus on collecting every known detail in respect of every transaction imposes a large and labour-intensive administrative burden on regulated entities in addition to the specific information already sought under the Proposed Regulations.

Moreover, the IIAC and its members are concerned with the new information requirements that are set out in the schedules. Using the STR schedule as an example, information that is requested to be inputted by regulated entities now includes a person’s alias, citizenship, the type of device used, a number that identifies the device, the IP address, information in respect of beneficial ownership, director information, and employer name and address. While some of this information may be collected by securities dealers to deal with their regulatory obligations outside of the Regime, this type of information is not required to be collected or maintained under the PCMLTFA. In our view, if this information was seen as critical from an anti-money laundering perspective, then both the current and the Proposed Regulations would require this information to be collected as part of the onboarding process.

Since these elements are not required data points under the Proposed Regulations, it follows then that these are not critical intelligence elements from an AML perspective. However, because securities dealers already collect certain of these data points to address other regulatory requirements, by including these data points into the reporting schedules of the Proposed Regulations, in our view, the Proposed Regulations are attempting to import additional record-keeping requirements into the Regime indirectly. In that regard, it should be noted that while securities dealers collect different types of information from their customers for different regulatory purposes, this information is not necessarily maintained in one central repository. For example, some customer information is maintained in AML related systems, and some are maintained in FATCA or other related tax systems. By including these new data elements in the reporting schedules, the Proposed Regulations are attempting to indirectly impose new AML record-keeping requirements on securities dealers which are not part of the legislative mandate of the PCMLTFA. In that regard, it should be noted that a stated object of the PCMLTFA is to implement specific measures to detect and deter money laundering and the financing of terrorist activities. In our view, the information that the reporting schedules require regulated entities to provide moves the Regime beyond “detecting and deterring” money laundering and instead places regulated entities into the role of data brokers acting on behalf of the government, which is beyond the regulatory scope of the PCMLTFA.

Moreover, we question the approach of the Proposed Regulations in requiring regulated entities to maintain records of “every known detail” in respect of their clients’ transactions and activities. In our view, the approach of requiring regulated entities to obtain and maintain excessive amounts of data pays inadequate attention to risk and is not in keeping with a risk based approach. We believe that the focus of the Proposed Regulations should not be on gathering every piece of data that comes into the possession of a regulated entity, but rather, should focus on the quality and the relevancy of data. In this regard, the burden on regulated entities in collecting and assembling all data they have on file in respect of a specific person or entity should, in keeping with a risk based approach, only be required where the information is considered relevant by the reporting entity in the determination of reasonable grounds to suspect money laundering or terrorist financing activities.

We note that securities dealers are in the business of providing financial services. Although our members are fully supportive of performing due diligence in respect of their clients, the information being requested in the revised STR is not information that is collected in the normal course of onboarding. Moreover, the information required may be viewed by our clients as a violation of their privacy rights.

Consistent with our views, the IIAC and our members are cognizant of the comments made by the Privacy Commissioner of Canada in his appearance before the House of Commons Standing Committee on Finance for its statutory review of the PCMLTFA on February 18, 2018:

“... While I appreciate that a holistic approach to the collection and sharing of information might be useful to identify threats, what is proposed unless appropriate privacy safeguards are adopted, would further exacerbate our concerns with proportionality. Instead, I would suggest that a risk based approach be adapted in order to minimize the risk of overcollecting and retaining the financial and personal information of law-abiding individuals.”

With the greatest of respect, the IIAC and its members agree with this position. From a policy and a privacy perspective, consideration must be given to proportionality when requesting vast amounts of personal data from clients. The IIAC submits that the requirements to obtain and retain the large amounts of personal information contemplated by the Proposed Regulations goes beyond the scope of preventing, detecting and deterring money laundering, and these onerous record-keeping requirements need to be seriously re-examined.

Implementation

The RIAS indicates that the proposed amendments would come into force 12 months after their registration. Given the significant changes in the new data and the information to be collected, as well as new record-keeping and reporting obligations, the IIAC is of the view that a 12-month implementation timeline is aggressive and impractical. We would be happy to work with the Department to develop a more workable implementation period, but in any event, in order to address the extensive system changes that will be required by our members we would view a 24 to 36-month implementation timeline as more reasonable.

This is especially the case for certain changes such as the provision relating to authorized users under paragraph 29(b) of the Proposed Regulations which creates additional complexity to collect this new

information. Additionally, as securities dealers have many different systems for online interfaces, there is additional complexity in mapping the information connected to a transaction.

However, in respect of provisions of the Proposed Regulations that can be implemented earlier that do not create additional administrative or system burdens, we would for example, be agreeable to allowing for new “authentic” ID verification to be implemented in 12 months, effective upon publication.

In addition, regardless of the final transition timelines agreed upon, the IIAC would suggest that a 12-month transition timeline from the time that FINTRAC guidance is issued to allow reporting entities to properly implement the new requirements.

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,

A handwritten signature in dark ink that reads "M. Alexander". The signature is written in a cursive, flowing style.

Schedule A
Proposed Language

General Regulations

107(3)(a) immediately obtain from the other person or entity the information that was confirmed as being that of the person and be satisfied that at the time the measures were taken by the other person or entity that the information obtained was valid and current and that the other person or entity verified the person's identity in the manner described in one of paragraphs 105(1)(a) to (d) -...."

141(2) Every person and entity that is subject to subsection (1) shall take reasonable measures to confirm the accuracy of the information: (i) when it is first obtained under that subsection; and (ii) when in the course of ongoing monitoring the information originally obtained under subsection (1) has **[materially]** changed.

STR Regulations

9(2) The person or entity shall send the report to the Centre within three business days after the day on which they have completed taking all measures that enable them to establish that there are reasonable grounds to suspect that the transaction or attempted transaction is related to the commission of a money laundering offence or a terrorist financing activity offence.