August 1, 2023

Director General
Financial Crimes and Security Division
Financial Sector Policy Branch
Department of Finance
90 Elgin Street
Ottawa, ON K1A 0G5

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

Dear Sirs and Mesdames:

RE: Consultation on Strengthening Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime

Overview

The Portfolio Management Association of Canada (**PMAC**), through its Industry, Regulation & Tax Committee, is pleased to have the opportunity to provide the Department of Finance Canada (**Finance**) with comments on the consultation on Strengthening Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime (the **Consultation**).

General Comments

PMAC represents over 310 investment management firms that collectively manage over $3 trillion in assets, all of which are registered as portfolio managers with one or more of the Canadian Securities Administrators (**CSA**). PMAC members manage investment portfolios for private individuals, institutions, foundations, universities and pension plans.

PMAC's members are financial entities that generally fall under the definition of "securities dealers" and are required to comply with specific obligations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (**PCMLTFA**), including anti-money laundering and anti-terrorist financing (**AML**)-specific know your client identification requirements, training staff on AML issues, implementing and maintaining an AML compliance program, and maintaining records in connection therewith.

PMAC is supportive of the Finance's efforts to improve the operationalization and enforcement of Canada's anti-money laundering and anti-terrorist financing regime. PMAC believes that meeting the Financial Action Task Force (**FATF**) standards improves Canada's international reputation and improves the global AML framework.

We believe it is important for stakeholders to have the opportunity to provide feedback when changes to the PCMLTFA and guidance are under consideration. We applaud Finance for its continued commitment to ensuring that this review will take into consideration the balance between compliance burden and compliance costs, and Finance's focus on the need to safeguard the public interest and privacy concerns.

We have provided our responses to specific consultation questions in the attached **Appendix A**. Our key recommendations are set out below.

KEY RECOMMENDATIONS

1. Regulation should be principles-based and industry-specific

We are strongly supportive of principles-based regulation that takes into account the type of industry, the type and size of the reporting entity and the particular risks associated with the reporting entity's activities. Generally, requirements should not be prescriptive; effective AML requires a nuanced approach – there is no "one size fits all". To the extent possible, regulation should be flexible and adaptable to the particular business model of the reporting entity and its clients. For example, in the context of this Consultation, a prescriptive requirement to determine the source of wealth over a specific monetary threshold would not be practical for securities dealers and would not reduce risk in the vast majority of cases, given the existing thorough know-your-client requirements for the securities industry.

PMAC's 2022 Compliance Benchmarking Survey (which had an over 50% response rate from our 310 member firms) reports that only **1%** of firms have reported a suspicious transaction or an attempted suspicious transaction related to the commission or attempted commission of a money laundering offense or a terrorist activity financing offense. The in-depth know-your-client requirements that securities dealers are subject to under securities legislation mean that portfolio managers are required to ask about and document a wide range of information about each client, resulting in portfolio managers generally knowing their clients very well. The on-boarding process makes it unlikely that clients would attempt to commit a money-laundering and/or terrorist activity financing offense, or that the activity would not be detected by ongoing monitoring. Moreover, portfolio managers do not directly custody client assets and a comprehensive regulatory regime applies to third party custodians of assets.

This illustrates that the risk of money laundering and terrorist financing among our members is extremely low. Reporting and compliance requirements for portfolio managers should reflect this low level of risk.

2. Avoid increased regulatory burden, particularly in regulated industries

Changes to existing AML regulations should be based on data and evidence and should be responsive to specifically identified risks. Regulation should only be imposed where there is a legitimate and pressing concern, and a reasonable prospect that the planned intervention will have the desired effect. In the context of portfolio managers who are already strictly regulated by the various members of the Canadian Securities Administrators, this point is particularly salient. Potential additional regulatory burden on reporting entities should be taken into account and should be avoided or reduced to the extent possible. Regulation should also be phased in over time to allow reporting entities to make the changes, and clear and updated guidance should be provided.

In the context of this consultation, our members advised that a PEP and HIO database would be very helpful to them and could potentially reduce regulatory burden. While we generally support the development of a "keep-open" regime, we believe that additional consultation with affected stakeholders should be conducted to determine how the framework could be administered with the least disruption to the reporting entity's business. The suggestions of (i) a universal reporting entity registration regime, (ii) establishing specific knowledge and competency requirements for the compliance officer, and (iii) mandating a source of wealth determination over a specific monetary threshold are examples of regulation that is likely to increase the compliance burden for our members, without a corresponding public interest benefit. Please see **Appendix A** for a more detailed discussion of these issues.

3. Share information among regulatory bodies and harmonize requirements

In order to develop an efficient, effective and cost-effective anti-money laundering and anti-terrorist financing regime, duplication of effort should be avoided. Existing systems should be leveraged to the extent possible, and governments and regulators should cooperate and share information. Potential information gaps among agencies should be identified and closed. Duplication of reporting or other requirements for reporting entities should be avoided. Rules and reporting requirements should be harmonized among agencies provincially and federally, while taking regional differences into account.

Please see **Appendix A** for additional discussion of these issues.

Conclusion

Thank you for the opportunity to participate in this consultation. We would be pleased to continue the dialogue on this important issue and discuss the recommendations included in this submission in more detail.

If you have any questions regarding this submission, please do not hesitate to contact Victoria Paris (vparis@pmac.org) or by telephone at 416-504-7491.

Yours truly,

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA

"Katie Walmsley"
Katie Walmsley
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Margaret Gunawan
Director and Chair of Industry, Regulation & Tax Committee

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APPENDIX A

We have set out below specific comments on certain sections of the Consultation. We have not included the questions on which we have no comments.

Chapter 3 - Federal, Provincial, and Territorial Collaboration

- How can different orders of government better collaborate and prioritize AML/ATF issues related to beneficial ownership, the legal profession, and civil forfeiture?

  In our view, a consistent approach to beneficial ownership disclosure and a centralized registry of same would be useful. However, any new rules should be phased in over time to provide reporting entities sufficient time to develop policies and procedures, training and to gather and report the relevant information.

Chapter 4 - Criminal Justice Measures to Combat Money Laundering and Terrorist Financing

4.11 – Keep Open Accounts Under Investigation

- Should a legislated "keep-open" regime be implemented?

  Although we believe a "keep-open" regime could be useful to law enforcement, it should be subject to a strict process with ongoing judicial oversight, as a keep-open order could subject a financial institution to significant cost and risk.

- How should such a regime operate vis-à-vis circumstances under which law enforcement would make a "keep open" request, the discretion of financial institutions to accept or deny the request, whether legal and reputational protections are required for financial institutions that comply with the request, and ensuring privacy rights are protected?

  We believe that keep-open orders should be sought and issued via judicial authorization, similar to obtaining an injunction or a warrant. The regime should have a defined framework. For example:
  - The financial institution(s) should have standing in the proceeding to determine whether a keep-open order is required;
  - There should be a test developed, similar to the "balance of convenience" test for obtaining an injunction, to determine the level of risk involved for each party and the hardship that would result to the financial institution, to determine whether the "keep open" order is truly required;
  - The judicial order should set out what types of approvals would be required for transactions where a keep-open order has been issued for an account, is law enforcement approval of transactions required before acting on them, and whether post-transaction reporting would be required and within what timelines;
  - The judicial order should set out whether the financial institution could refuse a transaction request from the client despite the existence of the keep open order, for example where it would ordinarily do so under its own policies and procedures;
  - The order should also be time limited or subject to renewal to encourage law enforcement to proceed quickly with an investigation.

In addition, there should be a process whereby financial institutions could appeal such orders or apply to have them terminated.

- What would be the benefits to such reforms?

  This would provide greater opportunity for law enforcement to obtain evidence that could lead to charges being laid. It would also protect assets for potential seizure/forfeiture. There would have to be procedural fairness to the financial institution to determine that the order is genuinely required and would serve the purposes of law enforcement.

- What would be the drawbacks?

  There would be added administrative burden to financial institutions regarding approvals and reporting associated with the order. Financial institutions would also need to develop policies and procedures to support this administration, such as defining the scope of which employees would have knowledge of the order, how accounts subject to such an order would be identified, etc. This would also involve effort and cost to implement required system changes. There could be legal time and costs involved in determining the scope of the order and appealing the order, if necessary.

Chapter 6 - Information Sharing

6.2 – Public-to-Private Information Sharing

Database of Politically Exposed Persons and Heads of International Organizations

- Should the government create and maintain a database of politically exposed persons (PEPs), heads of international organizations (HIOs), and their family members and close associates?

  A standard centralized database easily accessible to reporting entities would be very beneficial and would reduce the regulatory burden for reporting entities, especially if it could be provided at a lower cost than private sector providers. It would allow reporting entities to more easily check new and existing clients against the list; however, it would only be useful if it were possible to query/run comparisons against it. A basic flat-file export would have limited utility directly for reporting entities. There is a risk that such a database would expose PEPs to being targeted by bad actors.

- Should the government charge an access fee to help offset costs of such a registry?

  The government could charge an access fee but it should be a reasonable cost, and should be lower than what private sector providers charge.

- Is there a need for such a database given the existing resources and other databases available?

  The current databases available can be costly – a database would be desirable if it could provide similar useability but at a lower cost.

Sharing Information Between FINTRAC and Other Regulators

- Should the government amend the PCMLTFA to provide FINTRAC the ability to leverage findings from other regulators in its compliance examinations and share FINTRAC compliance information with other regulators to inform compliance assessments and help improve supervisory strategy?

  We believe that it would be reasonable and desirable for FINTRAC to receive information from other regulators' findings and to share information related to its findings, but that this information sharing should be limited to information that is relevant to the regulators' and FINTRAC's mandates. The information should be subject to relevant privacy and other protections as provided by law.

Chapter 7 - Reviewing Existing Reporting Entities

7.4 – Streamlining Regulatory Requirements End Period for Business Relationships

- How could the end period for "business relationship" be made consistent and applicable across all reporting entities?

  We believe that consistent standard could be applied for reporting entities with account-based business relationships, but non-account-based relationships would be more challenging.

- Should a proposed end period correspond to existing obligations to keep records (e.g., 5 years from account closure or last transaction)?

  Yes, there should be consistency wherever possible with respect to existing record-keeping and monitoring requirements.

- Should a proposed end period correspond to risk (e.g., longer period for high-risk and shorter period for low-risk relationships)?

  We believe that this would be difficult to administer and prefer a consistent standard. If the relationship has ended, the previous risk level should no longer be applicable.

Chapter 8 - Modernizing Compliance Tools

8.1 – Modernizing Compliance Tools

Compliance Program Review

- Should the government amend the PCMLTFA to allow FINTRAC, in circumstances of urgent or significant noncompliance, to direct reporting entities to undertake a review of their compliance program by an independent external or internal reviewer and share the results with FINTRAC?

  We agree that instances of urgent or significant non-compliance should be subject to a review. If a reporting entity has had an internal reviewer performing its effectiveness review as required, and there remains significant non-compliance, a directed review by an external reviewer could be mandated.

- Should there be any specific criteria for FINTRAC to make use of this provision?

  We suggest that the review should be directly related to violations of or non-compliance with the specific sections of the PCMLTFA/regulations that are most critical, where the risk is determined to be high, or where there are multiple infractions of less critical sections. Depending on the circumstances, instances of repeat non-compliance could be referred for external review.

Compliance Officer

- Should the government amend the PCMLTFA to specify the knowledge and competencies required of a qualified compliance officer?

  We agree that it would be appropriate to include examples of the knowledge and competency requirements for a compliance officer in the PCMLTFA or the guidance, but these should be general in nature and commensurate with the individual's experience and level of responsibility within the organization. Examples of relevant education could also be included, but there should not be specific educational requirements or a licensing regime implemented. Including very specific knowledge and competency requirements or implementing an educational/licensing regime would make it difficult for financial institutions to find a qualified compliance officer and would significantly increase costs to financial institutions.

Recording

- Should the government amend the PCMLTFA to allow FINTRAC to use audio and video recording during compliance examinations to improve the efficiency of the process?

  We believe that if recordings are to be used, this should only be implemented if it will be consistently applied for all examinations and should not be limited to smaller businesses. Any amendment should specify the exact purposes for which such

recordings can be used, and a process should be developed to allow the reporting entity to object to recording technologies to be used.

- Does this proposal raise any privacy considerations?

  We believe that policies could be implemented regarding the purposes for which such recordings may be used, who will have access to the recordings and defined retention periods, which would mitigate some privacy concerns.

Publicizing Violations and Penalties

- Should the government amend the PCMLTFA to expand the details that FINTRAC publishes in respect of violations and penalties imposed?

  We believe this would be desirable; the greater the detail provided, the greater the possibility that other reporting entities might recognize deficiencies in their own compliance programs and make improvements as a result. The government should consider in which circumstances the publication would include the identity of the subject entity, and in which circumstances identifying information would be omitted.

- If so, what additional information should be included?

  FINTRAC should provide as much detail as can reasonably be summarized to clearly outline the nature of the violation, the information uncovered as a result of FINTRAC's investigation, how the violation was identified, any defences offered by the reporting entity, and any penalties levied (including any remedial actions required). The FCAC Commissioner's Decisions and Reasons notices referenced in the consultation paper are a good model, as are the enforcement notices issued by regulatory bodies and self-regulatory organizations such as the Canadian Investment Regulatory Organization.

Issuing Administrative Penalties Against Individuals

- Should the government amend the PCMLTFA to grant FINTRAC the authority to levy administrative penalties against directors, officers, and agents within an entity in certain cases of violations of the PCMLTFA?

  We agree that the government should have this authority, but that it should only be used in specific circumstances of severe violations that that it should be subject to procedural fairness principles, including an appeals process.

- Under what circumstances should FINTRAC be authorized to levy a penalty against directors, officers, or agents?

  Penalties should only be levied against individuals in cases of egregious non-compliance (e.g., actions taken that are clearly contrary to the PCMLTFA or associated regulations, a pattern of inaction that shows clear disregard for the requirements of the PCMLTFA and associated regulations). FINTRAC should not have the authority to issue fines

against individuals for administrative errors and minor or unintentional infringements of the PCMLTFA.

- What would be an appropriate penalty structure?

  The structure should be similar to those of other administrative and regulatory bodies such as provincial Securities Commissions and Federal agencies that have the ability to issue penalties. Penalties against directors, officers and agents should be proportionate (i.e. lower) to sanctions available to be imposed on individuals and entities directly involved in money laundering and terrorist financing activities.

8.2 – Effective Oversight and Reporting Framework

False Information Offence

- Should the government amend the PCMLTFA to create an offence against reporting entities for knowingly providing false or misleading information to FINTRAC, or omitting information that should be provided to FINTRAC, in the course of fulfilling any requirement under the PCMLTFA and its associated Regulations?

  We agree that there are circumstances in which such activities should be subject to FINTRAC enforcement. We agree that the PCMLTFA should be amended to include such an offence; however, we believe that depending on the circumstances, FINTRAC should also have the ability to impose administrative penalties that do not amount to an offence under the PCMLTFA. Therefore we believe that administrative sanctions should also be included.

- Would this offence promote greater compliance among reporting entities subject to the PCMLTFA?

  Charging entities with an offence should be limited to the most serious, repeat and high-risk violations of the PCMLTFA. It is not clear to us how prevalent such violations are and therefore it is difficult to predict whether the creation of an offence would promote greater compliance. We believe that adding administrative penalties in addition to a more serious offence may encourage greater compliance with respect to less serious infringements of the PCMLTFA.

Reporting Framework

- How can the government assist reporting entities in fulfilling their reporting obligations in a manner that provides FINTRAC with information necessary to prepare financial intelligence?

  The mechanisms for providing reporting should be regularly reviewed against best practices in user interface and user experience design. Reporting entities should be provided with as much information possible to assist with reporting (a searchable registry of PEPs for example). They should also be provided with clear and updated guidance as to how to fulfil their reporting obligations.

- How can the government clarify reporting obligations?

  Clear, practical and updated guidance should be provided and should be updated as expectations change. Reporting obligations should be streamlined and simplified as much as possible so as not to increase the regulatory burden for reporting entities.

- Should the government consider adjusting the reporting timelines for threshold reporting?

  We do not believe that the timelines should be adjusted.

Universal Registration for All Reporting Entities

- Should the government amend the PCMLTFA to introduce registration requirements for all reporting entities?

  We do not believe that all reporting entities should be subject to registration requirements. This should only apply to entities not already subject to other existing licensing or registration requirements (e.g., provincial regulators, self-regulatory organizations, professional standards bodies, etc.). Otherwise, this would result in duplication of the existing registration regime, increased regulatory burden.

- How could this potential measure be structured to minimize any additional regulatory burden for reporting entities?

  FINTRAC could establish its own registry of reporting entities. For those reporting entities already subject to other existing licensing or registration requirements, FINTRAC should coordinate with those regulators/licensing bodies to obtain the necessary information to populate the registry of reporting entities. Reporting entities should then be encouraged to review the FINTRAC registry and add their contact information, to receive relevant updates from FINTRAC.

8.3 – Additional Preventive and Risk Mitigation Measures

Source of Wealth/Funds Determinations

- Should the government amend the PCMLTFA and/or its Regulations to require all reporting entities to take reasonable measures to establish the source of wealth of an individual when conducting a financial transaction or transfer of a certain threshold?

  We acknowledge that there are certain industries (real estate licensees are noted in the consultation document) that may be at higher risk for money laundering, and that it may be prudent to require these reporting entities to take measures to establish the source of wealth for certain transactions.

However, we are concerned that requiring source of wealth information will represent a significant burden for registered securities dealers (as defined in the PCMLTFA), including with respect to updating policies and procedures, training, and implementation (obtaining the information). Our members are already required by regulation to make detailed "know-your-client" inquiries and already take steps designed to determine whether funds are derived from criminal activity. They maintain policies and procedures with respect to this determination. To require a determination as to the activity from which wealth is derived for every transaction would be a very difficult undertaking and the costs would outweigh the benefits.

Applying a more principles-based approach, where a reporting entity has, or ought to have, genuine concerns about the source of wealth, they could be required to document what they did to determine the source of wealth, and what the results of that exercise were; when the transaction/transfer source is self-evident or patently innocent, no documentation of the determination should be expected or required.

The PCMLTFA/FINTRAC should not require an extensive documentary record of source determination for large numbers of transactions/transfers – in this case the requirement would simply create work, not provide additional anti-money laundering protection.

- If so, what would be an appropriate threshold (e.g., $100,000 or more)?

As noted above, we would not recommend a prescriptive threshold – rather, any requirement to determine the source of wealth should be based on the specific circumstances of the transaction and the reporting entity's polices and procedures.

Chapter 9 - National and Economic Security

- Should FINTRAC take a more proactive role in combatting sanctions evasion?

We believe that FINTRAC should take a more proactive role in combatting sanctions evasion, which may be tied to money laundering and terrorist financing. It would be logical and efficient to centralize this responsibility.

Technical Proposals

<u>Record Keeping for Crowdfunding Platforms</u>

- Would this requirement be commensurate to the potential risk posed by pledgers to crowdfunding platforms?

We believe that this would be commensurate to the potential risk, especially given the potential for pledgers to come from anywhere in the world.

- Would it have a chilling or negative impact on pledges?

  We do not believe that it would have a chilling or negative impact on legitimate pledges, as long as the platforms maintain the ability for pledgers to remain anonymous (if desired) in the public "roll" on their websites.

Additional Beneficial Ownership Information

- Would reporting entities have challenges collecting this information?

  We do not believe that reporting entities would have significant challenges collecting this information.

Authorized Signers on Business Accounts

- Would this change create exploitable gaps or risks?

  We believe that there are potential gaps given that the current regime is not onerous.

Provide Records to FINTRAC Promptly

- Taking note of the FATF requirement for financial entities to be able to provide records to competent authorities "swiftly," what time period would be appropriate to specify for this requirement?

  We believe that an appropriate standard would be "as soon as practicable". The ability to provide records "swiftly" would be dependent on the nature and quantity of the records requested and the size of the entity, so there needs to be some flexibility in the time period, but there should also be a maximum time period beyond which the records would be required to be provided.