

January 17, 2012

Via website posting: fcs-scf@fin.gc.ca.

Re: Consultation Paper: Strengthening Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime

Dear Sir/Madam:

Founded in 1908, the Certified General Accountants Association of Canada (CGA-Canada) serves 75,000 Certified General Accountants and students. Respected accounting and financial management professionals, CGAs work in industry, finance, government and public practice. CGA-Canada establishes the designation's certification requirements and professional standards, offers professional development, conducts research and advocacy, and represents CGAs nationally and internationally.

CGA-Canada welcomes the opportunity to comment on the Consultation Paper: **Strengthening Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime**. We have commented on the proposals most relevant to accountants and accounting firms. We have also provided additional comments on certain related matters.

Proposal 1.2

The Government proposes to review the current exemptions from CDD and record-keeping for scenarios involving introduced business, in order to improve the continuity of record-keeping and to clarify how responsibility for the CDD information is divided among the party introducing the business and the party receiving the business. In addition, consideration will be given to expanding the scope of introduced business scenarios that would qualify for an exemption from certain CDD obligations.

Comment:

We believe that compliance with FATF Recommendation 9 will be better achieved by unambiguously assigning the responsibility for CDD and record-keeping to the reporting entity, rather than dividing this responsibility between the reporting entity and the introducer of the business, unless the introducer of the business is also a reporting entity and has concomitantly adopted identical procedures and record-keeping practices as the receiver of the business. Such provision would plausibly bolster consistency and continuity of CDD procedures and related record-keeping, while also mitigating the prospective conundrum that may arise when the relationship between the reporting entity and the introducer of the business is terminated. We are also concerned that, if the introducer of the business is a non-reporting entity, it may not have adequate and appropriate resourcing or expertise to discharge the obligations under *PCMLTFR* and, in such, case the standards of compliance may be subject to compromise.

Proposal 1.8

The Government is giving consideration to extending paragraph 62(2)(m) of the PCMLTFR to all corporations whose shares are traded on a Canadian or other foreign stock exchange designated by the Minister under subsection 262(1) of the Income Tax Act.

Comment:

We suggest that, before making such extension, it would be prudent to put in place required safeguards because there are known instances when listed corporations are used for money laundering and terrorist financing activities. For example, Wachovia Bank, a listed corporation of USA, revealed in March 2010 that it had ‘laundered’ \$378.4 billion dollars for the *Sinaloa Cartel*, through a network of exchange houses, or *casas de cambio*, between 2004 and 2007¹. The bank avoided prosecution by agreeing to pay the fine of \$160 million. Hence, no presumptions can be made while assessing the risks associated with listed corporate clients.

Proposal 1.9

The Government is giving consideration to amending the PCMLTFA to specify that any document that is used as proof of the existence of a corporation must be no more than one year old. For greater certainty, it is proposed that acceptable certificates of corporate status could be those that are issued by the competent authority under whose laws the corporation exists.

Comment:

We agree with the proposal and note that it will make the required documentation under *PCMLTFA* more current, effective and helpful.

Proposal 1.10

The Government is giving consideration to amending the provisions that establish the third party determination requirements, under the PCMLTFR, to replace the term “third party” with “instructing party”.

Comment:

We agree with the proposal as it will clearly identify the “third party” as the “instructing party” and, consequentially, assist reporting entities in discharging their obligations under *PCMLTFR*.

Proposal 2.6

The Government is giving consideration to amending the PCMLTFR to provide that reporting entities would be required to record and report large cash transactions of \$10,000 or more, even where the cash would be received on behalf of the reporting entity by an agent or affiliated entity.

Comment:

We agree with the proposal. We note that there is, at present, a proposal to establish the “third party” determination requirements and to replace the term “third party” with “instructing party” (Proposal 1.10). We believe that the desired outcome can be achieved by including reference to agents and affiliated entities in the definition of the reporting entity.

Proposal 2.8

The Government is giving consideration to amending the PCMLTFR to exclude from reporting requirements activities undertaken by the accountant sector when providing trustee in bankruptcy services.

Comment:

We welcome this proposal as it will rationalize the requirements for accountants working as trustees in bankruptcy. We also note that the members of legal profession are, at present, not covered by the provisions of *PCMLTFA* because of a court ruling and related injunctions. Accordingly, we further

¹ <http://www.bloomberg.com/news/2010-06-29/banks-financing-mexico-s-drug-cartels-admitted-in-wells-fargo-s-u-s-deal.html>

suggest that, without prejudice to other commentary afforded and for the purpose of *PCMLTFR*, accountants should be considered at par with the legal professionals subsequent to adjudication of the final appeal in this matter, because there is little persuasive justification for the extant differential treatment of accountants relative to the legal professionals.

Proposal 2.9

The Government is giving consideration to amending the description of “single transaction” in the PCMLTFR to include all transactions, regardless of their amount, conducted on behalf of the same person or entity within a 24-hour period where the combination of those transactions would total to at least \$10,000.

Comment:

We endorse this proposal and further suggest that the description of “single transaction” should include all transactions, regardless of their amount, affected on behalf of the same person or entity within a period of up to 30 days (instead of 24-hour period, as proposed), subject to pre-defined conditions where the combination of those transactions would total to at least \$10,000. We believe that this is necessary to increase the effectiveness of the AML/AFT regime and to reduce the structuring opportunities available to the would-be offenders. Such lengthening of the coverage period would nullify attempts to spread-out the illegal financial transactions over an extended period.

Proposal 3.3

The Government is giving consideration to amending the PCMLTFA to provide FINTRAC with an additional tool to ensure that FINTRAC receives the reports that entities are required to submit under the Act.

Comment:

We agree with the proposal of additional penalties on non-compliant entities for improving the enforcement of requirements under the *PCMLTFAI*. The proposed measure would improve access of *FINTRAC* to the required information.

Proposal 3.4

The Government is giving consideration to requiring reporting entities to document and keep a record of any “reasonable measures” they are required to take under the Act.

Comment:

We agree with this proposal and note that it complements proposal 1.9. The proposal will serve to improve consistency and continuity of compliance, as well as access to the required information.

Proposal 5.1

The Government proposes to implement regulations that will list specific countermeasures that the Minister, when issuing a directive, could require reporting entities to take in respect of a designated foreign jurisdiction or foreign entity, as set out in Annex A.

Comment:

We appreciate the need for countermeasures in respect of a designated foreign jurisdiction or foreign entity. However, we expect that this need will be reasonably balanced against the cost of the administrative burden to the reporting entities, and that the specific countermeasures will be limited to jurisdictions and entities which are otherwise not in compliance with FATF Recommendations. We also caution against treating reporting entities as intelligence gathering vehicles of the authorities in view of the limited resources and expertise of such entities and the enjoined discomfort.

Proposal 5.2

The Government proposes to define the term 'foreign entity' as set out in Annex B.

Comment:

We consider the proposed definition of the term "foreign entity" as set out in annex B as appropriate.

Proposal 6.1

The Government is giving consideration to broadening the requirement to report suspicious transactions to encompass activities conducted for the purpose of a financial transaction.

Comment:

Subject to our comments relating to proposal 5.1 above, we agree with proposal 6.1 in so far as it is likely to render the extant AML/ATF regime in Canada more comprehensive, efficient and effective. However, we would like to invite attention to IMF Working Paper No. 07/81². The paper shows how excessive reporting can dilute the information value of reports. Excessive reporting is investigated by undertaking the first formal analysis of money laundering enforcement. The reporting entities monitor transactions and report suspicious activity to government agencies, which use these reports to identify investigation targets. The reporting entities face fines should they fail to report money laundering. However, excessive fines admittedly compel banks to report transactions which are less suspicious. The empirical evidence is shown to be consistent with the model's predictions. The model is used to suggest implementable corrective policy measures, such as decreasing fines and introducing reporting fees.

Additional Comments:

We suggest a risk based approach for strengthening the Canadian AML/ATF regime, and making it more effective and efficient. We present in the following paragraphs some of the guiding principles for waging a successful war against money laundering and terrorist financing.

- 1) All entities involved in any form of money transfer system must be covered under AML/ATF regime, and provide contact information and a registered address. Further, the definition of money transfer needs to be broad enough to cover any derivation thereof. This will provide the government with a list of entities engaging in financial activities, allowing for easier monitoring of the specific legality of such activities.
- 2) When the government freezes the assets of an entity, the government must proactively look through the registered transactions to decipher which of them are regular transactions. Those regular transactions must be restored as quickly as possible.
- 3) A record of all transfers made through any form of money transfer must be kept by both the entity and the consumer transferring the money. This will provide a transom through which to view legality, making it far more likely that the government will not need to broadly shut down organizations due to a lack of information.
- 4) In the event that an entity is suspicious that its system is being used for the illicit purposes, the entity must both refuse to effectuate such a transfer as well as notify the proper government authorities.

² Takats, Elod, A Theory of 'Crying Wolf': The Economics of Money Laundering Enforcement (April 2007). IMF Working Papers, pp. 1-54, 2007

- 5) The government must be able to structure a prima facie case for any action that either shuts down an entity or freezes the assets of such an entity. This requirement will serve to prevent a claim or perception that government can overstep its authority in sweeping actions.
- 6) The government must take a proactive approach by establishing an enforcement wing whose sole duty is to detect money laundering and terrorist financing networks existing in the country.
- 7) The government should use its international influence to persuade other nations to institute similar legislative mechanisms aimed at eliminating money laundering and terrorist financing. Without international support, domestic efforts will be undermined.
- 8) Enforcement should not target only small local operators, but rather must address the entity as a whole. Many illegal money transfer networks have significant operations around the world. Thus, enforcement actions must be aimed at the central organization; not just domestic agents.
- 9) Traditional concepts of money laundering cannot be used in fighting terrorist financing; rather, the government must look for any illicit *intent*, not whether the money itself is “clean” or “dirty” at the time of the transfer. Transferring “clean” money must make the money illegal immediately upon either a showing of a future intent to support terrorism or willful blindness of such support.
- 10) Any efforts to curb the money laundering and financing of terrorism must take significant steps to proactively protect the privacy rights enshrined in the constitution of Canada.

We welcome and support this Government initiative to consult stakeholders as part of its mandatory five-year review of the PCMLTFA. We believe that this consultation process will lead to a more comprehensive, robust and efficient AML/AFT regime, and will protect financial institutions and Canada’s capital markets. We believe that a sound and stable financial system translates into lower borrowing costs for the allocators of capital and is *sine qua non* for continued economic growth. The Certified General Accountants Association of Canada remains fervently supportive of the Government’s war against money laundering and terrorist financing.

Should you wish to discuss the contents of this comment paper or require further elaboration on any of the items presented herein, please do not hesitate to contact Kamalish Gosalia at kgosalia@cga-canada.org or alternatively the undersigned at rlefebvre@cga-canada.org.

Sincerely,

[Original Signed By:]

Rock Lefebvre, MBA, CFE, FCIS, FCGA
Vice-President, Research & Standards