

December 5, 2011

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

Re: Consultation Paper: **Proposed Amendments to the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations on Ascertaining Identity**

Dear Sir/Madam:

Founded in 1908, the Certified General Accountants Association of Canada (CGA-Canada) serves 75,000 Certified General Accountants and students. As 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.

The Certified General Accountants Association of Canada welcomes the opportunity to comment on the Consultation Paper: **Proposed Amendments to the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations on Ascertaining Identity**. We have also provided additional comments on certain related matters

Proposal 1.1

Define business relationships for the purposes of the PCMLTFR to mean any financial relationship established to provide financial activities or transactions. Deem that a business relationship between a reporting entity and a client arises when a reporting entity conducts any financial activity or transaction in respect of which it is required to keep a record under the PCMLTFR. Clarify that the obligation to apply designated measures to business relationships does not arise until after such time as a person or entity subject to the PCMLTFA conducts a financial activity or transaction in respect of which a record is required to be kept under the PCMLTFR.

Comment

We appreciate the need to widen and clarify the scope of PCMLTFR. The scope expansion is ostensibly justified as the result of increased operator sophistication in money laundering and terrorist financing. Moreover, the proposal seeks to eliminate deficiencies in the extant Canadian AML/ATF regime, and introduces holistic risk-based approaches, which we trust will be consistent with Financial Action Task Force (FATF) Recommendation 5.

We find, however, that the proposed definition of business relationship could, in fact, be circular because it is defined to include any financial relationship between the reporting entity and a client, while at the same time, it is deemed to arise when the obligations under PCMLTFR crystalize. We believe that greater clarity in this definition would be beneficial. Also, we suggest that consideration be given to recognizing that obligations might better be compelled upon the establishment of the relationship having prospective view of the transaction, rather than at the time that the financial activities and transactions take place, as is proposed.

Proposal 2.1

Amend the PCMLTFR to clarify that reporting entities are required to take reasonable measures to ascertain the identity of customers who conduct transactions that give rise to a suspicion of money laundering or terrorist financing, regardless of whether such transactions are covered by the exceptions to general customer identification, record-keeping and reporting requirements in under section 62 of the PCMLTFR.

Comment

It is believed that the proposed clarification and requirement is consistent with sound practices of Customer Due Diligence (CDD), and can serve to strengthen the anti-money laundering and terrorist financing regime within, and through, Canadian financial institutions. The proposal will also establish primacy of section 53.1 over section 62 of PCMLTFR which exempts prescribed financial transactions from CDD measures by financial institutions. It is observed that enforcing rules-based reporting represents a typical disclosure challenge, as actions of reporting entities are verifiable only ex-post. They are arguably insufficient because money launderers are conceivably aware of the rules and may have the ability to circumvent them. For instance, money launderers can apportion large cash deposits exceeding \$10,000 into smaller deposits that fall below the reporting threshold. Hence the requirements for discretionary reporting of “suspicious” activities, while plausibly subjective, exposes would be money launderers to a tiered regime extending beyond simple bright-line rules. Moreover, reporting entities can gain heightened sensitivity and constantly improved understanding of how money laundering is perpetrated.

However, we suggest providing increased clarity and more guidance in respect of what constitutes “reasonable measures” and what constitutes “suspicion” of money laundering or terrorist financing activities.

Proposal 2.2

Amend the PCMLTFR to clarify that reporting entities are required to take reasonable measures to ascertain the identity of individuals who conduct or who attempt to conduct a transaction that gives rise to a suspicion of money laundering or terrorist financing.

Comment

We reiterate our comments on the Proposal 2.1 above and further note that this proposal serves to lessen the artificial and superfluous distinction between completed and attempted transactions.

Proposal 3.1

Amend the PCMLTFR to require reporting entities to obtain information as to the beneficial ownership of customers that are corporations, entities or trusts and to take reasonable measures to ascertain such information.

Amend the PCMLTFR to require reporting entities to keep a record of the reasonable steps taken to ascertain the beneficial ownership information.

Comment

The proposed amendment is considered beneficial and it is further believed that this new mandatory, rather than discretionary, requirement will seal a conspicuous lacuna within current law. Concurrently, authorities are aided by this proposal in the piercing of the corporate veil, to the extent that the identities of the real beneficiaries of financial activities are otherwise masked as legitimate corporations and trusts. There are, for example, well-known instances when duly established business and charity identities were in reality conduits for money laundering and terrorist financing activity. Also, proper documentation of reasonable steps taken by the financial institutions will contribute to the implementation and enforcement of the proposals.

Proposal 3.2

Amend the PCMLTFR to extend ongoing monitoring to all clients and activities to which the PCMLTFA applies, not just those that a reporting entity has assessed as being high risk.

Comment

This requirement seems reasonable to the extent that it renders anti money laundering and terrorist financing more comprehensive and continuous. The proposal also serves to minimize the probability of such activities escaping the monitoring mechanisms of the financial institutions.

Proposal 3.3

Amend the PCMLTFR to provide that ongoing monitoring should be conducted in respect of a business relationship as a whole.

Comment

We agree with this proposal and strongly endorse a holistic approach to tackling money laundering and terrorist financing activities. The outcomes of this proposal will encourage replacement of the current narrow and fragmented approach focused on transactions with a more appropriate integrated approach focused on the business relationship as a whole. We believe that the proposal has the prospect of enhancing the quality of monitoring activities by the reporting financial institutions under PCMLTFR.

Proposal 3.4

Add a provision in the PCMLTFR to require reporting entities to keep a record that sets out the purpose and intended nature of a business relationship between a reporting entity and its customer.

Comment

We are in general agreement with the proposal and believe that the proposal will improve the documentation of the PCMLTFR regime, and help reporting entities to customize appropriate recognition and monitoring of their activities.

Proposal 3.5

Amend the PCMLTFR to provide that the obligation to implement enhanced CDD measures also arises in circumstances in which a client, activity or business relationship has been determined to be high risk as the result of ongoing monitoring.

Amend the PCMLTFR to require reporting entities to implement mandatory enhanced CDD measures when a client, activity or business relationship has been determined to be high risk. The enhanced CDD measures would include taking:

- 1. Enhanced measures to ascertain the identity of any person or confirm the existence of any corporation or entity;*
- 2. Enhanced measures to keep client identification information up to date; and*
- 3. Measures to conduct enhanced ongoing monitoring of business relationships for the purpose of detecting suspicious transactions.*

Comment

We agree with both parts of the proposal as they constitute the logical corollary of a robust PCMLTFR regime. We believe that mandatory enhanced CDD measures in respect of deemed high risk customers and transactions will make the PCMLTFR regime more effective and efficient. The prescribed enhanced CDD measures would facilitate the implementation of the requirements.

Additional Comments

We are encouraged by the proposals to strengthen the PCMLTFR regime and believe that such measures will enhance the already sterling reputation of Canadian financial institutions and their international standing. We believe that the proposals can help align the Canadian AML/ATF regime with the best

international practices, and that responsible implementation of deliberate enhancements will result in observable economic and security benefits. The proposals will also make Canada largely compliant with 40+9 recommendations proposed by the Financial Action Task Force (FATF). However, we caution against excessive reporting which typically fails to identify what is truly important by diluting the information value of reports. We believe that information is not only raw data, but also a representation of informed identification of truly important data and insights developed by such expert analysis. We also identify, as a key challenge, the avoidance of unnecessary segmentation and exclusion in financial markets.

We are confident that the final regulations will seek not to burden the reporting entities with avoidable paper work and balance costs against the corresponding benefits. We also expect that, while finalizing the proposals, due consideration will be given to the constitutional privacy rights of Canadian citizens.

Although the basic goals of money laundering and terrorist financing are no different today than in the past, these operations now take place in a technologically advanced global environment. Forensic accounting skills, as well as audit expertise, are needed to help in combating this crime. The development of internal policies, procedures, and controls to prevent, deter, and detect money laundering today fits within the professional accountant's abilities and expertise.

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 Kamallesh Gosalia at kgosalia@cga-canada.org or alternatively the undersigned at rlefevre@cga-canada.org.

Sincerely,

[Original Signed By:]

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