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Leah Anderson  
Director, Financial Sector Division  
Department of Finance  
140 O'Connor Street  
Ottawa ON K1A 0G5

Submitted by Email: [fcs-scf@fin.gc.ca](mailto:fcs-scf@fin.gc.ca)

Dear Ms Anderson:

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

Independent Financial Brokers of Canada ("IFB") has prepared this submission in response to the Department of Finance's request for comments on proposed amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing (PCMLTF) Regulations*.

IFB consents to the public posting of this submission in its entirety on the Department of Finance's website.

At the outset, we would like to respectfully note that the consultation period for these amendments was short, being limited to only 5 weeks. We believe that many reporting entities will find that there are wide-reaching consequences to their existing procedures as a result of the increased oversight being proposed and may well need more time to consider the impacts on their compliance systems.

#### Introduction

IFB is a trade association representing approximately 4,000 licensed financial advisors across Canada. Our membership is comprised of self-employed, generally small business owners or sole proprietors, who operate as independent contractors. They have chosen this business model so that they can offer their clients a variety of products from various companies. In addition, many hold multiple licenses to enable them to provide clients with advice and access to a range of wealth management products including mutual funds and securities, and insurance products including term and universal/whole life policies, segregated funds, guaranteed interest accounts, annuities, RRSPs, RLIFs, RESPs, etc.

IFB supports the Canadian government's commitment to be a valuable player in the global fight against having legitimate financial systems used for criminal activities such as money laundering, terrorist financing and other illegal purposes. We understand that the purpose of the proposed amendments is to improve Canada's compliance with the Financial Action Task Force's (FATF) 40+9 Recommendations on Money Laundering and Terrorist Financing by addressing certain deficiencies.

While we applaud this goal, we are concerned that the application of these amendments will significantly increase the scope of the current AML/TF compliance practices, well beyond identifying and dealing with higher risk situations. Of particular concern to our members, is that these new requirements will apply unilaterally to small – even individual – financial advisors, which in turn increases their exposure to be investigated and penalized for non-compliance.

In order to provide context to our comments, it is important to understand the regulatory context in which our members conduct business with the public.

Firstly, our members must be provincially licensed to provide life insurance, mutual funds, securities and/or other complementary financial services to their clients. Before they become licensed, they must successfully complete the educational requirements specified for each sector. Once licensed, they are required to maintain individual errors and omissions insurance and many provinces require additional fraud cover as part of this insurance. This insurance is an important consumer protection tool.

Their day-to-day market place conduct and individual transactions are subject to extensive oversight by their mutual fund/securities dealer and the life insurance companies they are contracted with, as well as their provincial regulator(s). Individually, they are subject to disciplinary action by their securities or insurance regulators, including fines, suspension or termination of their license for contravention of regulations.

The insurance companies and securities dealers these brokers are contracted with are subject to the *Proceeds of Crime (Money Laundering) Terrorist Financing Act* and as such require brokers who deal with clients to be knowledgeable and compliant with the client identification, record-keeping and suspicious transaction reporting requirements under this Act. This is an appropriate part of their shared business relationship and a prerequisite to the mutual fund company or insurance carrier accepting new business. It recognizes the 'gate keeper' role of the broker as generally the first point of contact with the consumer.

#### Comments on Proposed Amendments to PCMLTF Act

Managing the risk of financial products and services being used by criminals for money laundering and terrorist financing is at the core of the AML/TF obligations. Life insurance has some risk, albeit a much lower one than many other financial products. We are concerned, then, that a reasonable balance must be struck between layering on additional compliance obligations uniformly across all financial sectors and recognition of the level of risk.

Additional compliance obligations necessarily lead to additional cost for reporting entities, which, under the *Act*, include independent life insurance brokers. The widespread monitoring of a client's business relationships and increased client due diligence procedures, for example, will be difficult to perform without brokers' investing in some sort of technological support. We think that this level of oversight is more appropriately sited with the insurance company or other financial institution because they already have invested in putting significant compliance systems into place. Subjecting individual brokers to

these operational costs should only be considered based on a proven rationale and be confined to high risk situations only.

*Business Relationships –*

The proposed amendments introduce a new concept, that of a “business relationship”. This business relationship is intended to significantly broaden the obligations of reporting entities to include any financial activity or transaction for which it must keep a record and that the business relationship includes the “entirety of its relevant financial activities with the customer”.

From a practical point of view, many of our members are dual licensed as both mutual fund representatives and life insurance brokers. As such, their clients often come to them for investment advice or strategies that include multiple products to meet their financial planning goals. While the dual licensed broker would have access to all the investment components of this strategy, this would not be the case for either the mutual fund dealer (which would have records pertaining to the client’s mutual fund holdings) or the insurance company (which would have records pertaining to the client’s insurance policies).

Our members will be alarmed if the practical application of this proposed new requirement will be to require them to routinely inform their mutual fund dealer or life insurance company of their client’s full investment portfolio. Not only would this break the advisor’s privacy obligations to the client, but may influence how investment decisions are made. This is because the financial services industry is based on a competitive model. We caution that an unintended consequence could arise, whereby the broker may be pressured to buy or sell the products the dealer or life company endorses, rather than the one the broker chose for the client. For example, the dealer may push for investment in a particular mutual fund instead of a segregated fund from a life insurance company, or vice-versa. This would not be in the best interests of the client or the public in general.

The requirement for ongoing monitoring of all business relationships, irrespective of the risk level, is significant and, again, we question how this requirement will be complied with in practical terms where a mutual fund broker (for example) is subject to the dealer’s compliance oversight, yet the same broker is a reporting entity for his/her life insurance activities.

We believe more time is needed for the industry to understand the implications of this and we would be pleased to assist with this process.

*Suspicious transactions –*

The proposed amendments would eliminate the blanket client identification and record-keeping exceptions that exist under the current regime for specified low risk financial products/transactions. These include registered plans (RRSP, RRIF), employer sponsored group plans and annuities. This will lead to a much greater compliance burden for reporting entities if they are required to monitor products that are recognized as having minimal risks for being used for money laundering/terrorist financing.

We question why the government appears to be moving away from a risk-based approach, which has been a fundamental (and efficient) premise of this legislation, and to a more prescriptive approach.

*Attempted suspicious transactions –*

The proposals would require reporting entities to go beyond reporting suspicious transactions and include attempted suspicious transactions. In practice, financial advisors will often not collect detailed

client information when meeting with a new client until some mutual agreement is reached to provide a service. Trying to collect such information once the client has decided not to proceed would place the advisor in a difficult situation and may lead to tipping off the client, contrary to Section 8 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA).

*Purpose and Nature of a Business Relationship –*

The proposed regulations would 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.

Letters of engagement are widely used by financial advisors which set out the agreed upon terms of the arrangement between the client and the advisor (or advisor's firm). This document may also incorporate the various disclosure requirements (such as compensation, referral arrangements) mandated by insurance and securities regulators, or may be presented to the client as separate documents. Again, where the advisor holds multiple financial licenses, these records may be kept by the securities/mutual fund dealer or by the insurance agency/broker or by both.

A client's financial needs change over time and the advisor is forefront in helping clients keep to their financial plan and assuring their financial security. These plans may involve short term or long term goals, or a mixture of both. It is not clear to us how the proposed amendment will affect this process, but we would hope that it will not lead to additional, separate record-keeping to satisfy PCMLTF regulatory requirements.

Compliance Challenges Already Exist with the Current Regulations

*Under the PCMLTFA, independent life insurance brokers are required to have their own Compliance Regime -*

The Act has been in place for over 10 years now and Canadian regulators have sound experience on which to assess its success and on which to base the need for new regulations. IFB believes that this consultation presents an excellent opportunity for the government to revisit some of the existing requirements, streamline them where possible and provide more guidance on the applicability of certain provisions to participants, particularly as they pertain to the life insurance industry.

Under the *PCMLTFA*, independent life insurance brokers are reporting entities. As such, they are responsible for establishing their own compliance regimes, in addition to their ongoing client identification and record-keeping obligations for the life insurance companies they are contracted with.

The requirement to establish a compliance regime is puzzling to many brokers, because life insurance companies already have extensive compliance regimes and procedural oversight in place, as do many of the larger managing general agencies (MGAs) that brokers place their business through. Generally, risk is reduced because of the types of products sold, life insurance companies and their brokers do not accept cash from clients and once a policy application is approved, the client becomes a policyholder of the carrier.

Adding to the confusion for life insurance brokers that are dual licensed as a securities or mutual fund representative (as a great many are), for that part of their business, the securities or mutual fund dealer is responsible for the compliance regime and training of advisors.

Most of our members are small, independent operators of their own business, often working out of a home office, or sharing space with another broker. Indeed, some are older, semi-retired insurance

brokers who only maintain their license in order to be able to service a small number of existing clients on a very occasional basis or simply to receive renewal commissions from past sales. Despite this, these brokers are expected to have a documented, 5 step compliance regime that is reviewed and updated at least every 2 years. They are subject to FinTrac compliance audits and fines for non-compliance.

To help alleviate their stress in this regard, IFB implemented a series of workshops and seminars to help brokers understand how to establish a compliance regime and work through the details. We question, and suggest it may be time to review, why Canada (unlike the United States, for example) adopted the requirement that independent life insurance brokers must be reporting entities. The reality is that thousands of licensed life brokers across Canada must have and maintain a compliance regime. This is an onerous compliance burden, especially for these small or one person offices, and leaves many brokers at risk of being found to be non-compliant. And, this is the case despite there being minimal risk to the public because of the safeguards built into the application and approval process that already exist in life insurance company procedures.

*The U.S. example -*

In the United States, insurance agents and brokers are not required to have a separate compliance regime because regulators judged it appropriate to site this responsibility with the insurance company for the following reasons:

*The insurance company “develops and bears the risks of its products, and the responsibility for guarding against such products being used to launder illegally derived funds. Second, insurance companies, due to their much larger size relative to that of their numerous agents and brokers, are in a much better position to shoulder the costs of compliance connected with the sale of their products. Finally, numerous insurers already have in place compliance programs and best practices guidelines for their agents and brokers to prevent and detect fraud. We believe that insurance companies largely will be able to integrate their obligation to report suspicious transactions into their existing compliance programs and best practices guidelines.”<sup>1</sup>*

The amendments proposed by the Department of Finance are intended to address potential compliance gaps raised by the FATF in its review of the Canadian model. However, the FATF itself provides for reasonable measures to reduce the compliance burden for small reporting entities where the country can be assured that the risk of money laundering is minimal, per the excerpt below:

*“When a financial activity is carried out by a person or entity on an occasional or very limited basis (having regard to quantitative and absolute criteria) such that there is little risk of money laundering activity occurring, a country may decide that the application of anti-money laundering measures is not necessary, either fully or partially.*

*In strictly limited and justified circumstances, and based on a proven low risk of money laundering, a country may decide not to apply some or all of the Forty Recommendations to some of the financial activities stated above.”*

In light of the above, we recommend that the Department of Finance give serious consideration to exempting independent brokers from the requirement to establish their own compliance regime. It represents a huge compliance burden, yet does not contribute to the fight against money laundering or

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<sup>1</sup> Source: US Department of Treasury, Financial Crimes Enforcement Network Guidance, FIN-2008-G004; Issued: March 20, 2008  
Anti-Money Laundering Program and Suspicious Activity Reporting Requirements for Insurance Companies

terrorist financing in any significant way. It is these brokers' direct contact with customers during the sales process that makes them a valuable ally in this fight, because they are in a position to alert the company if the source of the investment assets, the nature of the client, or the objectives for which the insurance products are being purchased seem suspicious. This is where they have an important role in assisting the insurance company to prevent money laundering, not having thousands of individual brokers appointing themselves as their own compliance officer, producing written policies and procedures, conducting a risk assessment of their business, training themselves and reviewing their program every 2 years.

We reiterate our earlier concern that the requirement for individuals to have a compliance regime represents a prescriptive approach, not one based on risk.

Any new compliance obligations should be tied to identifiable higher risk situations

In our view, any new compliance obligations should reflect - and be directly tied to - the level of risk of the transaction to money laundering/terrorist financing, not just add to the compliance burden of those who already operate in a heavily regulated financial services industry.

While we have not conducted a comprehensive study of different risk approaches to AML/TF in countries which seek to comply with the FATF requirement, we note that some jurisdictions (e.g. Australia, New Zealand) have sought out measures to reduce the compliance burden for low risk reporting entities. These measures have included establishing reasonable thresholds of materiality, where transactions or activity below a specified level are subject to reduced compliance requirements, or are exempt.

In our view, this is a sensible approach and would provide some relief, especially for those of our members who are licensed intermediaries but conduct infrequent or small transactions, or deal with very low risk products. Such a threshold could be set based on annual financial activity (such as premium), or type of activity (products sold), so that those brokers who conduct little business, perhaps because they are semi-retired or sell mostly term insurance or whose primary business is employer sponsored group benefits plans, would not have to maintain an extensive compliance system.

This is a far less preferable alternative to eliminating the compliance regime obligations for life insurance brokers, but would at least provide some relief for those brokers who are not particularly active in the marketplace.

Provide concrete relief for small reporting entities

We would like to see FinTrac provide more concrete support for smaller financial reporting entities to assist with their compliance.

*Another US example -*

Currently, FinTrac provides guidance on its website, but for small or individual agencies trying to decipher this into meaningful compliance, in the form of written documentation, can be complex and overwhelming. In contrast, the Financial Industry Regulatory Authority (FINRA) in the United States has available on its website template AML compliance documents aimed at assisting small firms (i.e., those with 150 or fewer registered representatives) to comply<sup>2</sup>. These templates provide examples, instructions, rules and other resources specifically designed for small firms.

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<sup>2</sup> Source: <http://www.finra.org/Industry/Issues/AML/p006340>

IFB has conducted workshops and seminars to raise the awareness of independent life insurance brokers that they must have - and maintain - up to date individual compliance regimes (they are already cognizant of their client identification, record-keeping requirements and suspicious transaction reporting through the insurance companies). Although, we have been able to reach out to a number of brokers, this number is small in relation to the overall number of life licensees in Canada. The situation could be greatly alleviated if FinTrac developed template documents that brokers could refer to and customize. Clearly, if FinTrac adopted this approach it would mean far wider access of this information to brokers and be extremely helpful to individual brokers and small firms in reducing both the burden of compliance and reducing the risk of non-compliance – which we all agree is the ultimate goal.

This concludes our comments. It is our sincere hope that the Finance Department will take this opportunity to revisit some of the existing requirements, along with the proposed amendments, and provide further opportunity for public comment. IFB would be pleased to participate in this process.

Kindly contact the undersigned should you wish to discuss any of our comments further.

Yours truly,



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