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Leah Anderson
Director, Financial Sector Division
Department of Finance
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Ottawa, Ontario, K1A 0G5
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Dear Ms. Anderson:

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

Advocis, The Financial Advisors Association of Canada, welcomes the opportunity to provide its comments on the Government of Canada's Consultation Paper, Strengthening Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime.

We strongly support the goals of the federal government in seeking to combat money laundering and terrorist financing. However, we have concerns about the elimination of existing exemptions and risk-based criteria for some compliance obligations, which we believe will impose undue compliance burdens on small enterprises.

Advocis, The Financial Advisors Association of Canada, is the largest and oldest voluntary professional membership association of financial advisors and planners in Canada. Our members are provincially licensed to sell life and health insurance, mutual funds and other securities, and are primarily owners and operators of their own small businesses who create thousands of jobs across Canada. Advocis members are professional financial advisors who provide comprehensive financial planning and investment advice, retirement and estate planning, risk management, employee benefit plans, disability coverage, long-term care and critical illness insurance to millions of Canadian households and businesses.

Professional financial advisors and planners are critical to the economy, helping consumers make sound financial decisions that ultimately lead to greater financial stability and independence. Advocis works with decision-makers and the public, stressing the value of financial advice and striving for an environment in which all Canadians have access to the advice they need.

Our comments

The Government of Canada is proposing to strengthen Anti-Money Laundering and Anti-Terrorist Financing Regime by expanding the scope of the activities that financial intermediaries – from financial institutions to small businesspersons and individual insurance agents – are

required to monitor and report to the Financial Transactions Reports Analysis Centre of Canada (FINTRAC.)

Advocis has been supportive of the Government's efforts to establish an effective anti-money laundering (AML) and anti-terrorist financing (ATF) framework, and to be at the forefront in the global fight against these crimes. We have participated extensively in the Government's consultations over the past seven years, and have generally supported the Government's historically balanced approach.

We appreciate that Canada as a member of the Financial Action Task Force (FATF) is committed to implementing a consistent international regime to counter money laundering and terrorist financing. We assume that the proposed elimination of risk-based compliance criteria and the expansion of compliance obligations, are considered by the architects of the regime to be necessary to the effectiveness of this global regime.

We believe that there is a fundamental conflict between the Government's stated aims of reducing red tape and administrative burdens on small business, and the Government's approach to Strengthening Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime by expanding the scope of the monitoring and reporting that are required. In our view, this approach cannot help but add incrementally to the ever-increasing "red tape" burdens on small enterprises in Canada.

Expansion of Scope of AML / ETF Regime

The Proposals expand the scope of the AML / ATF regime under the PCMLTFA and Regulations, so that all financial transactions will be captured by one or more intermediaries. This represents a departure from the approach when the AML / ETF regime was originally introduced, whereby only transactions that were in some sense suspicious, by exceeding a particular amount or for other reasons, were reportable.

In essence, the Proposals appear to be based on the premise that financial privacy is no longer possible, and that money laundering and terrorist financing can only be curtailed successfully by comprehensively subjecting all financial accounts and transactions to identification, monitoring and reporting requirements.

However, we note that no evidence is presented in the Consultation Paper, to show that the existing regime in Canada, which has been risk-based and limited to transactions involving large amounts or suspicious circumstances, has failed to achieve its objectives, and that it is necessary in Canada to move to a comprehensive regime.

We submit that the Government should present clear and compelling evidence to justify expanding the scope of the AML / ETF regime under the PCMLTFA and Regulations in a manner that effectively does away with all financial privacy in Canada, and increases the compliance burdens on financial intermediaries. We do not believe that a case has been made out.

Duplication

The scheme of the PCMLTFA and Regulations effectively imposes client identification, monitoring and reporting obligations, with regard to the same client activity, on insurance companies, insurance brokers and insurance agents.

Proposals that affect Advocis members

Two of the proposed changes to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA) and Regulations, Proposal 1.6 and Proposal 2.4, would affect Advocis members in their activities as life insurance agents.

Proposal 1.6 - politically exposed foreign persons

Proposal 1.6 would (in conjunction with proposal 1.7) require life insurance companies, brokers and agents to take reasonable measures to determine whether persons (including all existing account-holders) are “politically exposed foreign persons” (PEFPs.) This requirement would no longer be limited to situations where an annuity or a life insurance policy is acquired for \$10,000 or more.

A PEFP is an individual who (or whose prescribed family members) holds or has held one of the following offices or positions in or on behalf of a foreign state:

- a. head of state or head of government;
- b. member of the executive council of government or member of a legislature;
- c. deputy minister or equivalent rank;
- d. ambassador or attaché or counselor of an ambassador;
- e. military officer with a rank of general or above;
- f. president of a state-owned company or a state-owned bank;
- g. head of a government agency;
- h. judge; or
- i. leader or president of a political party represented in a legislature.

The proposals also would require reporting entities to document the reasonable measures taken to determine whether persons are PEFPs.

We presume that this means that life insurance agents, who serve as the main point of client contact for insurance companies and insurance brokers, will be required to enquire of every client who proposes to do any insurance business with them, regardless of amount, as to whether that client is a PEFP or specified family members are PEFPs, and to document that response.

We note that there is nothing in the Proposals to suggest that the exemptions that are currently available with respect to insurance, which the Proposals will remove, has led to a single instance of money laundering or anti-terrorist financing activity.

Existing accounts

As the proposal also would extend the requirement to all existing accounts, we presume that life insurance agents will be expected to take reasonable measures to determine, in respect of all holders of accounts that are considered to be active, whether the account-holders or their family members are PEFPs.

The Consultation Paper does not provide any guidance concerning what measures will likely be considered appropriate and reasonable, as far as existing accounts are concerned. Would it be necessary to contact all account-holders and ask them to provide information regarding whether the account-holders or their family members are PEFPs? Will it be sufficient to initiate an inquiry, such as by sending a questionnaire, when sending a notice or report to the account-holder?

Proposal 2.4 Extension of client-identification and record-keeping to investment and loans business

Proposal 2.4 expands the client identification and record-keeping requirements that apply to life insurance companies, brokers and agents. Proposal 2.4 would eliminate the \$10,000 threshold for life insurance and annuities, and also would expand the requirements to also include transactions and accounts openings for investment and loan products.

We note that there is nothing in the Proposals to suggest that the fact that the legislation does not currently apply to all transactions and accounts openings for investment and loan products that involve life insurance companies, brokers and agents, has led to a single instance of money laundering or anti-terrorist financing activity.

Effectiveness of the Anti-Money Laundering and Anti-Terrorist Financing Regime

We believe it would be helpful, for the purposes of assessing whether it would be useful to expand the scope of the AML / ETF regime under the PCMLTFA and Regulations, to have a framework for assessing the effectiveness of the regime to date. How can the effectiveness of the regime be measured? Can the government point to data concerning the operation of the regime since its inception in 2005, that demonstrates why it is necessary to expand the scope of the regime as proposed?

Cost-Benefit Analysis

We urge the Government of Canada to commission a detailed cost-benefit analysis of the Proposals, by an independent consultant.

We believe it will be valuable to arrive at a credible estimate of the likely additional cost – including time spent developing and implementing policies and procedures and training, and expenditures on infrastructure - that the more comprehensive reporting that is being proposed will impose on various financial intermediaries, including life insurance agents.

Cutting Red Tape

In January 2011, Prime Minister Stephen Harper announced the creation of the Red Tape Reduction Commission, intended to reduce the burden of federal regulatory requirements on Canadian enterprises, especially small- and medium-sized businesses.

The Red Tape Reduction Commission was tasked with examining the cost associated with federal regulatory requirements that businesses face, and provide advice on permanent solutions for reducing the overall compliance burden.

Prime Minister Harper noted that “Canadian businesses spend billions of dollars each year adhering to regulations;” ... “We need to look at where and how we can reduce these costs and this red-tape burden, especially on small businesses.”

On September 6, 2011, the Honourable Maxime Bernier, Minister of State (Small Business and Tourism), and chair of the Red Tape Reduction Commission, announced the release of the Commission's “What Was Heard” report (online at <http://www.reduceredtape.gc.ca/heard-entendu/doc/wwhr-rlcr/wwhr-rlcr04-eng.asp#toc302497336>).

According to the Report:

It was often reported that the problem of administrative burden originates in the cumulative volume of demands that small businesses are expected to manage; government, it was thought, simply requests too much information, too often. This work requires hours of time and effort that are, essentially, unproductive overhead for businesses. One description of this situation came from the real estate industry in Kamloops, which pointed out the increasing burden in complying with regulations for reporting financial transactions, compliance with requirements under the *Privacy Act*, and requests from the Competition Bureau for information related to fixed commission rates. In Winnipeg, the amount of apparently needless paperwork requested, of all types, was said to have actually driven some entrepreneurs out of business.

We submit that eliminating risk-based criteria and exemptions and expanding the scope of the AML / ETF regime under the PCMLTFA and Regulations will add to the cumulative volume of the administrative burden on small businesses in Canada.

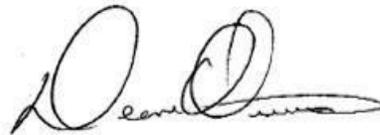
As we have noted above, we do not believe the Government has presented any evidence to substantiate why it is necessary to comprehensively subject all financial accounts and transactions to identification, monitoring and reporting requirements.

Advocis appreciates this opportunity to provide comments on the Proposed Regulations and would be pleased to address any concerns or answer any questions. Please feel free to contact the undersigned or Ed Skwarek, Vice President, Regulatory and Public Affairs, at 416-342-9837 or eskwarek@advocis.ca.

Sincerely,



Greg Pollock, M.Ed., LL.M., C.Dir., CFP
President and CEO



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