IFIC
THE INVESTMENT FUNDS INSTITUTE OF CANADA
L'INSTITUT DES FONDS D'INVESTISSEMENT DU CANADA
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BY MAIL & E-MAIL: Hemmings.Lynn@fin.gc.ca

March 8, 2006

Department of Finance
140 O'Connor Street
Ottawa, Ontario
K1A 0G5
Attn: Lynne Hemmings – Chief, Financial Sector Division, Financial Sector Policy Branch

Dear Sirs/Mesdames:

Re: Proposed Anti-Money Laundering Requirement to Identify Politically Exposed Persons ("PEPs") – Draft Consultation Document

General

Thank you for your email of January 25th, in which you invite The Investment Funds Institute of Canada ("IFIC") to provide written comments on an attached draft consultation document (the "consultation draft") that outlines proposals for meeting the identification requirements with respect to PEPs.

As discussed with you, the consultation draft was circulated on a confidential basis to our Manager and Dealer Issues Committees. Their comments are below:

Specific Comments

Part A – Definition of PEPs

The consultation draft defines PEPs as "Any person who ever had one of the following positions at the national level in any country/nation" (a list of government positions follows this definition). Immediate family members of people who occupy the specified positions also fall within the definition of PEP.

Our Members are of the view that the definition of PEP is extremely broad and, practically speaking, unworkable. Our Members will not be able to comply with any identification requirements that are based on this particular definition (to the extent that

the requirement to identify PEPs is left, as is proposed, to the judgment of individual reporting entities).

Requiring individual reporting entities to identify PEPs

Further to our comments above, our Members continue to believe that requiring individual reporting entities to determine if an individual is a PEP is the incorrect approach. Placing the onus on individual reporting entities will result in an inconsistent level of scrutiny (which is, at best, a sub-optimal way of achieving the objects of the proposed requirement) and is highly impractical from an operational perspective as our Members have thousands of clients.

We therefore strongly urge you, on behalf of our Members, to adopt the recommendation that we made to you in our September, 2005 submission[1], specifically, that the Department of Finance develop and update on an ongoing basis a comprehensive list of PEPs for use by Canadian reporting entities and that the requirement to identify PEPs be confined to the names published on this list.

Part B.1. - Account opening/Ongoing business relationships

The consultation draft defines "ongoing business relationship" as a relationship established to provide for regular banking or brokerage or money services or currency exchange services.

As the investment funds industry is also covered by this legislation, we believe that the definition of "ongoing business relationship" should also include "a relationship established to provide investment/investment advisory services".

Part B.2. - Steps

The consultation draft notes that "at account opening or at the beginning of a business relationship, reporting entities must ask 4 or 5 questions provided by Finance or FINTRAC to determine if the customer is a PEP or not".

Again, our Members believe that it is inappropriate to require individual reporting entities to determine what individuals are PEPs – please see our comments above.

In the alternative, our Members are of the view that it is highly impractical to require reporting entities to ask 4 or 5 questions just to determine if an individual is a PEP. We ask the Department of Finance to bear in mind that our Members engage in a high volume of business and are already subject, by law, to lengthy and detailed account-opening/Know Your Client procedures. If the Department of Finance is not amenable to adopting our earlier recommendation with respect to the identification of PEPs, we ask

[1] IFIC Submission to the Department of Finance, dated September 23, 2005, in response to the Consultation Paper "Enhancing Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime" published for comment by the Department of Finance, on June 30, 2005.

that, instead of requiring reporting entities to ask questions of potential clients, the requirement to identify PEPs be confined to searching PEP lists maintained by third party service providers (such as WORLD-CHECK or Factiva). Failing the adoption of this recommendation, our Members are of the view that serious consideration must be given to reducing the number of questions that are required to make this determination.

The consultation draft notes that if "it is determined that the customer is a PEP, the reporting entity must establish the origin of the funds or the origin of the wealth *by asking questions* to the customer. Based on the obtained information, senior management has 30 days to approve establishing or continuing the business relationship. *Insurance companies may rely on the identification performed by brokers or agents*" (italics added).

The requirement to "ask questions" to establish the origin of funds/wealth is, in the view of our Members, too vague to be acted upon. How many and what type of questions would be required? From a due diligence perspective how far would reporting entities be expected to go to satisfy themselves that they have gone far enough in their inquiries? We note again, that requiring individual reporting entities to make these determinations is impractical and will lead to an inconsistent level of scrutiny.

Consistent with the ability of insurance companies to rely on the identification performed by brokers or agents, we ask that the consultation draft be amended to also provide mutual fund managers with the ability to rely on the identification performed by mutual fund dealers/investment dealers so as to avoid duplication of effort. Similarly, where an investment is being made by a registered advisor for its clients or as administrator of a group plan, the mutual fund manager should also be able to rely on the identification performed by the advisor or administrator, as the fund manager has no contact with the end client in these circumstances.

<u>Ongoing Monitoring</u>

The consultation draft states that "Once the business relationship is approved, reporting entities perform enhanced ongoing monitoring". For the purposes of clarity, we believe that the words "with an identified PEP" should be inserted after the words "Once the business relationship".

With respect to enhanced ongoing monitoring, the consultation draft notes that reporting entities will be expected to engage in a particularly high level of scrutiny when:

- the client comes from a country with a high level of crime and corruption,
- unusual activities for the client are carried out,
- unusually high volume of [incoming] international wire transfers are initiated by the client,

What parameters are our Members supposed to use to initially define and determine on an ongoing basis what constitutes a "high level" of crime and corruption? Again, from a due diligence perspective, how far are our Members expected to go to satisfy themselves that they have gone far enough in their inquiries? It is inappropriate to require our Members

to make a determination with respect to this matter as ascertaining what countries have a high level of crime and corruption is not an exercise that forms a regular part of their day to day business and is therefore outside the scope of their expertise. We note again that providing reporting entities with a standardized list that identifies high risk individuals and countries is the only reasonable way to ensure that this requirement is fulfilled.

Similarly, what parameters are our Members supposed to use to determine what constitutes unusual activity or an unusually high volume of international wire transfers and to track this information on an ongoing basis? Our Members have thousands of clients and it is not at all unusual for the financial circumstances of individual clients to change (sometimes radically) at any point in time.

With respect to ongoing business relationships with PEPs, the consultation draft notes that "Senior management or the compliance officer must review all large transactions, but no approval is required prior to the transaction". If no approval is required prior to the transaction, what, practically speaking, is the purpose of this review? In addition, as certain securities transactions are time sensitive, requiring such pre-trade approval could also serve to put some clients at a disadvantage.

Part C – Occasional customers

We reiterate our concerns above, as applicable.

In Closing

Thank you for the opportunity to engage in an advance review of the proposals with respect to PEPs. We look forward to the opportunity to continue to assist you by engaging in similar advance reviews with respect to other anti-money laundering proposals that are currently being considered by the Department of Finance.

Please contact John W. Murray, Vice President, Regulation & Corporate Affairs at (416) 363-2150 x 225 /jmurray@ific.ca or Aamir Mirza, Legal Counsel, Regulation at (416) 363-2150 x 295 / amirza@ific.ca should you have any questions.

Yours truly,

THE INVESTMENT FUNDS INSTITUTE OF CANADA

By: "*Original signed by John W. Murray*"

John W. Murray
Vice President, Regulation & Corporate Affairs