THE INVESTMENT FUNDS INSTITUTE OF CANADA
L'INSTITUT DES FONDS D'INVESTISSEMENT DU CANADA
IFIC

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March 1, 2012

Ms. Leah Anderson
Director, Financial Sector Division
Department of Finance
L'Esplanade Laurier
140 O'Connor Street
20th Floor, East Tower
Ottawa, Ontario
K1A 0G5

Dear Ms. Anderson:

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

On behalf of The Investment Funds Institute of Canada ("IFIC") and its members, we thank you for the opportunity to provide our comments in respect of the proposals ("Proposals") set out in the Consultation Paper on Strengthening Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime (the "Consultation Paper").

As we noted in our comments on the Department's previous proposals to update the AML/ATF regulations in Canada, IFIC represents the vast majority of Canadian investment fund managers, fund distributors and organizations that provide services to the investment fund industry (e.g., legal, administration and accounting firms). Funds offered by IFIC members are sponsored and managed by registered investment fund managers, and units in these funds are sold through registered investment and mutual fund dealers, that may be related to or independent of fund managers, through their networks of individual advisors[1]. As of January 31, 2012, there were over 2,800 mutual funds in Canada, with estimated total assets under management of CAD $791 billion.

[1] Investment fund managers and dealers have been collectively defined in the PCMLTFR under the term "securities dealers" which means persons or entities that are authorized under provincial legislation to engage in the business of dealing in securities or any other financial instruments or to provide portfolio management or investment advising services.

General Comments on the Proposals

We would like to acknowledge our appreciation to the Department of Finance for engaging in this review and consultation at an early stage, providing stakeholders the opportunity to comment on the desired objectives, principles and concepts in the Consultation Paper, as well as on some specific amendment proposals.

For many years the Canadian mutual funds industry has operated comprehensive client identification, account monitoring and suspicious transaction reporting procedures that are allocated between dealers and investment fund managers (the "Allocated Compliance Model") as permitted by the exception in section 62(1)(b)(i)[2] of the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations ("PCMLTFR"). The industry takes its AML obligations seriously and has very successfully implemented the Allocated Compliance Model described in more detail below.

As a general comment, we completely support those Proposals that are designed to enhance the operational efficiency of Canada's AML/ATF regime and thereby will alleviate the administrative obligations on our members. One example is Proposal 1.8 which will exempt exchange listed corporations from those entities in connection with which reporting entities must keep records, given the stringent disclosure obligations already applicable to such corporations under corporate and securities legislation. We applaud the Department of Finance for identifying areas where existing business processes can be adapted to meet AML objectives, and other existing non-AML business requirements that could adequately, and without creating a lower standard, serve in place of adoption of duplicative AML requirements.

On the other hand, our members fear that some of the Proposals as described in the Consultation Paper will impose additional administrative burdens that are unwarranted in order to meet the policy objectives of the Proposals, thus complicating business processes and, in one instance, setting a requirement that will be impossible to comply with. We require more clarification as to the precise intention of several Proposals in order for our members to

[2] EXCEPTIONS TO RECORD-KEEPING AND ASCERTAINING IDENTITY

62. (1) Paragraphs 54(1)(*a*) and (*b*), 54.1(*a*), 54.2(*a*) and 55(*a*) and (*e*), subsections 57(1) and 57.1(1) and paragraphs 60(*a*) and (*b*) do not apply in respect of…

- (*b*) the opening of an account for the sale of mutual funds where there are reasonable grounds to believe that identity has been ascertained in accordance with subsection 64(1) by a securities dealer in respect of
  - (i) the sale of the mutual funds for which the account has been opened, or
  - (ii) a transaction that is part of a series of transactions that includes that sale;

understand the additional requirements that would be created. Clarification is also required to ensure that none of the Proposals are intended to change, or will in practice result in change to, the long-standing Allocated Compliance Model used by this industry.

In addition to the general comments above, in the attached Appendix we have provided specific comments on each of the individual Proposals applicable to securities dealers.

Mutual Fund Client Identification and Recordkeeping

To repeat some background on the Canadian mutual fund industry, investment funds in Canada are generally structured as trusts or corporations. The funds are managed by a registered investment fund manager and the units and shares (herein referred to generally as "units") are sold through retail distribution channels, that is, through registered investment dealers or mutual fund dealers that may be related to or independent of fund managers. An investor purchases units in Canadian mutual funds through the distributor or dealer firm. In most cases, mutual funds sell their units to investors on a continuous basis and the units are redeemable at any time.

Canadian mutual funds are generally regulated under provincial securities legislation and nationally-applied rules. All fund securities must be sold to the public either through prospectuses that are filed with and cleared through a securities commission or pursuant to a prospectus exemption (generally an "accredited investor" exemption). Dealers that distribute funds must be registered in each province in which they have clients and they are also subject to examinations by provincial securities commissions and self-regulatory organizations (primarily the Investment Industry Regulatory Organization of Canada and the Mutual Fund Dealers Association). The dealers' sales representatives and advisors are also licensed. Dealers and advisors are subject to stringent account-opening and know-your-client requirements under securities legislation, as well as the anti-money-laundering/anti-terrorist financing client identification requirements.

Funds may issue units either in the name of the beneficial owner (client-name) or through an intermediary or nominee, generally a custodian or broker. When units are sold through a custodian or broker, the units are recorded under that intermediary's omnibus account. The custodian or broker also maintains client-name accounts, including the specific identity information and other documentation for each client that purchases units through the intermediary. Fund managers generally do not have access to this information. As a result, to the extent any of the Proposals seek to expand, or will cause an expansion in the information gathering requirement, such that personal client information will need to be collected and held by numerous entities in a duplicative manner, our members are concerned that this will

contravene current privacy obligations, and increase their compliance expense, without any additional benefit to the structure that is currently working well.

Advisors are the client-facing representatives who first establish business relationships with clients, obtaining required information about the clients' identities, their risk tolerance and investment objectives. This information is obtained as part of the account opening (and know-your-client) process.

Once the client decides to purchase units in one or more mutual funds, information necessary to execute a purchase transaction is passed on to the manager(s) of that/those fund(s). An investment fund manager does not deal directly with clients prior to the purchase of the manager's funds, and must rely on the dealers to obtain and retain all necessary identity verification information about the client. Fund managers have very little additional information about investors in their funds. Once a purchase transaction with a client has settled, the fund manager is then in a position to monitor ongoing transactions of that client in mutual funds managed by that manager. Both dealers and investment fund managers submit suspicious transaction reports to FINTRAC, in respect of suspicious client activity in their accounts, or in respect of such activity in clients' mutual fund investments.

As noted earlier, section 62(1)(b)(i) of the PCMLTFR recognizes the effectiveness of the Allocated Compliance Model described above, providing mutual fund companies with an exemption from the record-keeping and identification requirements, where there are reasonable grounds to believe dealers have ascertained client identity as required. Fund managers are permitted to rely on the dealer to perform these obligations, which obviates the need for them to repeat information collection and recordkeeping already performed by a dealer. This is an effective and cost-efficient method that also ensures that sensitive personal client information is not collected and maintained by more firms than is necessary to adequately perform the AML requirements (keeping that information to one entity that is covered by privacy and AML obligations limits possible contraventions of privacy legislation).

In cases where funds are distributed without the inter mediation of a distributor, such as with institutional clients in certain circumstances, the manager will perform all of the client identification, recordkeeping and, if triggered, reporting obligations.

To the extent the Department of Finance proposes to change the client identification or recordkeeping obligations, such amendments must not in any way eliminate or compromise the exemption in Section 62(1)(b)(i). This exemption is well reasoned, incorporates existing business processes to avoid unnecessary duplication of administration, and has resulted in a very effective AML/ATF system within the investment funds industry. Our members would be

very concerned about any changes, proposed or resulting, to the allocation of responsibilities between dealers and fund managers.

It is these business processes, and long-standing allocation of responsibilities among managers and dealers, that support our members' comments on the Proposals both as set out above and in Appendix A.

We would very much appreciate an opportunity to meet with you to elaborate on and discuss our concerns and answer any questions that you may have. To contact us to arrange such a meeting, or to seek any clarifications in the meantime, please do not hesitate to contact Ralf Hensel, IFIC's General Counsel, Corporate Secretary and Director, Policy – Manager Issues at rhensel@ific.ca or (416) 309-2314.

Yours sincerely,

c.c. Jeremy Rudin, Assistant Deputy Minister

Appendix A

Comments on Individual Proposals Applicable to Securities Dealers

Proposal	Comments
1.2 Enhanced CDD Exemptions for Introduced Business 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.	We refer to our Allocated Compliance Model discussed in detail in our letter. The current process of identifying clients, including on introduced business, as performed during the account opening process by the investment or mutual fund dealer in most cases, and the manager in certain institutional client sales, works effectively. There would be no value to duplicating the process, and duplicating recordkeeping requirements (and the resulting resources cost for managers of necessary systems development), at both levels, especially when section 62 provides an exemption from the duplication, recognizing the current effective business model. We reiterate that fund managers do not have a direct relationship with clients when there is a dealer intermediary. To comply with privacy legislation managers are concerned that they only receive that amount of personal information as is necessary to meet their unique obligations, without duplicating the information that must already be obtained and maintained by dealers. As the current process works well, there is no need to change it by expanding/duplicating the requirements.
The Government would like to receive comments from financial institutions regarding the security features that have been included in electronically provided bank statements and that would assist with determining the authenticity of such a statement.	The bulk of account openings in the mutual funds industry are done face-to-face, by the securities dealer. Our members perform credit file checks and obtain cleared cheques and bank statements in order to verify the existence of bank accounts. In this case the onus is on the banking institution with which the client maintains an account to provide statements, either in paper or in electronic form. To the extent a securities dealer may wish to move to a completely online account opening process, it would be useful to have an electronic means by which the securities dealer could confirm the existence of the subject account at a financial institution.
1.4 Record of Signing Authority The Government proposes to review the requirement that a hand-written signature card, or electronic image of a hand written signature, must be maintained by reporting entities for record-keeping purposes when accounts are opened.	Currently, when accounts are opened online, the client is required to print and sign documentation which must be submitted to the dealer. The industry welcomes proposals to eliminate the need for dealers to obtain handwritten signatures, in order to simplify and streamline the on-line account opening process.

1.5 The Government is giving consideration to amending the definition of 'politically exposed foreign person' to include close associates of such a person.	Our members believe that the present definition of "politically exposed foreign persons", which includes numerous categories of individuals and their family members, is sufficiently broad to address the policy objectives of this requirement. An expanded definition will in practice be virtually impossible to implement initially and then manage subsequently. If the definition were expanded, our members would first need to confirm that existing service providers who maintain databases of PEPs and PEFPs are capable of adding "close associates" to their databases. Adding much more information to the existing database will significantly enlarge that database, thereby drastically increasing the number of hits and false hits that are generated and that must be reviewed manually. It is difficult at this stage to estimate the additional administrative burden that would result. For that matter, the Proposal is not clear if securities dealers will be required to ask specifically about close associates, or if they would be permitted to rely on service providers, even if their databases may not contain this new degree of detail. Our smaller members who do not use such service providers, would need to add the appropriate questions to their account application forms. If Finance elects to proceed with such expansion, in order to prevent colossal additional administrative burden in following up existing accounts, the change cannot be retroactive. Additionally, Finance must clarify what is meant by "close associate".
1.6 Require Life Insurance Companies to Determine if Persons are PEFPs when Opening Designated Accounts The Government is giving consideration to requiring life insurance companies and life insurance brokers and agents to take reasonable measures to determine if persons are PEFPs when opening an investment or loan account for a client, or in respect of existing clients who have investment or loan accounts. Where such persons are determined to be PEFPs, life insurance companies and life insurance brokers and agents would be required to implement all relevant PEFP obligations.	Our member distributors that are dually-licensed (mutual funds and life insurance) already perform such client identification when clients are purchasing investment fund/segregated fund products. It appears this Proposal would expand this identification requirement to life insurance distributors that are not dually-licensed to also sell mutual funds.
1.7 Amend Paragraph 54.2(b) and Subsection 57.1(2) of the PCMLTFR to require assessment whether all existing	As the assessment of PEFPs among existing accountholders was originally grandfathered in the Regulations, please clarify whether the Proposal is intended to apply retroactively. Additionally, please clarify whether the assessment requirement will apply with respect to the current PEFP list or

accountholders are PEFPs, if not already determined The Government is giving consideration to amending paragraph 54.2(b) and subsection 57.1(2) to clearly provide that reporting entities would be required to assess whether all existing account-holders are PEFPs, where such a determination has not already been made.	the much expanded list of PEFPs and their close associates as proposed in 1.5 above. This Proposal will, in any event, create considerable compliance burden based on current forms, as it will require the follow up of all paper-based applications for existing clients, and many clients will not reply to a written inquiry asking if they are PEFPs. As expressed earlier, it will be almost impossible to comply with this Proposal if it is intended that the assessment cover both PEFPs and their close associates.
1.8 Extend Exemptions to Include Listed Corporations 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.	We are pleased that this exemption recognizes existing disclosure obligations outside of the AML/ATF regime, as it is difficult to check this information currently. The Proposal should reduce some of the administrative burden on our members.
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.	Our members' existing practice is to obtain articles of incorporation or certificates of corporate status as proof of a corporation's existence. It is rare to receive such articles or certificates that are less than one year old, although some firms do require recent certificates as a matter of policy. As there is a fee to obtain each such document, the Proposal to require certificated proof of existence less than one year old would create additional cost obligations on securities dealers who may need to obtain more current versions. This would be very problematic for managers with institutional business which is sold without a dealer intermediary. The Proposal should also clarify whether a securities dealer may rely on other online information, such as the Canada Revenue Agency register of active charities, to "update" a corporation's status in the face of a certificate of status or articles of incorporation older than one year.
1.10 Identification of Third Parties 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".	Our members consider this to be an improvement as it will clarify the appropriate party in relation to which the information must be collected and maintained. It would be helpful if the Proposal could clarify, or provide examples of, what is considered to be an "instructing party" for various types of accounts (i.e. individual, corporate, trusts, etc.).

2.4 CDD and recordkeeping requirements for life insurers and brokers/agents The Government is giving consideration to amending the PCMLTFR to expand the client identification and record-keeping requirements applicable to life insurance companies and life insurance brokers and agents beyond the specified purchase of annuities and life insurance policies. • Client identification and record-keeping requirements would apply to transactions and accounts openings for investment and loan products offered by life insurance companies, agents and brokers that are not currently captured under the PCMLTFR. The requirements would be comparable to those currently imposed by the PCMLTFA on other financial entities and securities dealers. • Eliminating the exemption for income tax purposes and the $10,000 threshold for the cost of an annuity or policy would result in the requirements applying to more annuities and life insurance policies that may provide opportunities for money laundering.	Although not applicable to securities dealers, we repeat that our member distributors that are dually-licensed (mutual funds and life insurance) already perform such client identification and record-keeping when clients are purchasing investment fund/segregated fund products. It appears this Proposal would expand this identification requirement to life insurance distributors that are not dually-licensed to also sell mutual funds.
2.5 Extending large cash transaction reporting obligations in life insurance sector The Government is giving consideration to amending the PCMLTFR to limit the exemptions for large cash transaction reporting by life insurance companies and life insurance agents and brokers to only those transactions where the origin of funds may be easily identified and determined to be of low risk for money laundering,	Please refer to our comment on Proposal 2.4 above.

specifically those identified in paragraphs 62(2)(c) to (f) of the PCMLTFR.	
2.6 Expand the Application of Large Cash Transaction Obligations 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.	Mutual fund dealers and investment fund managers do not accept cash as a general compliance matter. Even if this were not the case, investment fund managers do not consider dealers to be their agents, and so this expansion would not add any additional requirements to the processes already in place in our industry.
2.9 Clarifying the 24-Hour Rule 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. .	Please refer to our comment on Proposal 2.6 above.
3.3 Non-Compliance with Reporting Obligations 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.	As noted in our letter, IFIC members take their AML/ATF reporting obligations very seriously and would consider a failure to file a report to be a very serious compliance matter. As such, our members support proposals that will enhance the reporting regime.
3.4 Requiring the Documentation of Reasonable Measures 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.	We agree that it is necessary to keep records of the reasonable measures taken to identify clients. The Act requires that reasonable measures be taken to obtain information on clients. If the information has been successfully obtained it will be demonstrably evident on application forms and other documents. If the information has not been successfully obtained, then securities dealers will have to take reasonable measures to obtain it, and document and explain what such measures were taken. Is the Proposal intended to require securities dealers to document in each and every situation what measures were taken, or are dealers permitted

	to rely on operating policies which set out the reasonable measures to be taken in most cases, and explain and document only those outlier situations where more measures were required to be taken than set out in the dealer's policy.
Part 4 **Stronger Information Sharing**	Our members have no substantive concerns about the proposed enhancements to information sharing among agencies and assume that any concerns raised by the Privacy Commissioner will or have been incorporated into the Proposals.
5.1 Scope of Countermeasures 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.	Our members are concerned that the proposed countermeasures may overlap with existing Canadian economic sanctions legislation and OSFI reporting requirements, and are concerned about the number of government organizations that provide directives in this area. In this regard, we recommend that the appropriate government agencies collaborate to eliminate duplication and overlap, thereby ensuring a streamlined and efficient information flow. We reiterate the structure that is permitted by section 62(1)(b)(i) which permits investment fund managers to rely on dealers to perform client identification and recordkeeping requirements in most cases. Our manager members would certainly not have the ability to identify the jurisdiction to which their investors relate. Our dealer members would require clear guidance on how to readily identify the clients and potential clients to whom any directives would apply. If Finance elects to proceed with the Proposals in any event, we recommend that a sufficient transition period be provided to implement the new requirements, to allow our members adequate time to develop and put into operation the necessary procedures.
5.2 Definition of "Foreign Entity" The Government Proposes to define the term "foreign entity" as set out in Annex B	It appears that under the Proposal a particular entity can be instantaneously designated as a "foreign entity" for purposes of the Act. We would like clarification as to how such designations would be brought to the attention of reporting entities – either through Finance or FINTRAC notices, or is it intended that this would be accomplished by an expansion of existing PEP and PEFP databases that could be searched in real time for client identification purposes.
6.1 Broadening the Requirement to Report Suspicious Transactions The Government is giving consideration to broadening the requirement to report suspicious transactions to encompass activities conducted for the purpose of a financial transaction.	As noted in our comment to Proposal 3.3 our clients take their reporting obligations, including suspicious transaction reporting obligations, very seriously. They generally interpret the suspicious reporting requirements broadly, and the example included in the explanation to this Proposal (that a suspicious transaction report is required if an account application were considered suspicious) is already considered by our members to be reportable as an attempted suspicious transaction. We would remind Finance that the scope of what is a suspicious transaction has already been broadened to include attempted suspicious transactions, and our members consider the current scope to be sufficiently broad to meet the policy objectives of the Proposal.