



May 18, 2018

Director General  
Financial Systems Division  
Financial Sector Policy Branch  
Department of Finance Canada  
James Michael Flaherty Building  
90 Elgin Street  
Ottawa, ON K1A 0G5  
Email : fin.fc-cf.fin@canada.ca

Dear Sirs/Mesdames:

**Re: Reviewing Canada’s Anti-Money Laundering and Anti-Terrorist Financing Regime**

The Private Capital Markets Association of Canada (the “**PCMA**”) is pleased to provide our comments in connection with the Department of Finance Canada discussion paper Reviewing Canada’s Anti-Money Laundering and Anti-Terrorist Financing Regime (the “**Paper**”) as set out below.

**What is the PCMA?**

The PCMA is a not-for-profit association founded in 2002 as the national voice of exempt market dealers (“**EMDs**”), issuers and industry professionals in the private capital markets across Canada.

The PCMA plays a critical role in the private capital markets by:

- assisting its hundreds of dealer and issuer member firms and individual dealing representatives to understand and implement their regulatory responsibilities;
- providing high-quality and in-depth educational opportunities to private capital markets professionals;
- encouraging the highest standards of business conduct amongst its membership across Canada;
- increasing public and industry awareness of private capital markets in Canada;
- being the voice of the private capital markets to securities regulators, government agencies, other industry associations and public capital markets;
- providing valuable services and cost-saving opportunities to its member firms and individual dealing representatives; and
- connecting its members across Canada for business and professional networking.

Additional information about the PCMA is available on our website at [www.pcmacanada.com](http://www.pcmacanada.com).



## **Who are Exempt Market Dealers?**

EMDs are fully registered dealers who engage in the business of trading in securities to qualified exempt market clients. EMDs are subject to full dealer registration and compliance requirements and are directly regulated by the provincial and territorial securities commissions. The regulatory framework for EMDs is set out in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (“**NI 31-103**”) which applies in every jurisdiction across Canada.

## **General Comments**

The PCMA strongly supports the comprehensive and coordinated efforts of the Government of Canada to combatting money laundering and terrorist financing to promote the integrity and safety of the financial system and protection of Canadians. EMDs are reporting entities as securities dealers and we note the Paper is not seeking any specific comments relating to this area of the financial system. Our comments and concerns primarily focus on reducing regulatory burden and we have limited our comments to certain sections of the Paper.

## **Corporate Transparency**

The securities industry is highly regulated by 13 provincial and territorial regulators and 2 self-regulatory organizations. NI 31-103 requires obtaining detailed information about clients including reputation risks and beneficial ownership. We support changes to government legislation related to corporate registration to improve the transparency of beneficial ownership of corporations and other legal entities.

NI 31-103 requires the collection of know your client (“**KYC**”) information including the identities of beneficial owners, or individuals exercising direct or indirect control or direction of more than 25% of the voting shares of a corporation. It also requires the identities of individuals who exercise or control over the affairs of a partnership or trust. The collection of this information is monitored by securities regulators through periodic compliance reviews.

As a result, the PCMA does not support the mandatory use of third-party verification of beneficial ownership. We believe the information used by third-party service providers would be subject to the same weaknesses identified in the Paper and would not be materially better than the KYC information currently collected by our members.

The challenges and issues surrounding beneficial ownership are of interest to the PCMA and its members. The Paper states consideration is being given to views on how to improve access and transparency to corporate ownership including “...whether beneficial information should be



collected in a central registry(s) or repository, [and] whether it should be made publicly available...” The PCMA would be supportive of broad consultation and industry input in the design and implementation of any such central registry scheme. We are concerned with balancing the right to privacy with transparency and the possibility that such information could be made available to third-party service providers and used for unintended commercial purposes.

### **Non-Federally Regulated Mortgage Lenders**

The Paper notes risks associated with non-federally regulated mortgage lenders. The implementation of NI 31-103 in 2009 introduced the exempt market dealer category. This resulted in a number of entities involved in the mortgage investment market requiring registration as EMDs and being subject to the collection of detailed KYC information. We note that recently the securities regulators announced changes to securities legislation that will expand the scope of participants in the mortgage investment industry that are subject to registration under the securities acts and the detailed regulation related to KYC.

### **Administrative Provisions**

The PCMA supports continued initiatives to enhance and strengthen identification methods. As the Paper notes, reliance on physically viewing and validating identification documents may not be the optimal identification method as we increasingly move to an online and digital world. We are encouraged that the Paper recognizes the need to maintain flexibility in a rapidly changing environment.

The PCMA is also supportive of adding provisions for exemptive relief and administrative forbearance given the rapid growth of the fintech sector. This will be helpful in the spirit of fostering innovation and supporting companies who just want to do proof of concept.

Many of our members are small firms, dealing in illiquid securities and mainly sell to Canadian residents. As a result, the inherent money laundering and terrorist financing risks of their business activities is low. However, they collectively spend a significant number of hours each year filing ‘NIL’ Suppression of Terrorism and Canadian Sanctions Reports (“**STCS Reports**”). In addition, the STCS Reports are filed with the securities regulators who are not charged with the administration, monitoring and enforcement of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and its associated regulations.

While we do not deny the importance of reviewing clients against the appropriate lists the filing of a NIL STCS Report adds no value to the protection of the Canadian financial system. Similarly, it is inefficient to have the securities regulators collect information they do not assess or require. Moreover, the securities industry (at least in Ontario) is self-funded through annual fees which are being diverted to conduct efforts unrelated to the regulation of the securities industry.



The PCMA finds the collection of NIL STCS Reports and filing with the securities commissions has a high regulatory burden and financial cost not commensurate with any benefits to the protection and safety of the Canadian financial system. We recommend exception reporting rather than the current practice of NIL reporting for EMDs to meet STCS reporting obligations. Furthermore, we recommend the reports should be filed directly with FINTRAC, as it is the entity which makes use of this information, rather than the securities commissions.

### **Closing Remarks**

The preceding remarks express the PCMA’s comments on the Paper. The PCMA would ask that the Department of Finance move forward with prudence taking into account the concerns in relation to regulatory burden placed on participants in the private capital markets and the securities industry more generally.

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We thank you for considering our submissions and we would be pleased to respond to any questions or meet with you to discuss our comments.

Yours truly,

### **COMMENT LETTER COMMITTEE MEMBERS**

*“David Gilkes”*

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David Gilkes  
Vice Chair and Co-Chair of the  
Compliance Network Committee

*“Nadine Milne”*

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Nadine Milne  
Co-Chair of the Compliance Network  
Committee

### **PCMA Executive**

*“Doug Bedard”*

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Doug Bedard  
Chair

*“Georgina Blanas”*

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Georgina Blanas  
Executive Director