

May 17, 2018

Ms. Lisa Pezzack
Director General
Financial Systems Division
Financial Sector Policy Branch
Department of Finance Canada
James Michael Flaherty Building
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Dear Ms. Pezzack:

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

CPA Canada is pleased to respond to the February 7, 2018 Discussion Paper *Reviewing Canada’s Anti-Money Laundering and Anti-Terrorist Financing Regime* (the Discussion Paper). As a professional body with representation on Canada’s Advisory Committee on Money Laundering and Terrorist Financing (ACMLTF), CPA Canada welcomes the opportunity to provide input on issues raised in the Discussion Paper related to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) and Canada’s Anti-Money Laundering and Anti-Terrorist Financing regime (the Regime).

CPA Canada recognizes the real threat posed by money laundering, terrorist financing and other forms of illegal and unethical conduct such as corruption to Canada’s national reputation, economy and society. The accounting profession plays a variety of important roles regarding the integrity of the financial system and markets. CPA Canada reiterates our ongoing commitment to engaging in these important issues that affect all Canadians.

We are aware of the various matters highlighted in the 2016 Financial Action Task Force (FATF) Mutual Evaluation Report concerning Canadian measures in place to combat money laundering and the financing of terrorism, as well as areas identified for further strengthening. We commend the Department of Finance for seeking consultation with stakeholders and the public regarding the broad array of potential policy measures and issues for consideration in the Discussion Paper. We look forward to participating in the continuing review and development of the Regime.



About Canada's CPA Profession

Chartered Professional Accountants of Canada (CPA Canada) is one of the largest national accounting organizations in the world, representing more than 210,000 members. Domestically, CPA Canada works cooperatively with the provincial and territorial CPA bodies who are charged with regulating the profession. Globally, it works together with the International Federation of Accountants and the Global Accounting Alliance to build a stronger accounting profession worldwide. CPA Canada, created through the unification of three legacy accounting designations, is a respected voice in the business, government, education and non-profit sectors and champions sustainable economic growth and social development. The unified organization is celebrating five years of serving the profession, advocating for the public interest and supporting the setting of accounting, auditing and assurance standards. CPA Canada develops leading-edge thought leadership, research, guidance and educational programs to ensure its members are equipped to drive success and shape the future.

Canada's CPA profession is regulated by the provincial and territorial CPA bodies whose authority and responsibilities are statutorily defined under provincial and territorial legislation. All members of our highly diversified profession are regulated by provincial/territorial requirements with approximately eighty per cent of our more than 210,000 members working outside of audit and assurance services in areas such as industry, non-profits, government and academia.

The CPA profession's Public Trust Committee (PTC) oversees the ethical standards and self-regulatory processes of the profession, serving to protect its integrity while maintaining public confidence and trust. The PTC serves the public interest by, namely, recommending policies and strategies to uphold the public's confidence and trust in the profession, as well as developing and supporting improved harmonization of the provincial and territorial CPA bodies' self-regulatory policies and practices. On behalf of the CPA profession, the PTC also monitors and responds to international developments in rules of ethics and standards.

Overall Response Recommendations

We are aware that the Department of Finance and other stakeholders such as the House of Commons Standing Committee on Finance (FINA) are evaluating and deliberating on approaches and efforts to improve the Regime to prevent money laundering and combat terrorist financing. We understand that there are domestic and international pressures and expectations for Canada to enhance its Regime. As the Discussion Paper notes in the introduction to Chapter 1, there is a need to "design a framework... to be aligned with the risk". As of today, the elements and effectiveness of such a framework are not clear to us nor is there clarity on the tools, measures, and expectations that will make the Regime a leader in the world for the future. CPA Canada would support the development of such a framework to balance the burden on business with the necessity to improve the effectiveness of the Regime for the next decade, considering developments in technology, threats, and speed of business.



The Discussion Paper refers to the collaboration between the federal and provincial governments on the development of “a national strategy to strengthen the transparency of legal persons and legal arrangements and improve availability of beneficial ownership information”. We believe that such a national strategy forms an integral part of helping Canadians to do business in a more transparent manner. Additionally, as the Discussion Paper points out, such information allows law enforcement’s efforts to be more effective. We would, however, discourage the creation of new requirements and expectations to strengthen the Regime that may be duplicative or confusing, if significant elements of key information may already be available to other parts of government such as through the tax system.

CPA Canada believes that a strong and effective response is needed to prevent improper activities within our financial system. We would, however, be concerned if the imposition of burdensome requirements and expectations on Canadian business bring only incremental benefits to the Regime, while leaving other possible areas of greater risk unaddressed. A well-developed, risk-focused Regime framework and national strategy are therefore critical requirements to meet Canada’s needs for today and tomorrow.

In developing such a Regime framework and national strategy, important choices will need to be put forward to business, legislators and Canadians. These choices should be adequately framed and developed, communicated and applied in a practical manner with reasonable regulatory burden. In some circumstances, it may be a matter of using existing rules and developing partnerships between stakeholders to achieve important public interest objectives (e.g., Project Protect). In other instances, such as beneficial ownership matters, the overall Regime approach needs fundamental consideration as part of the Regime framework and national strategy that will serve Canadians into the next decade.

Detailed Response Introduction

Globally, the accounting profession recognizes that it is on the front lines of systemic business innovation and technological change. A 2017 study by the International Federation of Accountants (IFAC) *The Accountancy Profession – Playing a Positive Role in Tackling Corruption* (<https://www.ifac.org/publications-resources/accountancy-profession-playing-positive-role-tackling-corruption>) notes a strong link between the percentage of professional accountants in the workforce and more favorable scores on the main global measures of corruption. The CPA profession is engaged and would welcome new tools being considered to assist in complying with AMLTF legislation and regulations in a complex and rapidly evolving national and international environment.

We found the Discussion Paper contained a broad array of potential policy measures and issues for consideration. In our response, we have included comments on those matters where our insights might provide the greatest value, recognizing that other stakeholders will offer feedback on matters that we have not specifically addressed.



Overall, we found the Discussion Paper to be interesting and thought-provoking when considering the Regime today and in the future. We support foundational concepts identified in the Discussion Paper including:

- Maintaining the balance between deterring and detecting money laundering and terrorist financing and improving corporate transparency while respecting the constitutional and privacy rights of Canadians;
- Minimizing the regulatory and compliance burden of measures to detect and deter money laundering and terrorist financing activities;
- Utilizing risk-based approaches to maximize the effectiveness of the regime;
- Internationally contributing to a strong global financial system through an effective Regime.

We believe these foundational concepts, along with data and details, would be useful to further evaluate proposed policy measures and to educate Canadians if changes are pursued. With the recognition that the regime needs to improve and develop in the future, we believe it is important to demonstrate how tactical and incremental changes are evaluated and how they fit into a larger picture of the Regime that effectively and efficiently addresses Canada's risks and contributes to global financial system security.

Beyond incremental and tactical changes, we believe there should be a cooperative and consultative process with key stakeholders, including regulators, in the private and public sector to develop a framework to protect Canada's reputation and the integrity of our financial system in an evolutionary period of sustained change. Such a framework should revisit the roles and responsibilities of all key stakeholders and outline efforts to define the future effectiveness of the Regime, improve upon it with an integrated larger picture approach and garner the support of Canadians.

LEGISLATIVE AND REGULATORY GAPS

Corporate Transparency

Generally, we agree that corporate transparency is important to the Regime and to international partners in the pursuit of global financial system security. We are aware that FATF international standards exist regarding transparency and beneficial ownership and that Canada, through the G20, has agreed to strengthen implementation of the standards. In an increasingly globalized financial system and markets, we agree that international support and implementation is critically important to Canada's financial system security and that of other countries.

Beneficial Ownership

From the Discussion Paper, we understand that a phased approach is being proposed that will begin with the commitments made by Canada's Finance Ministers in December 2017. While we understand the need to demonstrate progress on this front, we note that these proposed changes expected to affect federal, provincial and territorial corporate statutes or other relevant legislation are to be part of a national strategy not yet developed. We note that Canada's Finance Ministers have agreed to develop a joint outreach and consultation plan with the business community and other stakeholders, which is



very positive. We anticipate that there will be a desire to understand how the immediate changes will fit into the national strategy and we expect there will be interest in details as to how the national strategy will be developed to be both suitable and beneficial for Canada and Canadians. With our many jurisdictions in Canada, we understand that consultation and support building can take time and we have some concerns that legislative changes to be in force by July 1, 2019 may be too ambitious.

At a high level, the most immediate changes to be made regarding corporate information reporting requirements may be reasonable to improve upon transparency and consistency across jurisdictions although we will need to formally consider the details of the planned approach. In contemplating the legislative amendments, we believe it would be helpful to present these changes with an analysis of the risk basis to proceed and the expected costs and regulatory burden to be incurred. Further, we would recommend that government consider if the beneficial ownership information required could be leveraged from existing information streams already required by governments such as through the tax system. In addition, we suggest the government consider how the changes created today will satisfy the requirements of a national strategy that is to be determined. We believe it will be important to avoid any form of regulatory duplication or to enact changes that will not be fit for purpose longer term.

As noted in the Discussion Paper, further work will determine where beneficial ownership information should be located and how it might be accessed including, for example, by the public. Considering systems in other countries would be helpful to understand their relative strengths and weaknesses in addition to learning from other countries' experiences in this regard. Ultimately, we believe it is critical that the government set out the regulatory burden, privacy implications as well as the risks, such as money laundering, to be avoided or mitigated by such increased transparency. This information will help Canadians and corporate Canada to understand and assess such recommendations for possible support.

With respect to the Canadian Finance Ministers' agreement in principle to eliminate the use of bearer shares, we believe this should be a reasonable approach given the international assessment of their risks for money laundering. However, we are aware that there may be legitimate planning uses for bearer shares in a Canadian context and would therefore need to more broadly consult to respond to specific amendments.

Expanding Requirements for Designated Non-Financial Businesses and Professions (DNFBPs) in Relation to Politically Exposed Persons (PEPs), Head of International Organizations (HIOs) and Beneficial Ownership

We understand that FATF recommends all countries have PEP and HIO obligations in place for all reporting entities and that some Reporting Entities in Canada currently have such requirements, as well as obligations to collect beneficial ownership information from corporations or other complex legal entities. If such requirements were to be applied to accountants and accounting firms engaged in triggering activities, we would need to consult with members on detailed proposals to provide feedback of any concerns or issues. As an overall observation, beneficial ownership information could be straightforward, easy to obtain and static; however, it could also be very complex, subject to change and the costs to determine it could exceed that of the fees associated with the service to be provided to the client.



With detailed proposals, we could consult with members to determine the potential impact and inform government with respect to the potential regulatory requirements and compliance burden to be incurred. This would allow for an informed analysis of the risk basis on which to evaluate the proposals versus their cost.

Designated Non-Financial Businesses and Professions (DNFBPs) Non-Transactional Based Activities

We would need to consult members with detailed proposals in order to comment and provide feedback on the impact of any potential regulatory requirements and compliance burden. This would allow for an informed analysis of the risk basis on which to evaluate any proposals versus their cost.

Prohibiting the Structuring of Transactions to Avoid Reporting

We understand the issues identified in the Discussion Paper associated with the structuring of transactions to avoid reporting and at this early stage, we would highlight the need to avoid application to an otherwise inadvertent situation that could impose a criminal penalty.

MODERNIZING THE FRAMEWORK AND ITS SUPERVISION

Whistleblowing

We believe that Canada would benefit from a national framework for reporting and protection of whistleblowers. Currently, there is a patchwork quilt of provisions that appear in specific pieces of legislation at the federal, provincial and territorial levels. This impedes familiarity with what exists, when it applies and how it works. Canada needs to foster a culture and comprehensive whistleblowing architecture that enables doing what is best for the public interest while protecting those who take on the risks.

In providing this input, we wish to note an international ethics development that Canada's CPA profession is currently reviewing. In July 2017, the International Ethics Standards Board for Accountants (IESBA) Code of Ethics for Professional Accountants (IESBA Code) was amended concerning *Responding to Non-Compliance with Laws and Regulations* (NOCLAR). The revised IESBA Code sets out a framework for the response of professional accountants to known or suspected NOCLAR, including whether the known or suspected NOCLAR should be disclosed to an appropriate authority.

In Canada, the provincial rules of professional conduct must be as stringent as the IESBA Code unless there is a legal, regulatory, or public interest reason to differ. The CPA profession's Public Trust Committee is currently considering the NOCLAR changes to the IESBA Code in relation to the CPA profession's existing ethical standards and within the context of Canadian laws, regulations, and the public interest.



Closing Comments

On behalf of CPA Canada, we reiterate our ongoing commitment to engaging in these important issues that affect all Canadians. We would welcome any questions concerning our response and look forward to participating in the continuing review and development of the Regime.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Thomas".

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