



Securities Transfer Association of Canada

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President

Delivered via email: AML-ATF@osfi-bsif.gc.ca

November 30, 2020

Superintendent of Financial Institutions

Office of the Superintendent of Financial Institutions
255 Albert Street
Ottawa, Ontario
K1A 0H2

Dear Sir/Madam:

Re: Update and Consultation on OSFI's Activities on Anti-Money Laundering/Anti-Terrorist Financing (AML/ATF) Supervision

The Securities Transfer Association of Canada ("STAC") is pleased to be able to offer our comments on OSFI's review and consideration of specific adjustments to Guideline E-13 with a goal to ensure greater clarity about OSFI's mandate in relation to AML/ATF and to prevent any overlap with FINTRAC's role.

STAC is a non-profit association of Canadian transfer agents, most of which are either federal or provincial trust companies, that among others has the following purposes:

- To promote professional conduct and uniform procedures among its members and others;
- To study, develop, implement and encourage new and improved requirements and practices within the securities industry;
- To develop solutions to complex industry-wide problems; and
- To provide a forum and to act as a representative and spokesperson for the positions and opinions of its members, and, where appropriate, its clients and the holders of securities.

To provide some context to our comments, it is important to first explain the functions performed by our members and their relationship to public and private companies, investors and the other financial intermediaries, as our role is often not clearly understood outside the industry.

Role of a Transfer Agent and Registrar

STAC members' clients consist primarily of public and private companies for which they act as transfer agent and registrar (hereinafter, a "transfer agent"). In the vast majority of these cases, these clients list their securities to trade on public stock exchanges or on over the counter bulletin boards. As transfer agents, STAC members' primary function is to keep records of the securityholders of its various clients.

It is important to highlight that the transfer agent and registrar's direct relationship is with the public or private company whose register of securityholders it maintains, not the securityholders on that register. The investors who become those securityholders typically buy their securities through a broker-dealer or other securities intermediary, who has the client relationship with them. An investor can elect to leave their shares in their brokerage account (in which case, the investor is a beneficial securityholder and their name does not appear on the company's register) or can elect to become a registered securityholder and receive a physical security certificate evidencing their ownership position. This lack of a direct client relationship between the transfer agent and the registered securityholders creates some challenges in practical and reasonable compliance with certain aspects of the PCMLTFA and the Regulations.

If the beneficial securityholder wishes to become a registered securityholder, the request is made to their broker-dealer or other securities intermediary who transacts on their behalf with the transfer agent to move the securities into the investor's name on the issuer's register, at which point the transfer agent will generate a physical security certificate or Direct Registration Statement (DRS) in the investor's name. At this point, the investor appears on the register, but the transfer agent has only received the bare minimum of personal information on the investor – generally name and mailing address and, sometimes, SIN.

The transfer agent will subsequently use the registered securityholder's name and address to mail the continuous disclosure documents mandated under securities acts and corporate statutes (financial statements, proxy materials, etc.) and if the issuer declares a dividend, the transfer agent will also calculate and mail the dividend cheques and solicit their SIN for tax reporting purposes.

General Comments

We support the initiative by OSFI and FINTRAC over the past year to streamline Canada's AML/ATF regime to add efficiencies and reduce duplication with the oversight and execution by each respective regulatory body to be consistent with their mandate. As FINTRAC is responsible for ensuring compliance with Part 1 of the PCMLTFA, and the PCMLTFR, it is important that any OSFI guidance does not introduce or create any new regulatory requirements.

As part of the consultation, OSFI is seeking FRFI views on the nature and timing of any potential guidance amendments, including:

- Whether amendments to Guideline E-13 are needed, and the extent any such changes in relation to AML/ATF supervision or clarifying OSFI's expectations for compliance risk management more broadly; and
- Whether Guideline B-8 should be rescinded in full, or if elements of Guideline B-8 should be incorporated in a revised Guideline E-13.

In order to respond to the above questions, it is important to also review and compare existing FINTRAC guidance to ensure no duplication and to afford OSFI and FINTRAC the opportunity to debate best fit for certain aspects of Canada's regime guidance. The relevant FINTRAC guidance appears to be "Compliance Program Requirements".

There are differences in the guidance under Guideline B-8 as compared to FINTRAC's "Compliance Program Requirements" largely driven by the differing mandates of each regulatory body:

1. Guideline B-8 provides for a prudent corporate governance model that includes, amongst other elements:
 - a. "fit and proper requirements" for significant owners, directors and senior officers of the FRFI;
 - b. Clear articulation of the risk-based approach and the application of the three ways in which the PCMLTFA and the Regulations prescribe how an outcome is to be achieved that includes defining "reasonable measures"; and
 - c. Principle elements of an AML/ATF program, including the appointment of a CAMLO, CAMLO mandate and qualifications; roles and responsibilities of Senior Management; Reporting (Senior Management and Board) and Self-assessment of Controls.
2. FINTRAC's Compliance Program Requirements includes the basic elements of a compliance program; an appointed compliance officer (which can be interpreted differently than an explicit independent CAMLO role); and is silent on the corporate governance aspects, reporting and self-assessment of controls.

OSFI's mandate includes supervising financial soundness and promoting the adoption of policies and procedures designed to mitigate risk (prudential supervision). Therefore, it should continue to prescribe a compliance program with a risk-based component designed to ensure effective control over ML and TF risks aimed at helping institutions meet OSFI's governance and control expectations, either as part of Guideline E-13 (rescind Guideline B-8); or, a revision of Guideline B-8 to better align to OSFI's mandate.

We concur that effective control over ML and TF risks, and related regulatory, operational and reputation risks, is essential. However, it remains important to reaffirm that to achieve effective control, FRFIs will adopt different approaches to their AML/ATF programs that take into account the nature, scope, complexity and risk profile of their institution.

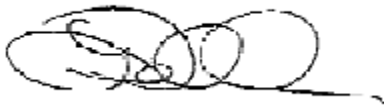
Update and Consultation on OSFI's Activities on AML/ATF Supervision

November 30, 2020

There remains value in providing FRFIs clarity with respect to OSFI's expectations for a compliance program with a risk-based component designed to ensure effective control over ML and TF risks. Even if that clarity merely reaffirms that OSFI has reviewed and determined that the existing FINTRAC "Compliance Program Requirements" guidance and expectations are sufficient.

We would be pleased to discuss these comments and provide additional feedback as OSFI may require regarding this commentary.

Sincerely,



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