PMAC
PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA
Advancing Standards™

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**Re: Proposed Amendments to the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations**

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The Portfolio Management Association of Canada ("PMAC") is pleased to have the opportunity to submit the following comments in response to the July 4, 2015 Federal government proposed amended regulations (the "Proposed Amendments") under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA), which form part of the Government of Canada's efforts to strengthen Canada's anti-money laundering and anti-terrorist financing regime.

## Background

As background, the Portfolio Management Association of Canada (PMAC) represents investment management firms registered to do business in Canada as portfolio managers. Our 200 + members are comprised of large and small firms managing institutional and private client portfolios, a large portion of which is pension funds and private retirement savings. PMAC was established in 1952 and its members manage in excess of $1.4 trillion assets. Our mission is to advocate the highest standards of unbiased portfolio management in the interest of the investors served by members. For more information about PMAC and our mandate, please visit our website at www.portfoliomanagement.org.

PMAC members are entities that fall within the definition of "securities dealers" under the PCMLTFA as persons and entities authorized under provincial legislation to engage in the business of dealing insecurities or any other financial instruments, or to provide **portfolio management** or investment advising services. As such, our comments relate specifically to the implementation of the Proposed Amendments and the compliance efforts of our Members as it relates to portfolio

management. An important point to highlight at the outset of this submission is that our Members do not custody assets for their clients nor have access to cash or accept cash directly from clients. Assets are custodied with a third party bank/custodian. We recognize that the AML regime must provide effective deterrence of unlawful money-laundering and terrorist activities, but it is important that the portfolio management industry is not overburdened with onerous rules and regulations given the risk profile of their business.

## General Comments

PMAC supports regulatory amendments that work to strengthen Canada's anti-money laundering and anti-terrorist financing regime and to improve Canada's compliance with international standards. In this regard, we applaud the Department of Finance's Proposed Amendments as they provide more principle-based regulation and less prescriptive requirements, which allow regulated entities more flexibility in meeting compliance obligations under the PCMLTFA and its regulations.

PMAC also supports amendments that address concerns raised with respect to duplication of identity verification efforts, particularly in the investment industry. We believe that reporting entities should be able to rely on the due diligence efforts regarding customers previously made by another agent or industry participant with respect to the same client. In general, PMAC supports the Proposed Amendments however; highlighted below are some areas where further clarity is required.

## Identify Verification Requirements

Client verification in a non-face-to-face context has become more and more challenging in an increasingly global environment. Many PMAC Members service high net worth private clients that are often "snowbirds" travelling to warmer climates during certain parts of the year. These clients spend a significant portion of their time abroad. In addition, our member's clients interact with our members on line or in other non-face-to-face situations. For these reasons, verifying identity in non-face-to-face situations could be significantly enhanced by reliance on various technologies (i.e. Skype, video conferencing and Face Time). In this regard, we applaud the direction of some of the changes proposed in this area. New, less prescriptive methods for verification of identity are particularly relevant for entities that transact with individuals that are not physically present. Reporting Entities will be permitted to verify identity by various additional procedures that include doing any two of the following:

> (ii) referring to information from **a reliable source** that contains the individual's name and address, and verifying that the name and address are those of the individual;
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> (ii) referring to information from **a reliable source** that contains the individual's name and date of birth, and verifying that the name and date of birth are those of the individual; or

(iii) referring to information that contains the individual's name and confirms the individual has a deposit account, credit card or other loan account with a financial entity, and verifying that information.

The introduction of the "reliable source" requirement raises questions as to what information and sources will be considered acceptable. We recommend that these provisions be interpreted in a manner that is practical for entities that conduct online and mobile transactions.

We also note the proposed change which requires referring to a person's Canadian credit file that has been in existence for at least *three years* and verifying that the name, address and date of birth contained in the credit file are those of the person whose identity is being verified. Since reference to a credit report without a secondary source is not currently a compliant means of identity verification, this is a welcome change. However, we question the change to the requirement that a credit file be in existence for 3 years (up from 6 months). In our view, this extended period is excessive and punitive to certain Canadian clients (younger clients or new immigrants, for example). We also note that many international jurisdictions do not prescribe the length of the credit file. We recommend that the credit file only be required to be in existence for the 6 month period as is currently required under the Regulations.

Finally, we support the provisions in the Proposed Amendments which are intended to limit the duplication of identity verification efforts. This is particularly important in the securities industry where one client is dealing with various market participants that are all subject to AML requirements.

## **Politically Exposed Persons**

The Proposed Amendments update and expand the requirements when dealing with politically exposed persons (PEPs). We support the expansion of the proposed PEP regulations to apply to domestic PEPs as well as the heads of international organizations or family members or close associates of such persons ("PEP Related Persons"). However, we believe it would be useful to outline the expectations and perhaps define what would be considered an "international organization" and "close associate". Also, we query why the prescribed period for the definition of "politically exposed domestic person" in subsection 9.3(3) of the Act is 20 years. We believe a 20 year period is excessive and a more reasonable statutory period would be 5 years.

We note the change that all financial entities and securities dealers will be required to take reasonable measures on a periodic basis, to determine if an existing account holder is a PEP Related Person. We understand that this change would apply to all account holders. We would appreciate confirmation on this point. Regulated entities subject to this requirement will have to build processes and procedures to address this new monitoring obligation. It would be helpful to get further clarification on the expectation and frequency of "periodic monitoring".

In addition to the abovementioned change, in respect of PEP Related Persons, the proposed Regulations also provide that where a financial entity or securities dealer (or any of their employees) become aware of information that could reasonably be expected to raise reasonable grounds to suspect that a person who is an existing account holder is a PEP Related Person, the financial entity and securities dealer are required to take reasonable measures to determine whether the account holder is in fact such a person. This also implies additional monitoring will be required for PEP Related Persons. We would like to clarify our understanding that the obligation to determine the source of funds to be deposited in the account, to obtain senior management approval to keep the account open and to engage in enhanced ongoing monitoring, only apply to foreign PEPs and their family members and close associates.

Finally, the change which allows firms more time — 30 days, up from 14 days — to determine whether a client is considered a PEP is a welcome change. We believe this increased timeframe will enhance the PEP determination process.

## Risk Assessments

As a general comment, we believe that regulated entities, including PMAC Members, could benefit from additional guidance on conducting an adequate risk assessment under the current requirements. The Proposed Amendments add two additional factors that must be considered in performing a risk assessment. These include:

- Any new developments in respect of, or the impact of new technologies on, the regulated entity's clients, business relationships, products or delivery channels or the geographic location of their activities
- For a regulated entity that is a financial entity or securities dealer, any risk resulting from the activities of an affiliated Canadian financial entity or securities dealer or from the activities of an affiliated foreign entity that carries out similar activities

We believe that both of these factors are likely already being considered and taken into account when regulated entities are conducting their risk assessments. However, in order to assist firms with the consideration of these additional factors, we seek clarity on what is contemplated by "new technologies" and how prospective the analysis must be to ensure compliance with consideration of the first additional factor. The second additional factor will likely require more detailed analysis and could be more challenging from an enterprise perspective. We urge FINTRAC to work closely with securities and bank regulators to develop meaningful guidance in this area.

## Implementation, Enforcement and Service Standards

We understand that once the proposed amendments are approved, FINTRAC will update its guidance to set out its expectations for how obligations are to be met as

well as undertake possible outreach activities to ensure reporting entities are aware of the new obligations. We welcome additional guidance from FINTRAC and would be pleased to participate in any outreach efforts undertaken. We will communicate this to FINTRAC as well.

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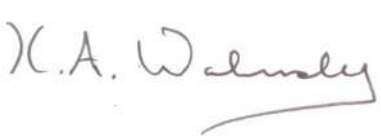
We would be pleased to discuss the above comments with Department of Finance staff in more detail and respond to any questions you may have.

Yours truly;

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA



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