INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

Ian C.W. Russell
President & Chief Executive Officer

December 16, 2011

VIA REGULAR MAIL

Ms. Leah Anderson
Director, Financial Sector Division
Department of Finance
140 O'Connor Street
Ottawa, Ontario
Canada
K1A 0G5

Dear: Ms. Anderson:

Re: Consultation Paper on Proposed Amendments to the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations on Ascertaining Identity ("Consultation Paper")

We are writing to you on behalf of the Investment Industry Association of Canada ("IIAC"). Our mandate is to promote efficient, fair and competitive capital markets in Canada. To this end, the IIAC supports the objectives of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* (the "Regulations") and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* ("Act"). A robust and effective anti-money laundering ("AML") regulatory regime acts to deter criminal activities and to enhance the overall credibility of our Canadian capital markets.

In November 2010, the IIAC and our members submitted a letter to the Department of Finance requesting relief from certain provisions of the Regulations relating to record-keeping and ascertaining identity that, in our view, place our members at a significant competitive disadvantage to other securities dealers operating in the global capital markets. We received a response in August 2011 which indicated that the proposal was still being examined. We look forward to working with the Department of Finance in order to address current disparities in the Canadian AML regime that impede the ability of our members to attract foreign investments from institutional investors that are regulated entities in their home jurisdictions while continuing to ensure that Canada satisfies FATF Requirements.

11 King Street West, Suite 1600, Toronto, ON M5H 4C7
Tel: (416) 865-3036 Fax: (416) 364-4861 irussell@iiac.ca / www.iiac.ca

Response to Consultation Paper

The Consultation Paper was published on November 7, 2011 and many of the changes contemplated in the Consultation Paper appear to raise current standards. As you will note from the responses below, our members currently follow such an enhanced regime as securities rules at both the Provincial and Self-Regulatory level place higher requirements on securities dealers than many other sectors do on their constituents. Below, we have outlined each proposed change and our members' concerns.

Proposal 1.1 – Introduction of business relationships

The Regulations currently do not extend AML obligations to the concept of 'business relationships' but rather to account openings for clients and occasional financial transactions. Under the proposal, the Regulations would be extended to cover the ongoing monitoring of business relationships, enhanced customer due diligence and ID requirements in respect of high risk business relationships as well as record keeping of the purpose and intended nature of a business relationship.

The definition of business relationships as included in the Consultation Paper does not provide adequate information to determine what business relationships would be captured under this proposed change. We recommend that the Department of Finance provide further clarification on the proposed revision in order to assist our members in understanding the scope of the change and how it will affect current processes. The definition as drafted appears to limit the relationships that could apply but goes beyond the current client relationship. Our members request specific guidance on the reach and definition of 'business relationship'. Specifically, would this trigger vendor due diligence, increased due diligence around institutional and investment banking businesses as well as ongoing monitoring requirements. Further details are required to evaluate the impact this change could have on our members and how it will affect current processes. Please note however, that it is our understanding that the proposed changes do not require client identification and record keeping requirements where the regulatory requirement does not exist today.

We are also unclear regarding the requirement which states "clarify that the obligation to apply designated measures to business relationships 'does not arise' until after such time as a person or entity subject to the Act conducts a financial activity or transaction in respect of which a record is required to be kept under the Regulations." Specifically in respect to the verification of ID, the IIAC and our members question whether this is in direct contradiction to the Financial Action Task Force ("FATF") Recommendations and whether changes will be required to the Financial Transactions and Reports Analysis Centre of Canada ("FINTRAC"), Guideline 6E: Record Keeping and Client Identification for Securities Dealers. The current requirements state "If you cannot identify an individual or an entity when you open an account according to the identification requirements, you cannot open the account. This means that no transaction other than an initial deposit can be carried out unless you are able to identify the individual or entity." Our members are of the opinion that not meeting their due diligence requirements until after the transaction takes place puts them at significant risk and as such we request further guidance and information to help us fully understand what this amendment proposes to accomplish.

Proposal 2.1 – Customer Due Diligence ("CDD") of suspicious transactions that are otherwise exempt from CDD obligations

Proposal 2.1 seeks to amend the Regulations to clarify that reporting entities are required to take reasonable measures to ascertain the identity of customers who conduct any financial transactions that gives rise to a suspicion of money laundering or terrorist financing, regardless of whether such a transaction or client would otherwise be subject to a prescribed exemption under the Regulations. The IIAC and our members are generally in agreement with the proposed changes as this is the general practice our members currently have in place.

However, there is some concern amongst members where an existing exemption at the client level has been applied. Specifically, how we would approach the client to obtain the information without 'tipping' them to suspicion. As the legislation and guidelines are publicly available information, it is likely any entity which qualifies for exemptions would be well aware of them, and a request to provide such information would raise questions.

Proposal 2.2 – CDD in respect of suspicious attempted transactions

Proposal 2.2 proposes to amend the Regulations to clarify that reporting entities must take reasonable measures to ascertain the identity of individuals who conduct or attempt to conduct suspicious transactions. Again, we are generally in agreement with the proposed changes.

Proposal 3.1 – Expand CDD measures for beneficial ownership information

Proposal 3.1 proposes to extend the beneficial ownership provisions of the Regulations. The changes will make the requirement to obtain beneficial ownership information mandatory and will require further reasonable measures be taken to ascertain beneficial ownership. Furthermore, it also states that this requirement extends to identifiable beneficiaries, settlors and trustees of formal trusts.

The IIAC and our members are in agreement with the proposed changes which seek to make the obligation to obtain beneficial ownership information mandatory as this is current practice for many of our members. In order to accurately assess the impact of the proposed revisions, we respectfully request clarification as to what the proposed revision means wherein reporting entities would be required to take reasonable measures to ascertain beneficial ownership. Does this mean that members need to take reasonable measures to verify that the beneficial information collected is accurate? What type of documentation would be required to independently verify/confirm beneficial ownership? Would a copy of the share registry or organizational chart suffice? The IIAC and our members would appreciate further information as to what the proposed requirement entails in order to determine how this will impact members' businesses. The wording as drafted is extremely broad and raises numerous questions especially when dealing with clients in other jurisdictions.

The requirement to extend this obligation to settlors also raises some issues for our members. Often the settlor is not involved in the account as they may be deceased or no

longer involved for a variety of other reasons. While our members agree and acknowledge that settlor should be disclosed, we request that exemptions to CDD and ID requirements be included when the trust is already established and the settlor has no ongoing involvement in the ongoing management of the trust or the account.

Proposal 3.2 – Extend ongoing monitoring obligations to all risk levels of customers and activities to which the Regulations apply

Our members who are regulated by the Investment Industry Regulatory Organization of Canada's ("IIROC") are currently required to continuously monitor client accounts and provide enhanced monitoring of high risk accounts. It is our view that this proposal is consistent with the requirement to take a risk-based approach to customers, products, and activities as part of the AML Compliance regime. Consequently, it would appear the proposal is stating that, using a risk based approach, reporting entities are required to monitor client transactions to which the regulations apply and that this requirement is not limited to "high risk clients" only. We are of the view that this requirement does not call for additional monitoring beyond what is currently required by IIROC.

Our members would also appreciate further clarification as to how this would work for those of our members with multiple subsidiaries who are not members of IIROC. We query whether such monitoring needs to be centralized. More information is required to determine how this would be structured for members with large multi-faceted organizations.

Proposal 3.3 – Conduct ongoing monitoring in respect of business relationships

As outlined above, our members require additional information as to what a 'business relationship' entails in order to conduct an impact analysis of how this proposed change will affect their businesses.

We would also like to confirm that it is our position that when reviewing business relationships, the requirement to monitor exists only at the individual reporting entity level within the firm's own jurisdiction and does not require members to view relationships across legal entities, wholly owned subsidiaries and affiliated companies.

Proposal 3.4 – Purpose and nature of a business relationship

Proposal 3.4 intends to add a requirement which will require reporting entities to keep a record that sets out the purpose and intended nature of a business relationship between a reporting entity and its customers. IIROC members presently collect much of this information under their current requirements at the account level and there would be no added value to describe the relationships which are generally self-explanatory. We do note that, for reporting entities that offer a multitude of products which a client may apply for over a period of time, it would not be possible to obtain an accurate view of the purpose and intended nature of the entire business relationship at any one time. As such, we would appreciate acknowledgement that our current practices meet the proposed requirement.

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Proposal 3.5 – Clarify and expand the application of enhanced CDD measures

Proposal 3.5 intends to amend the Regulations to provide that the obligation to implement enhanced CDD measures also arises in circumstances in which a client, activity or business relationship has been determined to be high risk as the result of ongoing monitoring. It also aims to require reporting entities to implement mandatory enhanced CDD measures when a client, activity or business relationship has been determined to be high risk. The enhanced CDD measures would include taking:

1. Enhanced measures to ascertain the identity of any person or confirm the existence of any corporation or entity;
2. Enhanced measures to keep client identification information up to date; and
3. Measures to conduct enhanced ongoing monitoring of business relationships for the purpose of detecting suspicious transactions.

The IIAC requests that further guidance be provided as to what is expected under Proposal 3.5. Furthermore, many of our members currently have enhanced due diligence processes in place which may already meet the proposed requirements and as such we would appreciate further information as to what the expectations are for enhanced measures. Specifically, further guidance is required on the following:

1. What does "enhanced measures" mean in the context of the requirement to ascertain the identity of a person / confirm existence of any corporation / entity; and
2. What is the expectation on the part of the Department of Finance with respect to the need to take "enhanced measures" to "keep client identification information up to date" for both personal and non-personal clients?

Conclusion

The IIAC and our members appreciate the Department of Finance taking the time to consider all of our comments. We welcome the opportunity for an ongoing dialogue with the Department of Finance and looking forward to hearing back from you regarding our concerns.

The IIAC consents to the Department of Finance posting this submission and names on their website.

Yours sincerely,

"Ian Russell"

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