Goodmans LLP Update

White Collar Risk Management and Investigations

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Canadian Federal Government Proposes Amendments to Anti-Money Laundering Regulations

The Government of Canada has recently introduced a package of regulatory amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* (the "**Regulations**") in an effort to strengthen Canada's anti-money laundering and anti-terrorist financing regime. The amendments follow several years of formal and informal consultations with stakeholders. Many of the proposed changes move toward greater flexibility for reporting entities, although increased compliance requirements will also be introduced for certain matters.

The Government of Canada is currently accepting representations from interested persons on the proposed regulations until September 2, 2015.

Background

Canada's anti-money laundering and anti-terrorist financing regime was formally established in 2000 and expanded in 2001 with the introduction of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the "**Act**"). The *Act* and its corresponding *Regulations* are overseen by the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) and the Office of the Superintendent of Financial Institutions (OSFI).

The regime establishes reporting requirements for designated entities that provide access to the financial system (such as financial institutions, life insurance companies, securities dealers, money services businesses, accountants, casinos, and government entities) and which could therefore be susceptible to criminal abuse. Designated reporting entities are subject to obligations with respect to record keeping, verification of identity of designated persons, reporting suspicious and other prescribed financial transactions, and the establishment and implementation of an internal compliance regime.

The Financial Action Task Force (FATF) is an international intergovernmental body that develops and recommends national and international policies to combat money laundering and terrorist financing. As a founding member of the FATF, Canada has committed to implement the Task Force's recommendations (the "**FATF Recommendations**") and to submit to periodic peer evaluation of their effective implementation. In February 2012, the FATF enhanced its international standards in various areas and made appropriate updates to the FATF Recommendations. The Canadian federal government has proposed the new regulatory amendments in an effort to align with the updated FATF Recommendations for its upcoming evaluation in 2015-2016. Non-compliance could provoke sanctions, cause serious reputational harm, and subject Canadian financial institutions to increased regulatory burden when doing business overseas.

The proposed amendments follow the federal government's issuance of a formal consultation paper issued in 2011, its publication of targeted discussion papers in 2013 and its informal discussions with stakeholders in 2014 and 2015.

Proposed Regulatory Amendments

The stated objectives of the proposed regulatory amendments are to:

- update and strengthen the legislation to combat money laundering and terrorist financing activities;
- strengthen due diligence requirements regarding customers;
- close gaps in Canada's regime;
- improve compliance, monitoring and enforcement efforts;
- strengthen information sharing; and
- address certain technical issues.

Generally, the proposed amendments add clarity and efficiency to the Regulations. However, Canadian institutions designated under the *Act* should also take note of some additional reporting obligations that will be implemented. The following changes are notable:

- *Identifying Politically Exposed Persons*. The *Regulations* currently require institutions to identify politically exposed foreign persons in prescribed circumstances, including account openings and large transactions of $100,000 or more. Politically

exposed foreign persons are individuals who hold or have held positions in foreign governments, such as heads of state, members of the government's executive branch, ambassadors, military officials, and judges (or family members thereof). The amendments would add a similar requirement with respect to identifying politically exposed domestic persons or heads of international organizations (or family members thereof) and the measures to be taken as a result.

- *Period for Determining Exposure*. The time within which a reporting entity must make a determination that a client is a politically exposed foreign person would be extended from 14 days to 30 days. Reporting entities would be further required to periodically determine whether existing account holders are politically exposed foreign persons (not just in prescribed circumstances).
- *Flexibility in Client Verification*. The amendments would approve a more flexible and broader range of reliable and independent methods that reporting entities can use to verify the identity of their clients. They would create two categories of sources of verification information, the former that can be used on a standalone basis (such as government-issued photo identification) and the latter that are sufficiently reliable to be used in combination with another source.
- *Reducing Duplication of Efforts*. The amendments would also limit some duplication of verification efforts by extending the existing identity verification exemptions for visual or voice recognition to situations where the client is recognized digitally (by a login code, for example) or has been previously verified by an agent or broker.
- *Expanding Risk Assessment Criteria*. Currently, the amendments require reporting entities to consider business relationships, products, delivery channels, and geographic locations in formulating risk assessments. The amendments would add to this existing list the additional requirement of assessing and documenting how new technology impacts the other risk assessment criteria.
- *Increasing Information Sharing*. The amendments would improve information sharing in the regime by requiring financial conglomerates to consider the risks resulting from activities of affiliate institutions in their compliance programs. They would also increase the scope of information FINTRAC is permitted to disclose to law enforcement, intelligence, and foreign bodies by including the methods that were used to verify an individual's identity.
- *Requiring Reasonable Measures*. Under the amendments, if institutions cannot produce certain information, they would be required to report on the 'reasonable measures' they had undertaken in an effort to do so.

Considerations for Designated Reporting Entities

Reporting entities will be expected to comply with the new obligations and make necessary adjustments to their existing systems. These amendments may increase administrative costs and will impose new risk assessment obligations. For example, entities would be required to periodically identify politically exposed foreign persons, consider the impact of new technologies on existing risk assessment criteria, and consider risks resulting from their affiliates' activities. They would also be subject to additional reporting requirements.

However, for many organizations these obligations may be partially offset by increased efficiency. For example, entities that frequently transact where an individual is not physically present would be able to obtain electronic signatures and digitally verify the individual's identity. Further, the amendments give reporting entities more time to determine whether a person is a politically exposed foreign person.

Upon the conclusion of the 60-day consultation period for the proposed amendments, the measures that provide more flexibility for reporting entities would come into force immediately. The measures that impose new requirements would come into force one year after registration.

For further information on these recent amendments, please contact any member of our White Collar Risk Management and Investigations Group.

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