Canadian Life & Health Insurance Association

Association canadienne des compagnies d'assurances de personnes

Submission to the Department of Finance

Consultation on Strengthening Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime

August 1, 2023

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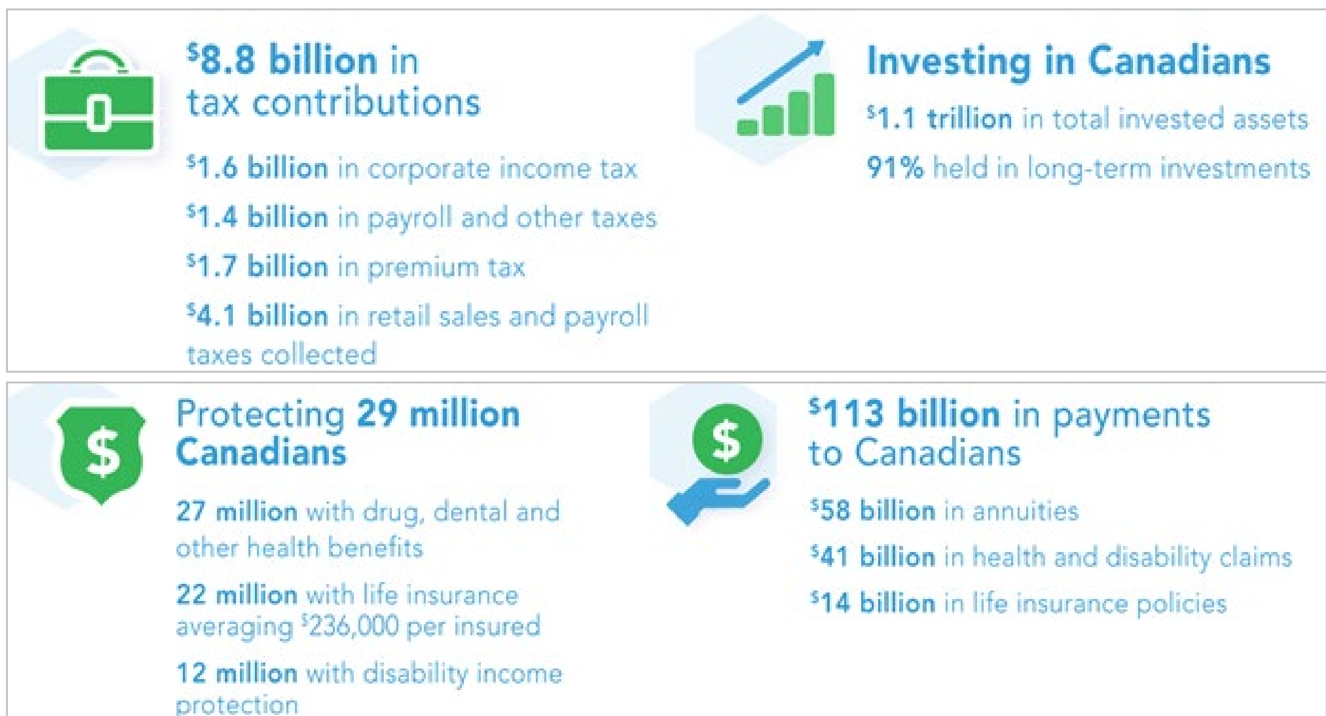
INTRODUCTION



The Canadian Life and Health Insurance Association is writing on behalf of its membership to comment on the consultation paper issued on June 6, 2023, which forms the basis for discussion of changes to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (the PCMLTFA). We appreciate the broad range of topics covered in the paper and are pleased to see that there were several proposals that would reduce the burden for our sector.

Our submission focusses on two key principles aimed at improving the effectiveness and efficiency of the AML-ATF regime:

1. Changes to the PCMLTFA should target the highest risk areas, and

2. We recommend that threats to Canada's from foreign interference be overseen by existing law enforcement agencies and OSFI, not FINTRAC. We also recommend that responsibility for overseeing Canada's AML-ATF regime and anti-fraud initiatives—move from the Department of Finance to Public Safety Canada.

We also include three sets of Appendices:

1. Discussion of the six priority issues that we tabled in response to the Department of Finance request leading up to the publication of the consultation paper. We have also added a section in that Appendix explaining why the proposed inclusion of mortgage creditor insurance in the regime is unnecessary and could harm consumers;

2. Our view on those questions posed in the consultation paper that relate to life and health insurance; and

3. Our views on the proposed Canada Financial Crimes Agency (CFCA), particularly in the context of benefits fraud which plagues all life and health insurers and imposes tremendous costs which ultimately redound back to the consumer.

OUR KEY RECOMMENDATIONS

1. Changes to the PCMLTFA Should Target High Risk Areas

Canada's life and health insurers recognize the harm caused by money laundering and terrorist financing (ML-TF) and support a strong and effective regime to deter, detect and prosecute these offences.

Our sector has been subject to the regime for over 20 years and, as such, insurers and regulators have a good understanding of the inherent risks in our industry. We have, in place, robust controls to address those risks. These conclusions about our industry were reiterated by the Financial Action Task Force (FATF) as well as the Cullen Commission.

The nature of the life insurance business is such that our products have intrinsic controls limiting the ability of criminals to exploit our sector.

An insurance contract represents a long-term promise to pay a benefit on the occurrence of a specific event, usually the death of the policyholder. Coupled with the absence of a liquid market for insurance policies, this makes life insurance a poor vehicle to convert illicit funds.

Moreover, insurance policies go through an underwriting check to ensure that a policyholder has an insurable interest and does not have excessive coverage which would lead to adverse selection and moral hazard. Underwriting also provides the insurer with a deeper ability to "know its customer". Before accepting a new risk, the insurer asks a number of key questions—what is the insured's profession? Who are their family members? What is their medical history? Many insurers also ask

about criminal history—i.e., whether the applicant has been arrested and charged with a criminal offence in a specific prior timeframe (e.g., 10 years). No other reporting entity sector conducts this level of diligence because the obligation to pay in other industries is not tied to the idiosyncratic characteristics of the customer.

To provide extra comfort, the industry monitors policies for indicators such as overpayment of policy premiums or use of free look periods to trigger refunds issued by an insurer.

For products that have a savings component, such as segregated funds, most insurers have contractual limitations that prevent a policyholder from using the fund like a bank account.

In short, life and health insurers are low-risk entities for money laundering and terrorist financing. The regulatory framework governing our sector is both mature and stable and we have implemented necessary controls in response to regulatory requirements and any potential residual threats.

Some other sectors are less mature and transparent. They may have been subject to the regime for only a very few years or are still not in scope. Unlike financial services companies, they may not otherwise be regulated, which reduces the ability of FINTRAC to uncover information about controlling shareholders or other aspects of their business.

The discussion paper puts forward suggestions covering well-established industries like ours and also nascent industries. When one examines the list of sectors which are currently excluded from the regime, some are cash-intensive and susceptible to money laundering. Greater effort to include these sectors in the AML regime will yield much higher dividends than adding incrementally more regulatory oversight to a low-risk sector like life insurance.

We strongly believe that the regulatory regime should recognise the differing risks in various sectors and apply rules in a risk-based manner. Our strong recommendation is that the reforms remain focused on sectors which have little or no oversight and which have been identified by FATF and others as posing the greatest risk.

2. New Accountabilities Should Fall to Entities Best Suited to Discharge Them

Accountability for monitoring foreign interference should reside with OSFI and law enforcement:

The discussion paper proposes several changes which expand the obligations of government agencies and private-sector entities alike. In particular, one significant proposal could see FINTRAC assume responsibility for threats to the security of Canada, economic security, proliferation financing, and sanctions evasion, along with concomitant reporting obligations on businesses that are subject to the PCMLTFA.

We do not believe that FINTRAC is best placed to monitor threats of foreign interference. Businesses which do not report to FINTRAC today (because they cannot be exploited for ML-TF) can still be targets of foreign interference and threats to Canada's economic security. Examples include the

telecommunications sector, media sector, power generation, and charities. If FINTRAC is to report financial transactions in connection with a broadened mandate, the universe of FINTRAC reporting entities will need to be expanded significantly beyond what is captured at present.

Given the recent expansion of OSFI's mandate to cover foreign interference in Canada's financial sector, we are also concerned about potential overlap between and duplication of OSFI and FINTRAC accountabilities. This would be at odds with recent efforts to eliminate unnecessary duplication in the application of ML/TF regulatory requirements for federally-regulated financial institutions (FRFIs).

On May 17, 2021, OSFI announced that it would be rescinding Guideline B-8 setting out expectations for institutions it regulates in relation to its oversight of ML-TF, thereby ceding AML-ATF oversight to FINTRAC. This change was supported by FRFIs. The change made for a reduction in the compliance burden, and it also focused accountability for successes and failures within FRFIs with one agency, removing any doubt about who oversees FRFI compliance.

In conjunction with its broadened mandate, OSFI recently announced that it expected FRFIs to have policies and procedures in place by January 2024 to deal with foreign interference. The proposed expansion of FINTRAC's mandate would compete with OSFI oversight and would represent a retrenchment from the intent of the May 2021 announcement. This overlap could be further exacerbated if the CFCA ends up having a role to play in foreign interference/threats to Canada's financial security. In our view, threats to Canada's security are best policed by Canada's intelligence agencies (CSIS and CSE), in tandem with law enforcement (RCMP, provincial and municipal police). The proposed CFCA would be more effective if were decoupled from Finance.

<u>Transfer accountability for AML from the Department of Finance to Public Safety Canada:</u>

We also encourage a reconsideration of the Department of Finance's role in fighting financial crime.

Canada's effectiveness in preventing money laundering has been criticized by the FATF, the Cullen Commission and Transparency International. The lack of prosecutions and criminal asset seizures are among the shortcomings listed in studies examining Canada's record on AML-ATF enforcement. Money laundering is fundamentally a criminal and law enforcement issue, particularly one driven by international organized crime. Regulated financial services firms will continue to play our role and should ensure we are leveraging strong tools and processes in the fight against money laundering. But financial services are only part of the solution and the bulk of the effort to combat money laundering needs to be focused on other sectors as well if Canada is to succeed in reducing ML and TF.

The Government should move the responsibility for overseeing Canada's anti-money laundering and fraud initiatives – including FINTRAC – from the Ministry of Finance to Public Safety Canada, supported by the Department of Justice. These are the bodies that ultimately have expertise in combatting the organized criminal networks at the heart of major money laundering and fraud operations. Consolidating all AML/ATF functions under Public Safety Canada would more closely

integrate Canada's AML/ATF efforts into the law enforcement regime, resulting in better coordination, communication, policy development, and enforcement outcomes.

This model of integrating a country's Financial Intelligence Unit (FIU) within law enforcement is present in the UK, France, Singapore, Australia and Japan. The FIU in those countries reports directly to the policing authority or to the Home Office, which has law enforcement responsibilities. While FinCEN in the US falls under the Treasury Department, Treasury has traditionally had oversight of a law enforcement arm, the Bureau of Alcohol, Tobacco and Firearms (which moved under the Justice Department following 9/11).

CONCLUSION

Once again, we appreciate the opportunity to share our thoughts on refinements to Canada's AML-ATF regime. We would be pleased to follow up with you to clarify any aspects of our submission.

Regards,

"Ethan Kohn"
Senior Counsel

Canadian Life and Health Insurance Association

Appendix 1--CLHIA Priority Issues

1. Technical Annex

We were extremely pleased to see that of the six issues notes we submitted as the paper was being developed four found their way into the discussion paper as recommendations to be considered. The six issues are summarized below. We have also included a discussion on mortgage creditor insurance, which our members offer and which we urge not be subject to AML-ATF rules.

a. Exempting Group Beneficiaries

The paper recognizes that it makes no sense to require verification of the identity of a beneficiary of a group retirement plan member where there is an exemption available to the plan member itself. We have requested this accommodation for the past few years and fully support the proposed change.

b. Identifying Beneficiaries who Have Received Proceeds of a Policy

The Regulations under the PCMLTFA recognize that insurers have an obligation, under provincial law, to pay a beneficiary the proceeds of a policy within 30 days after a claim has been made. As such, an insurer can pay the proceeds after 30 days even if the beneficiary has not provided identification in a manner set out under the PCMLTFA.

The way in which the Regulations are drafted, however, means that the obligation to pursue the beneficiary survives even after proceeds have been disbursed. Unsurprisingly, beneficiaries who have been paid are no more responsive to ID requests than they were before proceeds were remitted. The proposal in the discussion paper would replace the unbounded requirement that an insurer identify a beneficiary who has been paid with a “reasonable measures” qualifier.

We believe that it is never reasonable to require an insurer to continue efforts to contact a non-responsive beneficiary. The response rates are close to zero and the intelligence value of identifying a beneficiary is negligible. In our view, having asked the beneficiary for information, which was not forthcoming, we believe that the insurer should not need to do anything further. Put another way, asking for the information the first time should be considered a “reasonable measure” with no further follow-up required. We ask that this be clearly specified.

c. Exempting Electronic Funds Transactions (EFTs)

We strongly support a reconsideration of the current FINTRAC interpretation as it relates to insurer obligations to report EFT loan repayments. Unlike other reporting entity sectors (banks and money service businesses), insurers who receive EFTs do not transmit those funds onward to another individual. Rather, the insurer is receiving funds on its own account to discharge a loan it has extended to a customer. As such, the insurer should be considered to be the beneficiary of the EFT with no obligation to report the repayment (the bank will report on the transaction, listing the insurer as a beneficiary).

As requested in the consultation paper, we are collecting data on the number of international EFTs to repay loans, but to date the volume has been negligible. In the case of one of the three largest insurers, it only had **3** international EFTs over $10K that are reportable as "final receipt" transactions since June 1, 2021. All instances were for paying off an outstanding commercial mortgage loan at maturity for low-risk entity clients from low-risk jurisdictions. For these reasons, we do not believe that removing EFT reporting by insurers would create exploitable gaps or risks.

There are also major challenges that will require workarounds if insurers are to report as requested by FINTRAC: First, the reporting system is not currently set up to allow insurers to register. Second, insurers do not have access to the identity of the party initiating the EFT, whereas the bank does. We understand that some banks do not have the information that is needed for insurers to file, and we understand they disagree with the requirements and will not collect certain information that insurers will need. Finally, even if the information is available to insurers, the insurer would need to reach out to the bank to get this information, making the 5-day reporting requirement unachievable. It seems unfair to put insurers in a position to obtain and report on information that is not within their control. These challenges also apply to trust companies and other affiliates of insurance companies.

d. Information Sharing

In earlier submissions, we noted that reporting entities currently file suspicious transaction reports based solely on public sources and the RE's own internal information. This means that an RE does not have the benefit of information provided by other reporting entities or provided by FINTRAC when preparing an STR or determining whether there are reasonable grounds to suspect that a money laundering offence has been committed.

Information sharing between private sector entities has proven to be effective in combatting fraud. Banks and insurance companies have relied on exceptions in privacy legislation which allow for personal information to be shared when combatting fraud. Further private-to-private information sharing in relation to ML-TF would also improve the quality and quantity of STRs which insurers report to FINTRAC.

Similarly, having FINTRAC share information it has with the private sector would also improve the feedback loop, allowing REs to refine their methodologies in response to feedback received. For similar efficiency considerations, we also support the proposals in Chapter 6 related to improved information sharing between federal regime partners.

Barriers to information sharing currently exist. For instance, subject to certain exceptions, FINTRAC is prohibited, under s. 55(1) of the PCMLTFA, from disclosing information it receives. And privacy considerations also act as an impediment to information sharing, both public and private.

We support the dismantling of barriers to private-to-private information sharing and suggest as a guiding principle that the process be voluntary, open to all REs, and be available across sectors. One model to consider is the USA PATRIOT Act, sections 314(a) and (b) which allow for public-private and

private-private collaboration, and which also provide a safe harbour for institutions in the context of ML-TF. Such changes would improve the quality of STRs, and they would streamline the reporting process so as to yield improved financial intelligence, and benefit reporting entities and FINTRAC alike.

e. Limit the Applicability of the PCMLTFA to Beneficiaries

The requirement that an information record be created for a beneficiary carries with it the obligation to verify the identity of a beneficiary and, if the verification requirement is triggered twice, a business relationship is created, and ongoing monitoring of that relationship must take place.

Furthermore, if an insurer is to remit more than $100,000 to a beneficiary over the duration of an annuity, the insurer must determine whether the beneficiary is a “politically exposed person” (PEP) or a high-ranking official of an international organization (HIO). The purpose of a PEP/HIO determination on a client is to enable a reporting entity to place greater scrutiny on individuals who may be at higher risk of corruption and hence money laundering. There are also related obligations to establish the source of funds received from a policyholder or annuitant and determine the source of a high-risk beneficiary’s wealth.

In our view, the ongoing monitoring and PEP/HIO requirements should be eliminated in relation to beneficiaries. The requirement to monitor the business relationship of a beneficiary does not make sense, since the beneficiary will not be conducting transactions—the policy owner will. Extending them to beneficiaries is not proportionate to the associated risk, and it goes beyond the commentary offered by the FATF (which only required that verification of the beneficiary’s identity occur at payout).

The insurer will often not have a “business relationship” with the beneficiary, either in the commonplace sense of the term or in the meaning ascribed to the term in the PCMLTFA. The insurer will know the identity of the beneficiary before payout and will have been monitoring transactions during the life of the policy for suspicious activity.

Finally, asking the beneficiary for their source of wealth adds nothing to the prevention and detection of money laundering. Even if one accepts that the PEP/HIO status of a beneficiary informs the risk assessment of the client, the source of wealth is irrelevant because it has no bearing on the relationship with the client. Furthermore, in their capacity as beneficiary, none of the beneficiary’s funds will have been placed with the insurer. If the proceeds from an insurance policy are placed with the insurer, the beneficiary will have a new policy and will be subject to the insurer’s transaction monitoring.

The objectives of the PCMLTFA can be achieved where there is anything suspicious about the payout by having the insurer file a Suspicious Transaction Report with FINTRAC. We submit there is no need to add more steps to this already established process.

Moreover, a beneficiary is a recipient of funds directed to it by the policy owner or plan member. Deposit-taking institutions effect similar transfers on a daily basis, but they are not required to

ascertain the PEP status (or verify the identity) of payees of cheques drawn on their customers' accounts.

f. De Minimis STR Threshold

Unlike other reports such as large cash transactions, reporting entities must file suspicious transaction reports regardless of the value of the transaction.

One of the findings of the Cullen Commission report was that "FINTRAC receives an enormous volume of reports from public- and private-sector reporting entities, but it produces only a modest number of intelligence packages that go to law enforcement. For example, in 2019–20, FINTRAC received over 31 million individual reports. In that same year, FINTRAC disclosed only 2,057 intelligence reports to law enforcement across Canada, and only 355 to law enforcement agencies in British Columbia.

The federal regime in Canada has unwittingly encouraged defensive reporting, a practice under which reporting entities err on the side of making a report wherever there is some uncertainty. This has led to high-volume, low-value reporting. The high volume of reports submitted to FINTRAC is especially apparent when compared to reporting in other nations. On a per capita basis, reporting entities in Canada submit 12.5 times more reports than similar entities in the United States, and 96 times more reports than those in the United Kingdom."

Assuming FINTRAC and law enforcement prioritize significant ML cases over smaller ones, we propose that reporting entities be exempt from filing STR reports on small dollar amounts (we understand that the US has a $1000 *de minimis* threshold for SAR reports). We also support an exclusion from reporting requirements for regular premium payments to maintain a policy in force, where a Suspicious Transaction Report has already been filed with respect to the policy, the premium payments are of a fixed, recurring nature and amount, and there are no material changes to the method or source of payment.

New Sectors Proposed to Come Into Scope--Mortgage Creditor Insurance

The paper proposes a list of potential new sectors that could become subject to the PCMLTFA and its requirements, including the mortgage insurance sector. The paper states that, "Mortgage insurance is an insurance policy that protects a mortgage lender if the borrower defaults on payments, dies or is otherwise unable to meet the contractual obligations of the mortgage." We are strongly opposed to this proposal for several reasons.

The stated rationale for scoping in mortgage creditor insurance is that ""Mortgage insurers receive information on the property being insured from the lenders. Due to their sightline into an important share of the mortgage market, mortgage insurers are in a good position to monitor situations where various mortgage applications are made by a single applicant (or where a single individual has mortgages with different institutions), which can sometimes be helpful to identify fraud networks and potential money laundering schemes." This definition appears to extend to mortgage creditor

insurance which covers loss of life, job loss, disability, or critical illness, and not solely the large mortgage default insurance offered by CMHC and others.

We have significant concerns with this justification. First, the system should be risk-based, with the risk assessment based on the vulnerability of a sector to exploitation by money launderers, not on whether the sector has information about money laundering at other institutions. Including sectors because they have “a sightline” into a market which can be used to launder money but where there is little, or no risk of money laundering represents a significant departure from past practice. Asking reporting entities to report information that will be helpful to identify fraud networks (but not where there is reasonable grounds to suspect ML or TF) amounts to a requirement that goes well beyond the existing scope of the PCMLTFA. One can conceive of many industries that have information about potential criminal activity (e.g., security companies, credit bureaus, utilities, municipalities, etc.), but there is no requirement for these sectors to implement a compliance program or report that information to FINTRAC.

There is no ML or TF risk associated with this product. The product has no savings component, making it akin to a term life policy, which is exempt from the regime. The fact that the funding originates from, and proceeds are paid to, the lender makes ML risk even more remote, since the borrower cannot designate a beneficiary, and proceeds are returned to the lender. Premiums are low and they are tied to ongoing payment obligations of the borrower, not the value of the property.

Furthermore, we reject some of the underlying assumptions in the characterization of the sector. Contrary to the assertion that “mortgage insurers receive information on the property being insured from the lenders”, while mortgage insurers receive underwriting information including the mortgage amount, they do not receive information on the underlying property--only the lender has this information. None of the risk factors are present in respect of the product: PEP, third party, and occupation determination, along with geographic and distribution risk (credit insurance is only provided on domestic mortgages) are not relevant.

Second, we question the significance that “mortgage insurers are in a good position to monitor situations where various mortgage applications are made by a single applicant (or where a single individual has mortgages with different institutions).” Not all mortgagers opt for mortgage creditor insurance and the lender, who is already subject to AML oversight, is much better placed to monitor such situations through its credit underwriting and through information housed at credit bureaus. This extensive underwriting could provide wide-ranging insights to the lender into potential ML or TF. In summary, the risk of ML-TF on mortgage insurance products is even lower than on term products.

It is also unclear why multiple policies covering a single applicant represents a risky or suspicious state of affairs. Multiple mortgages can be taken out by one person over the same property in response to many common lifecycle events where the borrower needs access to funds. Furthermore, the rationale for mortgage creditor insurance is unrelated to the purpose or intended use of the underlying mortgage, but rather is placed to cover job loss, death, disability or critical illness. Given the declining balance on a mortgage and associated coverage, mortgage creditor insurers do not routinely monitor the borrower or activity on the mortgage—they are not even privy to such information. Finally, multiple creditor insurance policies covering multiple mortgages on more than one

property is an indicator that the insured/borrower has an extensive investment portfolio but won't itself indicate any ML or TF threats. The added collection of this information would be disproportionate with any risk and raises multiple privacy concerns as it is not necessary for creditor insurance underwriting purposes.

The impact of adding the information collection, monitoring, and reporting requirements of the ML regime would add significant administrative costs, resulting in increased premiums for consumers and potentially a lower adoption rate and negatively impact the social good that these products provide.

For all of the foregoing reasons, we believe that expanding the ambit of the PCMLTFA to cover mortgage creditor insurers would be ill-advised given the near zero risk of ML in this type of product.

Appendix 2—CLHIA Response to Selected Consultation Questions

1. Chapter 4.2-Additional Offences Such as Phishing or Spoofing

Whereas, in general, we have no view on the proposed expansion of criminal offences, we remain concerned about how the reporting regime could be affected. We are concerned about the possibility of scope creep that would expand reporting obligations beyond money laundering to include predicate offences. As we have mentioned above, our view is that reporting entities should not be enlisted as investigative partners with law enforcement in combatting predicate offences. A move in that direction would vastly expand reporting obligations which we believe would be inappropriate.

2. Chapter 4.11-The “keep open” Regime

The consultation paper discusses the possibility of a formal “keep open” regime that would allow law enforcement to continue an investigation without disruption by overriding the decision of an institution to “derisk” or “demarket” by ordering an account to remain open. The discussion in the consultation paper is focused on account-based relationships, which do not cover insurers, the latter of which cannot readily close an insurance policy on which premium payments have been made. Depending on the terms of the contract, insurers can sometimes manage AML risk by freezing transactions on a segregated funds policy. We support extending the “keep open” proposal to a “keep active” order. In either case, the institution responding to such a request from law enforcement would need a “safe harbour” providing the institution with legal and reputational protections from unfreezing an account which the insurer deems risky.

3. Chapter 6.2-Politically-Exposed Person and Head of International Organization Database

We support the creation of a PEP and HIO database. As noted in the paper, there are potential benefits in terms of access by regulators and law enforcement. Outstanding questions include the funding of the database and who would have access.

We recommend that reporting entities receive access and that funding be provided by government. At present, there is a lack of comprehensive data about PEP/HOIs that leads to enormous false positive rates and consumes significant effort by AML staff who need to examine “potential” matches with insufficient information to reach firm conclusions. A government-sponsored registry would improve the quality of Canadian data housed within commercial databases.

In terms of funding of a PEP registry, we oppose a user-pay model of access. As noted, the registry would enhance the effectiveness of the regime by improving the quality of Canadian data. It would not be of direct benefit to reporting entities, who could not rely exclusively on the registry because information on foreign PEPs and HOIs would, presumably, not be included. We also believe that fairness dictates that reporting entities who will be subject to cost assessments covering FINTRAC’s compliance function should not bear additional costs associated with a registry. As a final point, we do not see any privacy concerns because the office a person holds (which determines their PEP status) is generally publicly available.

4. Chapter 6.2-Identifying Foreign Actors

We agree that more valuable context would be provided to insurers if FINTRAC had the authority to identify foreign individuals or entities (including those who are deemed to be owners under the Special Economic Measures Act) in its strategic intelligence products. We are also supportive of initiatives that improve intelligence and the ability to target illicit behaviour. While we are not experts on the application of privacy law outside Canada, we question whether it would apply, both because the named individuals would be outside Canada and also because there would have been a prima facia case that they were involved in ML-TF before for naming them. Even if privacy considerations did apply, we feel that they would be outweighed by the availability of improved intelligence.

5. Chapter 6.3-Environmental Crimes

The section notes collaboration between banks and government on projects such as Project Anton. Many of the public-private collaborations (Projects Protect, Guardian, Chameleon) and operational guidance in general has had a banking focus, and we would like to signal our willingness to assist from an insurance perspective to the extent possible. As such, we welcome law enforcement and FINTRAC consideration (and publication) of any applicable indicators for other sectors, including ours.

6. Chapter 6.3-More Co-ordination Between FINTRAC and other Regulators

The paper suggests that FINTRAC cannot use compliance-related findings generated by other regulators. Given that FINTRAC has MOUs in place to share compliance-related information, we are not clear on where the gap exists. If the issue is adopting the findings of other regulators, we would want to ensure that there is due process and that an RE would have the opportunity to explain and provide context to FINTRAC. Findings from other regulators may be misinterpreted given the differing scope of examination. In addition, FINTRAC should not levy AMPs based on findings from another regulator. Rather, as a matter of fairness, FINTRAC should conduct its own examination and reach its own conclusions before assessing AMPs. Finally, we believe that any changes to information sharing arrangements between regulators should be fully transparent, supported by clear guidance to REs.

7. Chapter 6.3-Improved Training

Stakeholders are asked how the regime can better train investigators and prosecutors to support effective outcomes. CLHIA and FINTRAC have held regular operational symposiums and are committed to continued co-operation on this front. We find that dialogue between the organizations leads to better results as AML professionals in insurance companies obtain a better understanding of FINTRAC's objectives, methodologies, and expectations, while FINTRAC is able to improve its understanding and expertise as it relates to the life and health insurance business. We welcome a deepening of these relationships including the exploration of the possibility of secondments between FINTRAC staff and insurance company representatives.

8. Chapter 7-Extending AML Obligations to Cover New Sectors

Chapter 7 examines a number of sectors which are not currently covered by the PCMLTFA and asks whether they should be. We have already commented on the proposal to include mortgage creditor insurers. As far as other sectors are concerned, we favour applying the same analysis and where the level of risk is sufficiently high (relative to the compliance burden on the RE sector and FINTRAC) we think they should be covered.

9. Chapter 7.4-Clarifying When a Business Relationship Ends

For the most part, insurers consider the last transaction that requires a policyholder to be identified as the trigger for the end of the business relationship, with the relationship terminating 5 years afterwards. Discussion in the paper suggests changing that, either to harmonize with requirements in other sectors, or to introduce a risk-based trigger. We believe that the current definition is appropriate and are concerned with a change that would require companies to revisit and amend their current processes.

Subject to our proposal to narrow the ID requirement for beneficiaries (not to use the information record as the lever for the ID requirement, as it sweeps in other obligations which don't apply to beneficiaries (e.g., PEP determination, third party involvement)), we believe that a payment to a beneficiary from the same policyholder out of two different policies should not be considered as a two transactions requiring ID, given the contemporaneous nature of the transactions. Simply receiving a payment based on the contractual terms of the insurance policy does not make the beneficiary a customer of the life insurance company.

On the related proposal to change the end period to correspond to risk (longer period for high-risk), we are concerned that this could impose additional operational and resource challenges. For large insurers, it could necessitate significant system changes in order to create variable record retention periods for the different subsets of clients, which would be cost-prohibitive; for smaller insurance companies with less-sophisticated technology and/or manual processes, this could be even more challenging. It is our view that retention requirements should not be changed.

10. Chapter 7.4-Streamlining Obligations

Under this heading, stakeholders are invited to identify opportunities to streamline obligations under the PCMLTFA. We are extremely pleased and supportive of this request and reiterate our exhortation to continually look for opportunities to relax or remove requirements that are not commensurate with the risk they mitigate. To that end, we offer the following suggestions:

- Subject again to our proposal to remove all of the requirements associated with beneficiaries (other than a very narrow ID requirement to address FATF findings), in the alternative, we would ask that:
    - an insurer need not determine whether a beneficiary is a PEP or HIO or a relative or close associate of such an individual;

- That beneficial ownership need not be ascertained for corporate beneficiaries;
- That obtaining and documenting source of funds and source of wealth of beneficiaries not be required. In all cases, the source of funds are the insurance proceeds, and the source of wealth is irrelevant with respect to the risk associated with the transaction (i.e., paying the beneficiary with proceeds from the insurance contract, the associated risks of which relate to the source of wealth of the policyholder).

- We ask that the requirement that an insurer conduct an independent review of its compliance program every 2 years be recalibrated. The requirement is particularly onerous for smaller insurers and insurers with few products in scope. To reflect the lower risk of ML-TF in these instances, we recommend that the frequency of reviews be risk-based, and reflect the scale, scope and complexity of the RE.

- We support a full exemption of reinsurers from AML requirements. At present, reinsurers are only subject to STR filing requirements and the need to implement a compliance program (a compliance officer, AML policies, annual training, risk assessments and an effectiveness review), though many do further due diligence on clients to ensure that the clients have compliance programs in place. There is little to no risk of reinsurers being exploited for ML purposes as they have no contact with the ultimate policyholder. This lack of customer contact places reinsurance companies in a poor position to monitor for money laundering and terrorism financing risks (and file STRs) and excluding reinsurers from the regime would represent a streamlining opportunity.

11. Chapter 8.1-Compliance Program Review

The paper asks whether reporting entities should be subject to an external review in cases where FINTRAC finds urgent or significant non-compliance. We urge caution with this proposal, in particular in determining what constitutes "urgent or significant" non-compliance. Under the Administrative Monetary Penalties (AMP) Regulations, failure to file even one STR under section 7 of the PCMLTFA is considered a "very serious" breach of the PCMLTFA when determining an appropriate AMP, and we would obviously not want one such breach to trigger an independent external review.

12. Chapter 8.1-Specifying the Requirements to be a Compliance Officer

The paper asks whether the PCMLTFA should be amended to specify the knowledge and competencies required of a qualified compliance officer.

In our view, the proposal is unnecessary: In cases of non-compliance with the PCMLTFA, insurers are subject to AMPs and the risk of being named by FINTRAC. They are motivated to take care that the Chief Anti-Money Laundering Officer (CAMLO) have the skills necessary to put in place and oversee an effective program, and as part of that commitment the CAMLO must undergo annual training consistent with FINTRAC expectations of an acceptable compliance program. Other C-suite members, including the Chief Compliance Officer do not have to meet specific qualifications, presumably on the understanding that there can be a range of qualifications that add value to the role

and that the individual can grow into the position. Where necessary skills are lacking, outside expertise can be engaged. We are also concerned that new requirements could disqualify existing CAMLOs, especially if those requirements cannot be met through additional training but are intrinsic to the appointee.

Another question is whether the proposal is realistic. There are tens of thousands of real estate agents, accountants, and insurance brokers. These are generally small businesses where one person may be the CAMLO along with other oversight roles. It may be impractical to require such individuals to obtain certain qualifications or certifications. Moreover, among the large constellation of reporting entities, it will be a small subset of entities who are visible to FINTRAC and are already well-regulated that will be subject to scrutiny on this point. The focus on new rules and oversight should be on sectors which are lightly regulated or not regulated today.

Any new qualifications should be broadly worded and not specific and should be subject to professional judgement consistent with the scale, scope and complexity of an organization.

13. Chapter 8.1-Recording

The challenges faced by FINTRAC examiners in relying on notes made during an examination has prompted the question whether they should be allowed to record the proceedings. In our view, this is not advisable because a recording may be less efficient, causing staff of the entity being examined to be less open and want to respond in writing to questions. Moreover, REs are not permitted to record the examination, which raises fairness questions.

14. Chapter 8.1-Providing Greater Detail in Respect of Violations and Issuing Penalties Against Individuals

FINTRAC is considering providing greater detail in respect of violations and penalties imposed. We agree with the position that greater detail is helpful as a guidance tool for reporting entities. For example, Department of Justice orders in the US are pages long containing extensive reasons and a recitation of the surrounding facts and context. We are concerned, however, that due process/natural justice is lacking because the “naming and shaming” of entities and reasons for FINTRAC findings can happen before appeals have been exhausted. The reputational harm to an institution is difficult to reverse, even if a successful appeal is prosecuted.

We reiterate the same due process concern regarding the question of whether AMPs should be available against individuals (as well as entities). The principle that the publication of a finding should not occur before an appeal has been heard would also apply to the question of whether AMPs should be available against individuals (as well as entities).

15. Chapter 8.2-Universal Registration for all Reporting Entities

Currently, only money services businesses need to register with FINTRAC. Universal registration for all reporting entities would be advisable and would improve the effectiveness of the system. Most

importantly, universal registration would help FINTRAC identify entities that should be subject to its authority, thereby closing gaps in the system that exist today. It would also enable the government to respond to crises such as the recent trucker protest when the *Emergencies Act* was invoked. We understand that government was challenged to compile a list of entities that were to be alerted about not dealing with named individuals participating in the Ottawa protest.

Universal registration would also allow for a more equitable cost sharing formula. We firmly oppose the funding of FINTRAC by assessments on FRFIs. This levy is unusual in that government agencies with mandates related to public safety and crime prevention, including FINTRAC, are typically funded by general revenues, which promotes greater accountability and oversight. The levy is unfair as it seeks to recover the costs of law enforcement activities from entities who are not engaged in any criminal behaviour, and FRFIs already have their own costs to comply with PCMLTFA requirements. We suggest further that FINTRAC or any agency that has the power to recover its operating costs through assessments have any increases capped at the rate of inflation unless the Minister responsible for the agency approves a larger increase. While the current formula excludes small entities from the obligation to contribute to FINTRAC's costs, fairness dictates that the assessment base should include all regulated entities, and universal registration would further this goal.
Finally, many jurisdictions send questionnaires to REs to get a better picture of how each sector compares to the whole. Universal registration would provide the government with data and a richer understanding of vulnerabilities associated with a particular sector and would allow it to take measures to close gaps.

16. Chapter 8.2-Exemptive Relief for Testing New Technologies

Our industry favours steps that would enable experimentation with new technologies to comply with AML requirements. Given the regular expansion of AML requirements, number of customers, and number of products and transactions, the only way to avoid a burgeoning compliance workforce to meet those challenges is to deploy technology. Process automation and new technologies such as AI have the potential to increase an RE's efficacy in managing ML risks—for example, the identification, investigation, and reporting of suspicious transactions-- but there will be a transition period where some technical requirements may need to be relaxed on the understanding that the ultimate objective is a more efficient and effective scheme. Industry and FINTRAC will need to work together to understand the risks and opportunities associated with new technologies, and it may be the case that we need to accept some risk in the short term while systems are fine-tuned to make adjustments.

In facilitating the introduction of new technology, it could be helpful to provide forbearance powers to FINTRAC. In the past, we have articulated our support for this change as it would introduce more nimbleness and flexibility, for instance for unforeseen circumstances like COVID.

17. Chapter 8.3-Geographic and Sectoral Targeting Orders

Under the right conditions, geographic and sectoral targeting orders can be an effective tool to temporarily target regions or sectors which are experiencing elevated levels of ML-TF risk. We would ask that government work closely with industry to ensure the new powers are workable and narrowly

target the identified risk. If such orders are too broad, they could increase the burden on reporting entities with less benefit than if they are narrowly tailored. Accordingly, in the case of domestic geographic orders, one approach could be that the targeted area be defined by the first three characters of a postal code, so reporting entities know exactly where their focus should be. This would need to be tempered by concern that identifying particular geographies as risky (and by extension different ethnic groups or economic classes) could lead to inappropriate stereotyping or profiling.

We also caution that any changes in this regard be integrated with existing powers exercised by other authorities such as Ministerial directives and Global Affairs Canada sanctions.

18. Chapter 8.3-Source of Wealth/Source of Funds Determinations

The narrative in the section states that money laundering is most successful when the criminal origin of funds can be concealed which is why it is important to understand the source of wealth and source of funds.

We are strongly opposed to measures that would broaden the existing source of wealth/funds inquiry beyond PEP/HIOs. First, the existing level of diligence, “reasonable measures”, only requires a RE to ask the customer the origins. This is obviously fraught with the difficulty that those engaged in ML are likely to lie about the origin of funds. While this might suggest that REs should be required to obtain further assurances of the accuracy of declarations made by their clients, further verification is very difficult, if not impossible to obtain. Huge costs would be visited on REs for very little benefit (or on customers if they are to provide the verification), given the paucity of sources available to obtain such information. Life insurers would usually list a bank account as the source of funds from which premium payments are made and they would not have access to the transaction history on that account to know how the bank account had been funded.

Moreover, many insurance companies ask for source of funds information where client level risk is deemed to be high. We believe that the decision to ask for source of funds/wealth should be left to the individual RE based on its own assessment of risk of a client relationship. And lastly, as noted earlier in our submission, insurers are unique in the extensive underwriting of their customers, which includes financial underwriting and the need to demonstrate that the amount of insurance requested is appropriate based on the need of the client (which will include client income and wealth).

19. Chapter 9.1-Threats to the Security of Canada and Sanctions

We objected to the potential expansion of FINTRAC’s mandate to include threats to Canada’s security. Our main concern, from the perspective of administrative burden and effectiveness of the regime, is that there be clear accountability and no overlap of functions. The current system is characterized by competing accountabilities. Threats to Canada’s security are handled by law enforcement and CSIS and, with changes in the recent budget legislation, the Minister of Finance.

Sanctions legislation and related reporting obligations are the purview of Global Affairs Canada, with overlapping reporting obligations to CSIS, the RCMP and FINTRAC. Moreover, the new Canada Financial Crimes Agency will also have a role to play, depending on its exact mandate. In a May 2023 Senate report entitled "Strengthening Canada's Autonomous Sanctions Architecture", the Committee on Foreign Affairs and International Trade was critical of Canada's performance on the sanctions front. It made 19 recommendations, including that Canada work with its allies to co-ordinate and implement sanctions multilaterally to maximize sanctions effectiveness; that Canada articulate when the *Special Economic Measures Act* or the *Magnitsky Act* will be used; that the government outline objectives of a sanctions regime and communicate those to the public; that the government make it a priority to develop and provide to the private sector guidance on interpreting Canada's sanctions laws. In our view, these deficiencies should be addressed before FINTRAC assumes a greater role over sanctions.

Any additional reporting obligations related to protecting national and economic security should be commensurate with the level of risk of the products. Insurance products, especially those offered by small insurers and brokers are likely a very low risk and new rules should be consistent with the risk level.

20. Annex 1-Technical Proposals

Additional Beneficial Ownership Information

The paper asks whether reporting entities would have challenges collecting the dates of birth and gender of beneficial owners. Our members report that it is difficult even to obtain a customer's address, and it would be more difficult to collect date of birth and gender, particularly since these can be sensitive pieces of personal information. We also question the intelligence value in collecting a person's gender. In terms of implementation, given the range of possible answers to a person's gender, every institution will need to build open field text to record the answer, which will diminish the customer experience, and if the information is not obtained, the institution will need to consider the customer high risk and monitor them accordingly. Lastly, expanding the requirement to collect such information runs counter to the international and Canadian trend of moving towards centralized beneficial ownership databases. This information can be collected from beneficial owners of legal entities and included in a database, which would help institutions scan their customers, but we believe that it is up to each entity on how this is managed, bearing in mind the need to promote a positive customer experience.

Records

We do not support the proposal to require reporting entities to keep records in such a manner that they can be provided to FINTRAC more promptly than the current 30-day period. It appears that the proposal is designed to address the FATF requirement that records be available to competent authorities "swiftly". We do not believe that the change will result in improvements to the regime but will simply add requirements on REs. We suggest as a compromise that the timeframe for production of records mirror the test for reporting suspicious transactions, i.e., "as soon as practicable".

Appendix 3 - Canada Financial Crimes Agency (CFCA)

In response to Public Safety Canada's request for stakeholder views on the proposed CFCA, the CLHIA, on behalf of the industry, feels consideration should be given to benefits fraud.

Across all lines of business, Canada's life and health insurers provide financial protection to over 29 million Canadians[1]. In 2021, the industry received $139 billion of insurance premiums, paid out $133 billion in life, health, and retirement benefits, and contributed over $8.8 billion to Canada's tax base[2].

Every year in Canada, hundreds of millions of dollars is lost to benefit fraud in these areas.

How it happens:
Benefits fraud exists across all types of life and health insurance benefits. But it is especially prevalent in group health or workplace benefits when false or misleading information is intentionally submitted to life and health insurers for the purpose of financial gain.

Schemes are becoming widespread and sophisticated:
Insurers are seeing increasing evidence of organized crime or unscrupulous health service providers victimizing consumers. These providers reassure consumers that what they are doing is normal and/or that they are entitled to the money.

Benefits fraud costs hundreds of millions of dollars:
In 2021, Insurers paid out $41 billion in group benefits[3]. As fraud is designed to go undetected the exact amount lost is difficult to estimate. If only one percent of the group benefits paid was fraudulent, it would mean hundreds of millions of dollars lost from insurance plans and employers. Regardless of the amount the impact of fraud is far reaching and effects everyone.

Plan sustainability is at risk:
27 million Canadians depend on their workplace benefits. The rising cost of fraud can lead insurers to increase premiums and employers to limit or cut benefits. The result is the people who count on their workplace benefits to access and afford their drug, dental and supplementary health coverage may not have them when they need them most.

Workplace benefits are important to Canadians:
A recent survey by Abacus Data found that 88 per cent of those who have workplace benefits value their plan. A similar number – 84 per cent – say their benefits plan has been very helpful (36%) or quite helpful (48%) in saving them money on medications, dental and vision care, and other heath services.

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[1] Canadian Life and Health Insurance Facts 2022 Edition
[2] Ibid.
[3] Ibid.

The industry is supporting Canadians in the fight against benefit fraud:
The devastating impact of benefits fraud has brought all elements of the industry together. CLHIA and its members are responding to benefits fraud with significant investments in people, processes, and technology. The goal of these investments is to leverage the knowledge and resources of life and health insurers to reduce the time it takes to act on those who are exploiting workplace benefits.

- **Fraud=Fraud (wwww.fraudisfraud.ca)** informs Canadians about benefits fraud and teaches them how to recognize, refuse, and report benefits fraud, as well as the consequences of these activities.

- "**Protect your Patients, Protect your Practice," an ongoing CLHIA education campaign**, assists health care providers recognize, refuse and report benefits fraud. The program has been expanded to include an online training module to enhance employees' awareness of benefits fraud.

- **Provider Alert Registry** is a spot to host non-public indicators of fraud when an investigation into a benefit fraud results in an action by an insurer. This tool is intended to help other insurers prioritize their own investigation.

- **Using AI to pool claims data:** following in the footsteps of other industries (P&C, Banking), the life and health industry launched a program to pool anonymized claims data and use advanced artificial intelligence to enhance detection and investigations of benefits fraud.

- **Joint Investigations:** life and health insurers are now collaborating on joint investigations into benefits fraud.

Next Steps:
These initiatives enhance our members' individual programs and the industry strategy to collaboratively tackle benefits fraud. They will continue to expand with further education, advocacy, tools, and additional benefit types.

Key Challenge:
A key challenge the industry faces is prosecuting the bad actors when fraud is discovered. A national enforcement agency with a dedicated unit of investigators and prosecutors who focus on complex financial crimes and who understand life and health insurance benefits will help improve outcomes. Collaborating with the CLHIA and its members to effectively share information, advocate on key issues and educate Canadians about the consequences of benefits fraud are some of the ways we can work together.

What can you do?
Public Safety Canada's understanding and awareness of the extent of the problem is an important first step. But it does not end there. You can play an essential role when developing the mandate, structure, core activities and functions for the CFCA. We would request you consider the following:

1) **Create a dedicated and empowered enforcement agency** on either a standalone basis or as an office within Public Safety, where life and health insurers can easily contribute.
2) **Partner with the CLHIA and its members** to effectively share information, collaborate on investigations and prosecute benefits fraud.
3) **Share information across all industries, stakeholders, government, and regulators**.
4) **Advocate against changes to privacy legislation** that inhibit collaboration.
5) **Set up a whistleblower program** that makes it easy for Canadians to provide information about victims and perpetrators of benefits fraud. Align it with tip lines already in place.
6) **Cooperate with law enforcement bodies** in Canada (i.e., Serious Fraud Office) and other countries where life and health insurance fraud exist.
7) **Establish a fully resourced and funded** specialized unit with investigators and prosecutors who focus on complex financial crimes and who understand life and health insurance benefits.
8) **Prosecution and Recovery**: Focus on maximum penalties, including incarceration, and provide support services for the primary victims of benefit fraud. Advocate for regulators to have the authority to issue monetary penalties.
9) **Analytics and reporting:** Capture key statistics and publish successful prosecutions to expose the perpetrators of benefits fraud.
10) **Public Outreach**: Launch a public awareness campaign aligned with the life and health insurance industry's ongoing efforts to educate Canadians about the consequences of benefit fraud.

Why?
Use of the CFCA to effectively combat benefits fraud will:

1) protect the over 27 million[4] Canadians who rely on workplace benefits to access and afford drug, dental and supplement health needs.
2) bolster the significant investments the industry has made to combat this financial crime.
3) support the integrity of the Canadian life and health industry and its economic contributions to Canada.

Working together is essential:
Thank you for the opportunity to provide our views on the mandate, structure, core activities and functions of the CFCA. Benefit fraud is not a victimless crime; it has far-reaching human, social and financial consequences. We can have a profound and lasting impact on this devastating crime if we work together. It is up to all of us – benefit fraud mitigation is essential for improving plan sustainability and protecting our role in Canada's financial stability.

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[4] Canadian Life and Health Insurance Facts 2022 Edition

As Public Safety Canada continues its ongoing design and development of the CFCA, we look forward to continued collaboration and engagement.

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