HSBC

May 1, 2018

The Honourable Wayne Easter, P.C., M.P.
Chair of the Standing Committee on Finance
House of Commons
Six Floor, 131 Queen Street
Ottawa, Ontario K1A 0A6

VIA E-MAIL

Re: Statutory Review of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* by the Standing Committee on Finance

Dear Mr. Easter:

HSBC Bank Canada would like to thank you and the other members of the House of Commons Standing Committee on Finance for the opportunity to provide comments on the Statutory Review of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act. As you know, HSBC Bank is one of the world's largest global banks with operations in almost 70 jurisdictions. For its part, HSBC Bank Canada is the largest foreign bank operating in Canada and an active member of the Canadian Bankers Association's ongoing discussions of Canada's AML-ATF regime.

We fully support the recent testimony of the CBA before the Committee and wanted to offer the following complementary comments on areas where the Committee may wish to consider recommendations.

The need for better data to allow an evidence-based assessment of the effectiveness of the Canadian AML-ATF regime

In its 2013 review of Canada's AML-ATF regime, the Senate Banking Committee recommended that better information be developed on the extent to which FINTRAC case disclosures are used in investigations, prosecutions and convictions and that efforts be undertaken to improve the data on the number of investigations, prosecutions and convictions which is publicly available.

Unfortunately, the Canadian banks have seen little or no progress in these areas. As was the case five years ago, the number of electronic fund transfer reports (EFTRs), large cash transaction reports (LCTRs), suspicious transaction reports (STRs) and other reports received by FINTRAC continue to be reported in its Annual Report to Parliament. However, the RCMP and other law enforcement agencies provide no public information on the number of FINTRAC case disclosures that trigger new investigations or the number that support ongoing investigations. In additional, the Public Prosecutors Service of Canada provides no information on the number of FINTRAC's case disclosures that provide material input into the investigative cases that are ultimately referred to them for prosecution and, subsequently, result in criminal convictions and asset seizures.

In the absence of such information, it is extremely difficult to draw any meaningful conclusions about the overall effectiveness of Canada's AML-ATF regime and whether the large volume of reports that reporting entities currently submit to FINTRAC (about 25 million a year) have any significant impact on reducing financial crime or better protecting the integrity of the Canadian financial system. This being the case, at a minimum, it would appear useful if the RCMP and the PPSC were annually required to publicly report this information on their websites.

The need for a stronger risk-based link between the reporting requirements for certain transactions and the risks that they pose to the financial system

As the CBA indicated in its testimony, the banking community believes that the bulk of their financial crime compliance efforts should be focused on the high-risk individuals and entities that pose the greatest risks to the Canadian financial system. Instead, the current regime imposes large and increasingly onerous reporting requirements on a range of low-risk individuals and entities. This has had the unintended effect of redirecting a significant amount of attention and resources away from these higher-risk entities and individuals.

A case in point are current discussions between the Government and banks on the need for the "ongoing monitoring" of low-risk retail customers. The banks maintain that once a retail customer has been identified as "low risk" (as part of their onboarding process), the requirement to update the information on this customer should be linked to a specific "trigger event" (e.g. an unusual transaction) rather than routinely be required as part of some regular updating exercise (e.g. undertaken every five years). For our part, we would note that a requirement to regularly review the client identification information of all of our low-risk retail customers (which represent the bulk of our customers) would be exceedingly staff and resource intensive – and we are unaware of any policy-based evidence, which suggests that this would lead to a significant increase in the number of criminal investigations.

The need for additional action to reduce compliance costs through innovation and possible reporting reforms

In their response to Finance Canada's consultation papers on the renewal of the Bank Act, CBA members have underscored the important role that innovation and technology is continuing to play in the banking industry. In the context of Canada's AML-ATF regime, it would appear that there is considerable scope for the greater use of "industrial utilities" by the Government. To take an example, a number of other governments have committed to establishing national registries of beneficial ownership information, which would be available to private sector entities that have a legitimate need to use this information. This represents a significant improvement on the current system in which each bank is required to conduct its own independent investigation of each commercial customer. To the extent that this is permitted by the Canada's Charter of Rights, we and other CBA members would see significant value in the Canadian Government establishing a similar national registry. In addition, a number of CBA members have suggested that the Government might also look at the broader benefits of establishing a national registry of domestic politically-exposed persons, which could be integrated into such a broader national registry of beneficial ownership information.

Other potential reporting reforms include the possibility of considering, as is done in the case of EFTRs and LCTRs, that all automated transaction monitoring alerts should be automatically submitted to FINTRAC for further analysis. Under the current system, banks are asked to spend considerable time and resources to investigate many thousands of these alerts, discount the "false positives", and then only submit those that they cannot definitively determined not to be suspicious. Given that the number of these false positives often run as high as 99 percent, the current system effectively asks banks to spend enormous resources "weeding out" information that is of no use to law enforcement agencies rather than on high-value information which could help to more effectively combat financial crime.

The need for additional action to increase information sharing and improve current feedback mechanisms

It also appears that there is considerable uncertainty as to the type (and level of detail) of information that banks can exchange through the three key information-sharing channels – i.e. bank-to-bank, bank-to-government and government-to-bank. In part, this reflects the fact that each of these channels is constrained, to various degrees, by Canada's privacy laws. To take an example, in the case of bank-to-bank information sharing, there still appears to be considerable confusion as to the type of customer information that one bank can share with another. For example, it is unclear whether a bank is able to tell another bank that it exited a customer because of the existence of one or more STRs. And, if it were able to share this information, it is unclear how far it would be able to go in discussing the details of these suspicious

transactions. In the face of this uncertainty, we believe that the regime would benefit from a mechanism that could provide the banking community with a single, whole-of-government response to these sort of operational questions.

Another area that has attracted significant attention is the sharing of information between banks and law enforcement agencies. Project Protect provides an excellent example of the current ability of banks and the Government to share "strategic" information (e.g. on emerging trends and criminal typologies). However, the effectiveness of this arrangement is limited by the inability of these parties to share "tactical" information (e.g. on specific individuals or entities that are under active investigation). Other countries have shown that there is significant additional value from being able to share such tactical information. In light of this, the CBA would encourage the Government to consider the creation of a "safe harbour" arrangement, under which such tactical information could be the legally shared and the current AML-ATF regime significantly strengthened.

In closing, I wanted to thank you again for the opportunity to share these views with the Committee and look forward to the recommendations of your report on this very important public policy issue.

Yours sincerely,

Georgia Stavridis
SVP Head of Financial Crime Compliance
HSBC Bank Canada