



November 06, 2006

Standing Committee on Finance
Sixth Floor, 180 Wellington Street
House of Commons
Ottawa ON K1A 0A6

Subject: Bill C-25 (Bill C-25, An Act to amend the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (the Act)* and the *Income Tax Act* and to make a consequential amendment to another Act)

Mr. Chairman, Members of the Committee:

As requested, we are providing written comments on two matters which arose during the Committee's consideration of Bill C-25 on November 02, 2006.

Our overall view is that the Bill establishes important legal obligations for Canadian financial institutions to apply appropriate controls and oversight to their non-Canadian operations. Not only are these obligations required by Financial Action Task Force (FATF) standards, they are completely consistent with the Office of the Superintendent of Financial Institutions (OSFI) approach to assessing Anti-Money Laundering (AML) controls on an enterprise wide basis.

Treatment of Branches and Foreign Subsidiaries

Branches

The Committee received representations from the private sector that it is inappropriate to require foreign branches of Canadian reporting entities to comply with sections 6, 6.1 and 9.6 of the Act.

Based on its experience in assessing the foreign operations of chartered banks, OSFI believes that the provision as drafted in the Bill is appropriate. OSFI expects banks to apply a corporate-wide AML standard in their foreign branches, because these branches are Canadian entities.

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Over the past four years we have assessed the overseas operations of several Canadian financial institutions in foreign jurisdictions, including, where applicable, branches in such jurisdictions. We are not aware of any situation where a financial institution would be unable to comply with these very basic and fundamental requirements.

Further, there are many branches of foreign banks and life insurers operating in Canada. Some of these are required by their parent to conform to home country requirements. We have never seen a situation where such a foreign branch in Canada has experienced any difficulty in complying with home country requirements, and we know of no obstacles in the Act to such compliance.

Subsidiaries

The committee received representations that the Bill will, “impose Canadian client identification requirements on subsidiaries in non-FATF member countries.” This is not the case. The proposed section 9.7 imposes a standard of consistency with Canadian requirements, not the Canadian regulatory requirements themselves. Based on our observations of Canadian institutions’ overseas operations, we feel that the wording of the Bill is sufficiently broad so as to permit institutions a wide range of compliance solutions to address different local situations. We have specifically looked at subsidiaries abroad and are quite satisfied that the obligation gives financial institutions flexibility in dealing with local “level playing field” issues which can be assessed by financial regulators using normal supervisory standards.

FATF Member Countries

The Committee received representations from the private sector that the exemption of foreign subsidiaries from the requirements of the proposed section 9.7 of the Act, if such subsidiaries are located in an FATF member country, should be extended to include countries that are members of FATF-Style Regional Bodies (FSRBs).

OSFI does not agree with this suggestion for two reasons.

First, there are well over 100 of these countries, including some less developed nations in Africa, Eastern Europe and elsewhere, and although some have reasonable AML standards, many lack even the most basic AML requirements, or have otherwise seriously underdeveloped AML regimes. Therefore, their standards, and importantly their mutual evaluation standards, are not of the same quality as those of the FATF itself.

Secondly, the FATF recently permitted FSRBs to become associate members of the FATF provided they reach certain criteria, including minimal AML standards in their member countries and a robust mutual evaluation process. To date only two such FSRBs have attained associate membership. Since the FATF itself is not yet satisfied with the standards prevailing in most FSRBs, we believe that FSRB membership is not an appropriate criterion to use in the Bill.

If financial institutions are permitted to apply non-FATF standards abroad (outside the FATF membership) we increase the risk of Canadian financial institutions being used for access to the Canadian financial sector.

Accordingly, OSFI believes that it would not be appropriate to apply the exemption beyond FATF member countries.

I am available for any future questions you may have.

Regards,

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