Canadian Association of Private Lenders

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Submitted Electronically

Re: Inclusion of the Mortgage Services Industry into Anti-Money Laundering (AML) Regulation through Amendments to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)

We write on behalf of the Canadian Association of Private Lenders, which represents the interests of lenders, investors, lawyers, administrators and other service providers engaged in private lending across Canada.

In particular, we are responding to the proposal set out in the consultation document, *Regulations Amending Certain Regulations Made Under PCMLTFA* to "reduce ML/TF risks in the unregulated mortgage lending sector by implementing AML/ATF requirements to deter misuse of the sector for illicit activities." The Consultation document further explains that the "proposed Regulations, once in force, would require ***all entities involved in the mortgage lending process*** (i.e. brokers responsible for mortgage origination, lenders responsible for underwriting the loan or ***supplying the funds***, and administrators responsible for servicing the loan) to meet" PCMLTFA obligations (emphasis added).

The mortgage lending sector, however, has some unique characteristics which point to the need to carve out some mortgage lenders from AML regulation. We therefore wish to explain the challenges with requiring ***ALL*** mortgage lenders to comply under PCMLTFA.

The Diverse Spectrum of Mortgage Lenders

Mortgage lending is one of the world's oldest business activities, with its origins dating to the formation of human civilization, as far back as the fifth century BC. The core act of mortgage lending throughout history has not substantially changed, although in modern times, mortgage lending has evolved so that it is delivered through commercial vehicles and capital raising structures with various levels of sophistication. Mortgage lenders, which are not financial institutions include: passive investors, who may participate in single lender or syndicated mortgages arranged by brokers; family or friends who may occasionally lend one another funds secured by mortgages, mortgage brokers who lend, mortgage investment entities which raise funds under capital raising rules for mortgage lending purposes; and large bank-like entities which are exclusively focussed on mortgage lending. This diverse spectrum captures non-business lending or investor activity on one end, and highly sophisticated and well-resourced institutional lending on the opposite end.

There is no other sector currently captured by FINTRAC's compliance requirements which possesses such widely diverse and amorphous forms as mortgage lending. In contrast, the activities of realtors, notaries, securities dealers are more homogenous and can be more readily captured in various provincial licensing statutes.

Clients vs Industry Participants

The consultation document explains that the proposed regulation amendments "bring the requirements applicable to entities involved in the mortgage lending process in line with existing AML/ATF requirements conducted by financial entities, federally regulated mortgage lenders and real estate brokers/sales representatives and developers, thus ***creating a level playing field*** (emphasis added)…".

However, mortgage lenders in the investor or intermittent lending categories act more like clients deserving of regulatory protection rather than active industry participants who should be obligated to comply with regulation. These lenders depend on the expertise of other AML regulated professionals, such as lawyers, brokers and advisors, and have no capacity to develop their own AML policy, engage in know your client rules or identify and report suspicious activity to FINTRAC. We note that investor clients of financial advisors and exempt market dealers are not required to engage in AML compliance. Paradoxically, the capturing of all mortgage lenders in the proposed regulations in an effort to "even out the playing field", only shifts the unevenness of the playing field against mortgage lenders rather than leveling it out. Imposing regulatory obligations on mortgage lending clients will serve no true AML purpose, and will ultimately deter clients from investing in mortgages all together.

The Varied Licensing Requirements of Mortgage Lenders

There is a diverse checkboard approach to licensing mortgage lenders across the provinces. We suggest that this reflects the broad diversity in mortgage lending activity, and the challenges in nailing down a singular, uniform approach to mortgage lender regulation.

For instance:

- in Alberta, mortgage lending does not require any licensing under the Real Estate Act;
- in British Columbia, licensing for mortgage lending is only required for those who satisfy specified thresholds – either being in the business of lending or lending against 10 or more mortgages per year; and
- in Ontario, mortgage lender licensing is required unless there is an available exemption, such as by acting through a mortgage brokerage.

It is not clear how FINTRAC will provide regulatory oversight over mortgage lenders which are not licensed nor required to be licensed in the provinces? Unlicensed mortgage lenders are likely not engaged in discussions about regulation, and may not possess the resources, capacity or funds to comply with regulation.

Recommendations

For the reasons discussed above, we recommend the adoption of a more nuanced approach to capturing certain mortgage lenders within the scope of FINTRAC regulation. At a minimum there needs to be recognition that certain mortgage lenders are merely investors or clients and should accordingly, be treated like other financial services sector clients. In addition, mortgage lenders who may not be clients, yet are also not required to be licensed should only be required to comply with PCMLTFA regulation if they are in “the business of mortgage lending”.

Conclusion

We urge the federal government to modify the proposed PCMLTFA regulations to ensure that only active business or licensed participants are required to comply with AML requirements. Investors who merely fund mortgages and non-business lending parties should not be required to comply with PCMLTFA.

Thank you for the opportunity to provide comments on this important subject. Please know that we are available to discuss these issues more fully if you wish.

Yours truly,

Samantha Gale, CAPL CEO