City of Richmond

Report to Committee

To:	General Purposes Committee	**Date:**	July 17, 2020
From:	Cecilia Achiam General Manager, Community Safety	**File:**	09-5350-01/2020-Vol 01
Re:	**Provincial Consultation on Money Services Businesses Regulation**		

Staff Recommendation

That the responses included in Attachment 2 of the staff report titled "Provincial Consultation on Money Services Businesses Regulation", dated July 17, 2020, from the General Manager, Community Safety be endorsed for submission to the BC Ministry of Finance.

Cecilia Achiam
General Manager, Community Safety
(604-276-4122)

Att. 2

REPORT CONCURRENCE	
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SENIOR STAFF REPORT REVIEW	**INITIALS:**
APPROVED BY CAO	

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Staff Report

Origin

At the February 11, 2019, Council meeting, Council made the following referral:

> *"That staff bring forward amendments to Business Regulation Bylaw No. 7538 to include criminal record checks and other regulations for operators of money exchange businesses."*

In May of 2019, the Province released a report entitled "Combatting Money Laundering in B.C. Real Estate" by the Expert Panel on Money Laundering, which recommended that:

> *"The BC government should consider developing a regulatory regime for money services businesses to be operated by the Financial Institutions Commission."* [1]

In March 2020, the BC Ministry of Finance announced that it would engage the public regarding a potential regulatory regime for Money Service Businesses (MSBs) and released a report/survey (Attachment 1). Despite the passing of the consultation deadline on April 30, the Ministry of Finance has agreed to accept a submission from the City of Richmond (Attachment 2). The Province has extended the deadline to the City due to the extraordinary circumstances caused by the COVID-19 pandemic and the impact it has had on the response rate from survey recipients. Moreover, the Ministry of Finance has yet to develop draft legislation and policy options on MSBs.

This report supports Council's Strategic Plan 2018-2022 Strategy #1 A Safe and Resilient City:

> *1.1 Enhance safety services and strategies to meet community needs.*

Analysis

Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) MSB Registry

As noted in the Province's "Money Services Businesses Consultation Paper" (Paper), MSBs are required to register with Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). There are more than 900 MSBs listed in FINTRAC's registry and it is estimated that they account for $39.5 billion in transactions per year. In theory, MSBs are subject to monitoring, inspection and punitive action by FINTRAC. In 2019, according to FINTRAC's registry, there were 66 entities which were operating 75 MSBs in the City of Richmond. These businesses ranged from government agencies such as Canada Post to small retail operations.

Recently, FINTRAC has faced stern criticism following several government led studies and, in particular, Dr. Peter German's report entitled "Dirty Money – Part 2: Turning the

[1] https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/real-estate-in-bc/combatting-money-laundering-report.pdf pg 86.

Tide - An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales & Horse Racing" noted that:

> *"The great preponderance of stakeholders that we met during the Review were critical of FinTRAC. Despite its specialist resources and technical systems, FinTRAC is wrapped in a legal framework that resembles a straitjacket. The result is that its effectiveness is blunted and criticism results."*[2]

A Postmedia investigation delved further into FINTRAC's MSB registry and found that 24 MSBs in Richmond, Vancouver and the North Shore were registered as located in houses, condos or the offices of lawyers, accountants and real estate companies. The Postmedia further exposed that the registry appeared to lack the most basic verification and inspection system as many of the companies that were listed as closed in FINTRAC registries were still in operation.[3] It also appears that FINTRAC has not proactively shared intelligence with local law or bylaw enforcement partners who could have investigated these businesses further.

Detection

Dr. German also found that underground or undetected MSBs were key to the "Vancouver Model" of Money Laundering. These underground MSBs functioned like international banks providing liquidity for organized crime, gamblers and expatriates trying to avoid capital controls. The largest example of an underground MSB in Canadian history was Silver International. The Financial Action Task Force has provided a succinct and general typology based in large part on the Silver International and associated RCMP E-Pirate case:

> *"The cash given to the high-roller gamblers came from Company X, an unlicensed MVTS*[4] *[MSB] provider owned by Subject X. Investigators believe that gangsters or their couriers were delivering suitcases of cash to Company X, allegedly at an average rate of CAD 1.5 million a day. Surveillance identified links to 40 different organisations, including organised groups in Asia that dealt with cocaine, heroin and methamphetamine.*
>
> *After cash was dropped off at Company X, funds were released offshore by Subject X or his network. Most transactions were held in cash and avoided the tracking that is typical for conventional banking. Subject X charged a 5% fee for the laundering and transfer service. As the ML [money laundering] operation grew, the money transfer abilities of Company X became increasingly sophisticated to the point where it could wire funds to Mexico and Peru, allowing drug dealers to buy narcotics without carrying cash outside Canada in order to cover up the international money transfers with fake trade invoices from China. Investigators have found evidence of over 600 bank accounts in China that*

[2] https://news.gov.bc.ca/files/Dirty_Money_Report_Part_2.pdf pg 281.
[3] https://vancouversun.com/business/local-business/bc-attorney-general-opens-door-to-background-checks-for-money-transfer-exchange-businesses
[4] Money or value transfer services (MVTS) refers to financial services that involve the acceptance of cash, cheques, other monetary instruments or other stores of value and the payment of a corresponding sum in cash or other form to a beneficiary by means of a communication, message, transfer, or through a clearing network to which the MVTS provider belongs. (https://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-RBA-money-value-transfer-services.pdf)

> *were controlled or used by Company X. Chinese police have conducted their own investigation, labelling this as a massive underground banking system."* [5]

Expanding the Definition of MSB

In addition to MSBs, the Province's Paper considered broadening FINTRAC's definition of MSBs[6] to include white label automated teller machines which are typically operated by small businesses outside of the banking and credit union industry. In Canada, any individual can own or operate a white-label ATM. However, because white-label ATMs are not financial institutions, they are not covered under the Bank Act, and consequently are not regulated under federal jurisdiction. In 2018, FINTRAC reported to the Parliamentary Standing Committee of Finance that WLATM operators are not subject to FINTRAC reporting as defined in the *Proceeds of Crime (Money Laundering) Terrorist Financing Act*. As a result these machines have been exploited by organized crime and money launderers.

According to a redacted 2007 FINTRAC report on WLATMS, they have been known to be utilized by organized crime groups during the placement stage of money laundering. These groups usually locate the generic ATMs within an existing business where the owner/operator has a "clean" criminal record. The ATMS are typically exploited in the following ways:

"1. The white-label ATM is loaded with proceeds of crime (illegitimate funds may be commingled with legitimate funds).
2. The operator arranges to have the funds withdrawn from his machine, or lets the funds from his machine be gradually depleted.
3. A credit from a settlement company for the same amount is transferred to the operator's bank account through third party withdrawals."[7]

A similar problem exists with armoured cars and other money couriers who often serve as agents for MSBs. As a result of this lack of oversight and FINTRAC reporting, the Committee called for white label automated teller machines and armoured cars to be included under the *Proceeds of Crime (Money Laundering) Act* reporting guidelines. [8]

Public Consultation

Staff have prepared a response (Attachment 2) to the Ministry of Finance survey based on previous direction received from Council. Most importantly, the response asserts that the Province should take charge of a regulatory regime instead of deferring the responsibility

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[5] Financial Task Force, Professional Money Laundering, July 2018. http://www.fatf-gafi.org/media/fatf/documents/Professional-Money-Laundering.pdf. Cited in Dirty Money Part 2. pg 47.
[6] https://www.fintrac-canafe.gc.ca/msb-esm/msb-eng
[7] https://assets.documentcloud.org/documents/813221/2007-fintrac-report-on-white-label-atms.pdf
[8] https://www.ourcommons.ca/Content/Committee/421/FINA/Reports/RP10170742/finarp24/finarp24-e.pdf

to individual municipalities to ensure equity and regulatory effectiveness and efficiency province-wide.

Key Highlights of the Survey Response

The Province should create a regulatory agency for MSBs which has the following mandate:

1. a robust licencing regime similar to that of Quebec, which generates enough revenue to pay for the department that oversees it;
2. the authority and investigative tools to conduct inspections of MSBs and detect suspected underground MSBs;
3. adequate resourcing levels and trained staff to proactively conduct inspections of both licenced and suspected underground MSBs;
4. the ability to develop and share intelligence on suspected underground MSBs with local law enforcement, local government and FINTRAC;
5. the technology and staff trained in data analytics and intelligence analysis to monitor suspicious activity around MSBs;
6. education and outreach towards MSB operators as well as the banking and credit union industry regarding new trends, "red-flags", and modalities of criminal activity; and
7. regular consultation with key government and private sector stakeholders to develop strategic plans, which establishes clear performance metrics.
8. MSBs. Moreover, this new department should be given the mandate, strategic direction, resources, and tools to proactively regulate MSBs. At the same time, it recommends that the definition of MSBs be expanded to include White Label Automated Machines and armoured cars services.

Financial Impact

None.

Conclusion

The development of a BC regulatory regime of MSBs represents a historic opportunity to address many of the above deficiencies. Following direction from Council, staff will submit the attached response to the BC Ministry of Finance's consultation on money services businesses regulation.

Mark Corrado
Manager, Community Safety Policy and Programs
(604-204-8673)

MC:mc

Att. 1: MSB Consultation Paper
2: Response to Provincial Consultation on Money Services Businesses Regulation

Attachment 1

Money Services Businesses

Public Consultation Paper

MARCH 2020

BRITISH COLUMBIA | Ministry of Finance

GP - 26 (Special)

MONEY SERVICES BUSINESSES

PUBLIC CONSULTATION PAPER

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INTRODUCTION

The Ministry of Finance is consulting on whether the province should regulate money services businesses (MSBs). MSBs are currently required to register with the Financial Transactions and Reporting Analysis Centre of Canada (FINTRAC), Canada's financial intelligence unit, whose mandate is to facilitate the detection, prevention and deterrence of money laundering and terrorist financing. FINTRAC requires MSBs to establish and implement a comprehensive and effective compliance program as well as meet certain know your client, reporting and record keeping requirements. Both the Expert Panel on Money Laundering in BC Real Estate (https://news.gov.bc.ca/files/Combatting_Money_Laundering_Report.pdf) and the Independent Review of Money Laundering in Lower Mainland Casinos (https://news.gov.bc.ca/files/Gaming_Final_Report.pdf) recommended that in addition to the FINTRAC regime, MSBs should be regulated by the province.

Purpose of MSB Consultation Paper

The purpose of this public consultation paper is to seek input on whether the province should regulate MSBs and what the objectives of a possible regulatory framework should be and any potential costs that would be a consequence of such a regime. The paper sets out a number of possible rationales, objectives and implications of a potential regulatory regime on which input and comments are being sought. Questions are posed after each section to help identify the specific areas and issues. Stakeholders are also invited to provide comments on other issues related to the possible regulation of MSBs that they consider relevant to the review.

How to Provide Input

Submissions and comments must be received by April 30, 2020 and may be transmitted electronically to msb.consultation@gov.bc.ca.

Submissions and comments may also be mailed to:

Attn: Policy & Legislation Division
MSB Consultation
Ministry of Finance
PO Box 9418 Stn Prov Govt
Victoria BC V8W9V1

Public Nature of Consultation Process

Please note that this is a public consultation process and, unless confidentiality is specifically requested, comments and submissions may be summarized or attributed in a public report, and may also be disclosed to other interested parties or made publicly available on the Ministry of Finance website at http://www.gov.bc.ca/fin/.

If certain comments should not be posted publicly or shared with other parties, please clearly indicate that in the submission or covering letter. However, please note that all submissions received are subject to the *Freedom of Information and Protection of Privacy Act* and, even where confidentiality is requested, this legislation may require the Ministry to make information available to those requesting such access.

BACKGROUND AND CONTEXT

Money Services Businesses Sector

Definition

MSBs are a large and diverse set of businesses. The federal *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) defines MSBs as:

> …persons and entities engaged in the business of foreign exchange dealing, of remitting funds or transmitting funds by any means or through any person, entity or electronic funds transfer network, or of issuing or redeeming money orders, traveller's cheques or other similar negotiable instruments except for cheques payable to a named person or entity.

MSBs are not traditional financial institutions. They do not accept deposits or make loans like banks, credit unions or trusts; however, banks and other financial institutions often provide services that are similar to MSBs. FINTRAC does not consider persons and entities that engage in utility payments, payroll and commission services, mortgage and rent payment services and certain tuition payment services to be MSBs. This is because FINTRAC considers these services to be payment processing and that the transmitting of funds is simply a corollary of their actual service. Similarly, FINTRAC considers businesses that provide settlements directly to merchants on behalf of the merchant's customers for the purchase of goods and services not to be MSBs.

Many regulators, including FINTRAC, consider informal alternative money transfer systems such as Hawala[1] to be MSBs. Some jurisdictions also include cheque cashing and prepaid or stored value (e.g. prepaid cards, digital wallets) to be MSBs.

At least one jurisdiction has included the operation of privately-owned automated teller machines (ATMs) or so-called "white-label ATMs" (WLATMS) as MSBs. More recently, many regulators have clarified that MSBs also include businesses dealing in virtual currency, such as Bitcoin. Recent amendments to the PCMLTFA regulations define virtual currency as:

[1] The Financial Action Task Force (FATF) defines Hawala and other similar services providers (HOSSP) as money transmitters, particularly with ties to specific geographic regions or ethnic communities, which arrange for transfer and receipt of funds or equivalent value and settle through trade, cash, and net settlement over a long period of time. A broader category is Informal Value Transfer Systems (IVTS), which are informal money transfer systems that facilitate the transfer of value outside of the conventional financial system (https://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-RBA-money-value-transfer-services.pdf , p. 7).

> …(a) a digital representation of value that can be used for payment or investment purposes that is not a fiat currency and that can be readily exchanged for funds or for another virtual currency that can be readily exchanged for funds; or (b) a private key of a cryptographic system that enables a person or entity to have access to a digital representation of value referred to in paragraph (a).

This definition mirrors language from international guidance,[2] which has added definitions for "virtual assets" and "virtual asset service providers" to reflect the evolution of the virtual asset space. The Organisation for Economic Co-operation and Development (OECD) has observed that an increasing number of countries' financial authorities are defining and regulating virtual currency exchanges as MSBs.[3]

Industry Size

MSBs play an important role in the international financial system. For example, it is estimated that in 2018, U.S. MSBs handled over U.S.$1.4 trillion in transactions, of which U.S.$1.2 trillion were domestic transactions.[4] The majority of this was money transmission (60%), followed by stored value (such as prepaid cards or mobile wallets) (21%), payment instruments including money orders (12%) and virtual currency exchange (5%). MSBs also play a significant role in Canada, where there are more than 900 MSBs[5] (not including agents) registered with FINTRAC, which handle approximately $39 billion a year.[6]

Trends

MSBs are innovative businesses that often assist individuals who have challenges accessing the financial system. They are frequently at the forefront of adopting new technologies and developing new innovative products and services. These trends have accelerated in recent years with the rapid growth in international migration and migrants' related money transmission needs as well as the rise of new financial technologies and related start-up firms. At the same time, MSBs continue to experience challenges in accessing the banking system which can affect their ability to provide affordable and convenient products and services.

Use by Disadvantaged and Vulnerable Groups

Many MSBs provide convenient and affordable financial services to disadvantaged and vulnerable groups such as low-income, rural, and undocumented migrants. Remittances[7] to low- and middle-income countries have reached record highs in recent years and continue to grow rapidly. They are expected to be the largest source of external financing for these countries in 2019 and will surpass foreign direct investment and official

[2] https://www.fatf-gafi.org/media/fatf/documents/recommendations/RBA-VA-VASPs.pdf
[3] https://www.oecd.org/tax/crime/money-laundering-and-terrorist-financing-awareness-handbook-for-tax-examiners-and-tax-auditors.pdf, p. 55
[4] https://www.csbs.org/system/files/2019-10/Chapter%204%20-%20MSB%20Final%20FINAL.pdf, p. 13
[5] https://www.fintrac-canafe.gc.ca/publications/ar/2018/ar2018-eng.pdf, p. 13
[6] https://vancouversun.com/business/local-business/expert-money-laundering-panel-recommends-b-c-regulate-foreign-exchange-money-transfer-businesses
[7] A remittance is the transfer of money from a person to another party and typically refers to money that is sent to a person's family members and friends back in their home country.

development assistance.[8] Lowering the costs of remittances is both an international and domestic priority.

Other developments, which provide new opportunities for disadvantaged and vulnerable persons, as well as present some challenges, include the development of new technologies and the entry of new firms, increasing competition and resulting in lower prices as well as new products and services.

FinTech

FinTech is "technology-enabled innovation in financial services, that could result in new business models, applications, processes or products with an associated material impact on the provision of financial services."[9]

Many new FinTech firms are MSBs, as they develop and apply new technologies to existing bank infrastructure. Competition is growing as new FinTech firms enter businesses, such as money transmission and currency exchange as well as virtual currency dealing. FinTech new entrants are also partnering with large MSB incumbents to leverage new technologies to lower costs and improve products and services.

De-risking

Most MSBs require accounts at financial institutions in order to process transfers and settle accounts with agents domestically and internationally. However, some financial institutions avoid doing business with MSBs, as many financial institutions perceive that MSBs are high risk with respect to anti-money laundering/anti-terrorist financing (AML/ATF) obligations. The practice of financial institutions exiting relationships and closing the accounts of their clients because they perceive the clients to be high risk is referred to as "de-risking."

As a result of de-risking, some MSBs have experienced challenges in maintaining accounts with financial institutions. This has a serious impact on the business model of MSBs, as it can limit their ability to transmit remittances and it may lead to other negative outcomes such as financial transactions moving to less transparent informal channels. The Canadian Money Services Business Association (CMSBA) has reported that de-risking actions by Canadian financial institutions has led to the number of MSBs in Canada shrinking from over 2400 to approximately 800 over a 5-year period. The CMSBA has also claimed that several financial institutions have stopped doing business with all MSBs.

The Competition Bureau of Canada (Bureau) conducted a FinTech Market Study[10] (Study), which noted that several Fintech companies registered with FINTRAC as MSBs, particularly those providing payment related services, reported that they had difficulties opening and maintaining accounts with financial institutions. The Bureau also heard that financial institutions under certain circumstances have closed MSB accounts or refused services to

[8] https://www.worldbank.org/en/news/press-release/2019/04/08/record-high-remittances-sent-globally-in-2018
[9] https://www.fsb.org/wp-content/uploads/P140219.pdf, p. 44
[10] https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04188.html

MSBs with little or no explanation. The Study included a number of recommendations to combat de-risking including requiring financial institutions that terminate or refuse to provide account services to MSBs to provide their reasoning with supporting evidence to their clients. In addition, financial institution applicants who are unduly refused or clients who have had their accounts terminated should have a suitable course of redress, such as the Ombudsman for Banking Services and Investments.

In the international context, the Financial Action Task Force (FATF) has recommended that financial institutions should not resort to the wholesale termination or exclusion of customer relationships in the MSB sector without conducting a proper risk assessment of the MSB.[11]

Questions:

1) How would you describe the current state of the MSB industry in BC? Are the trends presented here representative of the BC marketplace?

2) Are there any other trends, challenges or industry developments in BC outside of what is presented here? Is de-risking a concern for MSBs operating in the province?

Regulation of Money Services Businesses

FINTRAC

FINTRAC was established by the PCMLTFA and is an independent government agency that reports to the federal Minster of Finance. Under the PCMLTFA, FINTRAC is authorized to disclose financial intelligence to police services, law enforcement agencies and other entities.

Registration and Compliance

MSBs are required to register with FINTRAC and to renew their registration every two years.

FINTRAC assesses the fitness of applicants before allowing registration. Organizations or individuals that have been found guilty of, or guilty of being involved in, a money laundering and terrorist financing (ML/TF) offence, as well as corporations, partnerships or other organizations with ineligible leaders/owners as well as listed terrorists are not eligible to register as an MSB and cannot own or operate an MSB in Canada.

MSBs are also required to submit a list of their agents, mandataries and branches upon registration and are accountable for them with respect to anti-money laundering and anti-terrorist financing (AML/ATF) compliance.

Under the PCMLTFA, MSBs must develop a comprehensive compliance program, which is the basis for meeting all reporting, record keeping, client identification and know-your

[11] https://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-RBA-money-value-transfer-services.pdf, p. 44

client (KYC) requirements. MSBs must verify their client's identity for certain activities and transactions and have obligations related to ongoing monitoring of business relationships, determining politically exposed persons (PEPs) or heads of international organizations, beneficial ownership and third-party determination. They are also responsible for identifying clients at certain dollar thresholds and must, with certain exceptions, keep client records for ongoing service agreements, electronic fund transfers (EFTs), fund remittances and foreign exchange services.

MSBs are required to complete and submit reports for suspicious transactions, terrorist owned or controlled property, as well as large cash transactions and EFTs of $10,000 or more. FINTRAC uses the reports to analyze transactions and develop financial intelligence.

Examinations and Penalties

FINTRAC has the authority to inquire into the business and affairs of MSBs. The Centre undertakes on-site and desk examinations applying a risk-based approach to selecting entities for compliance examinations. Examinations can result in an administrative monetary penalty (AMP). FINTRAC has reported that the imposition of AMPs on MSBs has had a significant dissuasive effect on non-compliance. The Centre may also disclose cases to law enforcement if there is extensive non-compliance or there is little expectation of immediate or future compliance.

PCMLTFA Regulations Amendments

In June 2021, amendments to the PCMLTFA regulations are expected to update customer due diligence requirements, include foreign MSBs in the AML/ATF Regime and update beneficial ownership reporting requirements in suspicious transaction reports. Amendments requiring virtual currency dealers to register as MSBs, are also expected be brought into force in June 2020.

As a result of the 2021 amendments, foreign MSBs, which are not currently subject to PCMLTFA obligations, will have the same obligations as domestic MSBs if they offer online services that target people in Canada even if the MSB does not have a place of business in Canada. Although not defined as MSBs, prepaid payment products with accounts that permit $1,000 or more to be added or maintained such as prepaid cards will be treated similarly to bank accounts with the same due diligence requirements. Certain low-risk products will be exempted, and the issuers of products restricted to particular merchants or groups such as a shopping centre gift card will not be included.

Other relevant 2021 amendments include requiring MSBs, along with other entities, to conduct ML/TF risk assessments of new technologies prior to their launch, clarifications related to the determination of large transactions reporting thresholds, PEP requirements, suspicious transaction report submission timelines and added record keeping for certain EFTs. MSBs will also have added flexibility for registration renewal.

White Label ATMs

WLATMs do not fall under the PCMLTFA and are not required to register with FINTRAC. However, in 2008 the federal government worked with Canadian payments networks representatives to develop a set of voluntary and self-enforced industry rules and measures to address ML/TF risks. This includes client identification, record keeping and an annual review by a qualified auditor.

Quebec *Money Services Businesses Act*

Quebec is currently the only province or territory that regulates MSBs. Quebec's *Money-Services Businesses Act* (MSBA)[12] came into force in 2012 and was adopted to facilitate the fight against money laundering and tax evasion. The Act does not regulate for consumer protection purposes. The MSBA was the result of efforts by the Quebec government to combat tax-related economic and financial crime, as MSBs were often linked to these crimes.[13] It was also meant to address the view that there was limited knowledge of the industry and a lack of control of the delivery of services by MSBs.

The MSBA definition of MSBs includes: currency exchange; funds transfer; the issue or redemption of traveller's cheques, money orders or bank drafts; cheque cashing; and the operation of WLATMs, including the leasing of a commercial space if the lessor is responsible for supplying the machine with cash. Businesses operating a virtual currency ATM or a platform for trading virtual currency must also obtain a licence.[14]

The MSBA requires that any person or entity that operates an MSB for remuneration hold a license issued by Quebec's financial market regulator, the Autorité des marchés financiers (AMF). The Act establishes standards for the integrity and "moral character" of executive officers and major shareholders of MSBs and imposes requirements for customer identification, maintaining and updating records and disclosure of certain transactions.

The AMF maintains a public register of licensees and sends relevant information to police and tax authorities when it believes an MSB is conducting unlawful activities. The Sûreté du Québec (SQ), Quebec's national police force, issues security clearance reports that include recommendations on whether or not to grant a licence to an applicant. An MSB that contravenes or commits offences under the MSBA can be fined or have its licence revoked. The AMF may also request that the Financial Markets Administrative Tribunal impose an administrative penalty. The Act includes a number of penal provisions, which can be doubled in the case of a second or subsequent offence.

The AMF was selected to administer the MSBA because of its expertise in registration systems management even though MSBs are not part of the regulated financial sector. A recent Quebec Ministry of Finance report[15] on the application of the MSBA recommended that Revenue Quebec should administer the MSBA. This is because the Act does not

[12] http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/E-12.000001
[13] http://www.finances.gouv.qc.ca/documents/autres/en/AUTEN_loiservicesmonetaires.pdf, p. 13
[14] https://lautorite.qc.ca/en/general-public/media-centre/news/fiche-dactualites/virtual-currency-atms-and-trading-platforms-must-be-authorized/
[15] http://www.finances.gouv.qc.ca/documents/autres/en/AUTEN_loiservicesmonetaires.pdf

conform to AMF's primary mission to protect and assist consumers of financial services, and that combatting tax evasion and money laundering are not part of its mandate.

The Quebec Finance report also noted that prior to the adoption of the MSBA, it was difficult to establish a clear picture of the MSB industry in Quebec even with FINTRAC reporting obligations. It concluded that the Act has made economic and financial crime more difficult to commit and acts as a deterrent.

United States Money Services Businesses Sector Regulation

In the United States, MSBs are regulated at both the federal and state level. Federal supervision is shared between the Financial Crimes Enforcement Network (FinCEN), which is the federal AML/ATF regulator, and the Consumer Financial Protection Bureau (CFPB), which is a regulatory agency that oversees the offering and provision of consumer financial products or services. State regulators also regulate for *Bank Secrecy Act* (BSA)[16]/AML compliance, consumer protection and financial system safety and soundness.

Financial Crimes Enforcement Network (FinCEN)

The BSA requires MSBs in the U.S. to register with FinCEN, which is the federal financial intelligence unit and is a bureau of the U.S. Department of the Treasury. FinCEN defines MSBs as any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the following capacities: currency dealer or exchanger; cheque casher; issuer or seller or redeemer of traveller's cheques, money orders or stored value/pre-paid access products; money transmitter; and the U.S. Postal Service.[17] To be considered an MSB, activity dollar thresholds apply, except for money transmitters where there are no dollar thresholds. Persons accepting and transmitting value that substitutes for currency such as virtual currencies, as well as Informal Value Transfer Systems (IVTS) are considered to be MSBs (money transmitters). WLATMs that limit service to remote access (balance inquiries, withdrawals) from their customers from their own accounts at a depository institution are not considered to be MSBs but are subject to certain BSA requirements.

MSBs must renew their registration with FinCEN every two years, develop and implement an AML compliance program, and report transactions greater than U.S.$10,000 as well as suspicious activities. MSBs must also provide estimates of business volume, information regarding ownership/control of the MSB and a list of agents. Businesses that operate solely as an agent of another MSB are not required to register. The U.S. Postal Services is not required to register but must still comply with the same AML/ATF obligations as other MSBs. Federal, state and local agencies are also not required to register.

[16] The *Currency and Foreign Transactions Reporting Act* of 1970 (which legislative framework is commonly referred to as the "Bank Secrecy Act" or "BSA") requires U.S. financial institutions to assist U.S. government agencies to detect and prevent money laundering. (https://www.fincen.gov/resources/statutes-regulations)
[17] https://www.fincen.gov/money-services-business-definition

State Supervision

Most state regulatory agencies also license and regulate MSBs and have had exclusive prudential jurisdiction of MSBs for over one hundred years.[18] State supervision of MSBs involves licensing, examination, enforcement and complaints handling. They ensure compliance with state and federal regulatory requirements as well as regulate for AML/ATF, narcotics trafficking, consumer protection and financial market stability, safety and soundness. Most states do not monitor or require registration of owners or operators of WLATMs.

State regulators coordinate with each other as well as federal agencies. The Multi-State MSB Examination Taskforce[19] (MMET) coordinates and facilitates multi-state supervision of MSBs. FinCEN meets with MMET regularly to compare examination schedules and review processes as well as the effectiveness of the supervisory regime. The states have also collectively developed and currently operate the Nationwide Multistate Licensing System and Registry[20] (NMLS) through the Conference of State Bank Supervisors[21] (CSBS), which many state agencies use for MSB licences.

Many states require MSBs to submit reports that include financial information, transactional activity and permissible investment amounts (high quality assets that must be reserved against money transmission liabilities). They also coordinate and standardize this information to better assess risks and identify trends. The CSBS has an information sharing memorandum of understanding (MOU) with FinCEN to provide regulatory information from NMLS. States also share information and coordinate with the CFPB where appropriate.

<u>Questions</u>:

3) If BC were to regulate MSBs, what kind of customer identification, record keeping, transaction reporting and other compliance requirements should a provincial regulatory regime have?

4) If BC were to regulate MSBs, which entity should be the provincial regulator and why?

5) Should agents and mandataries have to report in a potential provincial MSB regulatory regime?

6) Should WLATMs be included in a provincial definition of MSBs? Are there any other businesses or activities that should be included or excluded beyond FINTRAC's definition?

[18] https://www.csbs.org/system/files/2019-10/Chapter%204%20-%20MSB%20Final%20FINAL.pdf, p. 14
[19] https://www.mtraweb.org/exams/multi-state-msb-examination-taskforce-mmet/
[20] https://nationwidelicensingsystem.org/Pages/default.aspx
[21] https://www.csbs.org/

DISCUSSION OF KEY ISSUES AND AREAS FOR PUBLIC INPUT

Overview

The remainder of this paper identifies and briefly describes the key areas and issues about which government is seeking input for consideration as part of the possible regulation of MSBs. The intent of this paper is not to present conclusions about the issues, or to propose specific policies. The intent is to raise issues for discussion, and to provide an opportunity for stakeholders in the MSB sector, and any other interested parties, to comment and provide input.

The issues are grouped into two main sections: a section on the rationale and objectives for regulating the MSB sector, and a separate section outlining other potential implications of regulating MSBs. Additional questions are posed after each section to help identify the specific areas and issues about which input is being sought.

Stakeholders are also invited to provide additional input and comments on the issues (e.g., if they would like to comment on issues other than those specifically raised in the questions) and are encouraged to provide comments and input on any other issues or concerns (i.e., those not identified in the paper) they would like considered in the review.

RATIONALES AND OBJECTIVES FOR REGULATING THE MSB SECTOR

Combatting Money Laundering

MSBs vulnerability to ML

MSBs have been identified as being potentially vulnerable to money laundering. The BC government's recent reports on money laundering in BC real estate (Expert Panel)[22] and lower mainland casinos (Independent Review)[23] both recommended that MSBs be regulated by the province. The Expert Report suggested that a provincial business authorization requirement for MSBs could mean that MSBs engaged in ML would be more susceptible to detection by an active regulator with effective investigative resources. It also concluded that MSBs engaged in illegal activity and operating without a licence would be susceptible to detection. In addition, the Independent Review noted that the development of a provincial MSB licensing regime is strongly supported by the province's anti-gang agency, the Combined Forces Special Enforcement Unit – British Columbia (the CFSEU).

The federal Department of Finance's 2015 Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada[24] (Assessment Report) determined that ML/TF vulnerabilities of the MSB sector in Canada is medium to very high. Although the MSB sector is broadly vulnerable, the degree of vulnerability is not uniform across different firm sizes and business models. EFTs, currency exchanges and negotiable instruments

[22] https://news.gov.bc.ca/files/Combatting_Money_Laundering_Report.pdf
[23] https://news.gov.bc.ca/files/Gaming_Final_Report.pdf
[24] https://www.fin.gc.ca/pub/mltf-rpcfat/mltf-rpcfat-eng.pdf

(e.g., money orders) were found to be used the most often for ML due to the common use of cash in these transactions.

Two types of MSBs were identified as the most vulnerable: national full-service MSBs, and small predominantly family-owned MSBs that provide wire transfer services largely through informal networks. The national full-service MSBs conduct high volumes of transactional business (i.e., wire transfers, currency exchange and monetary instruments), and a significant amount of their business is with PEPs, clients in vulnerable businesses/occupations and those who conduct activities in locations of concern. The small family-owned MSBs were deemed to be vulnerable because they can allow high-risk clients to wire funds to high-risk jurisdictions through their informal networks. They may also be more vulnerable to exploitation because of their small size and low-profile.

Virtual Currency

Virtual currency market capitalization and transaction volume is growing and evolving rapidly, which may present an increasing ML risk. The Assessment Report found that the ML/TF vulnerabilities of virtual currencies is high. Virtual Currencies were found to be the most vulnerable because they can provide a high degree of anonymity, are easy to access and transfer and determining beneficial ownership can be challenging. Virtual currency exchanges in particular were found to be susceptible to ML due to their anonymity and intensive use of cash.

The FATF has updated its recommendations to clarify that virtual asset providers be regulated for AML/ATF purposes and that they should be licensed or registered and subject to effective systems of monitoring/supervision. A key priority of the FATF is urgent action by countries to mitigate ML/TF risks of virtual assets and virtual assets service providers, and it has issued several guidance documents related to addressing the ML/TF risks associated with virtual currency payments and products.

WLATMs

WLATMs may be vulnerable to ML because they can be owned by any person or entity directly or through nominees and can be loaded with large amounts of cash including criminal proceeds. Law enforcement continues to express concerns that the industry is used by organized crime groups in Canada.

International Regulation and Assessments

AML/ATF is often the primary purpose for and objective of MSB regulation. Both FINTRAC and FinCEN's mandates are focused on AML/ATF. In the U.K., HM Revenue & Customs (HMRC), which is responsible for regulating most MSBs, set up a Proceeds of Crime Intervention Team which focuses mainly on MSB ML.[25]

Both the US and UK's national assessments of ML/TF have found MSBs to be vulnerable to ML. The US 2018 National Risk Assessment found MSBs to have varying degrees of

[25] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655198/National_risk_assessment_of_money_laundering_and_terrorist_financing_2017_pdf_web.pdf, p. 71, 72

vulnerabilities to ML depending on the type of MSB.[26] It also found that specific case examples demonstrated that professional money launders continually seek out MSBs with weak controls or corruptible staff in order to access the financial system. The UK's 2017 national risk assessment found the ML risks associated with the MSB sector to be high although certain services (e.g., cheque cashing) had little or no risks. This was an increase from the previous assessment and was partly due to the persistence of previously identified risks such as the control of some MSBs by organized crime groups and low levels of compliance with ML regulations.[27]

MSB regulation for AML/ATF purposes is a global priority. The FATF, which has 37 member jurisdictions[28] has issued two risk-based approach (RBA) AML/ATF guidelines related to MSBs over the past decade, including the 2016 FATF Guidance[29] for Money or Value Transfer Services as well as the earlier 2009 Guidance[30] for MSBs.

Questions:

7) Should AML be the primary or only focus of a provincial MSB regulatory regime? Why or why not?

Consumer Protection

There are valid reasons to regulate MSBs for consumer protection purposes. Unfair business practices and fraud can occur by service providers in any industry, but the vulnerability of a consumer is greater when the service consists of handling the consumer's money. The BC Expert Report suggested that regulating the market conduct of MSBs for consumer protection would fill a significant gap in the existing provincial regulatory system. The FATF has recommended that as part of a risk-based regime, the legal and regulatory framework for MSBs should reflect broader financial sector policy objectives such as financial inclusion, consumer protection and competition. In addition, the OECD, Financial Stability Board (FSB) and other international organizations have developed common high-level principles on consumer protection in financial services as directed by the G20 Finance Ministers and Central Bank Governors.[31]

As mentioned above, many U.S. states also regulate MSBs for consumer protection as well as for financial safety and soundness. The U.S. federal regulator CFPB works to protect consumers from unfair, deceptive, or abusive practices and conducts enforcement, takes complaints as well as conducts financial education, research and monitors for new risks to consumers.

[26] https://home.treasury.gov/system/files/136/2018NMLRA_12-18.pdf
[27] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655198/National_risk_assessment_of_money_laundering_and_terrorist_financing_2017_pdf_web.pdf, p. 68
[28] http://www.fatf-gafi.org/about/membersandobservers/
[29] https://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-RBA-money-value-transfer-services.pdf
[30] https://www.fatf-gafi.org/documents/documents/fatfguidanceontherisk-basedapproachformoneyservicesbusinesses.html
[31] https://www.oecd.org/daf/fin/financial-markets/48892010.pdf

Financial Inclusion

Consumer protection may be especially important in the context of MSBs, as they are often used by those who are less likely to use traditional banking. MSBs are a lower cost option for people that need to send money quickly and cheaply instead of waiting for domestic or international wire transfers from a financial institution, which can sometimes take several days to process. The services are also often used in places with limited or no banking services.

Money transmission services are particularly important to financial inclusion. They comprise a large portion of total MSB transactions and are growing rapidly and increasingly relying on internet-based business models. Remittances, in particular, are an important source of income for many developing countries with annual remittance flows to low and middle-income countries reaching U.S.$529 billion in 2018. This was an increase of 9.6% from the previous high in 2017. Reducing remittance costs to 3% by 2030 is a global target under the World Bank Sustainable Development Goals.[32]

A recent Statistics Canada study found that 37% of Canadian residents born in countries eligible for Official Development Assistance sent money abroad to relatives and friends.[33] Money transfer stores are the most common method of sending money, with 56% of remitters going in-person for their most recent transfer and 8% sending money online. The study reported that the average remittance fee was 6% in 2017, with the amount varying depending on the transfer method. The remittance of lower dollar amounts generally had higher average fees.

Reducing remittance fees is a priority in Canada. In 2015, the federal government announced a series of provisions to reduce the costs of remittances. More recently, the federal government indicated that it intends to work closely with provincial and territorial governments to improve regulation of the remittance industry to ensure that consumers are not charged exorbitant fees.[34] The government has also committed to lowering remittance costs to an average of 5% by 2022 and 3% by 2030 which is consistent with the Sustainable Development Goals and Canada's G20 commitments.[35]

Competition

Competition can provide significant benefits to consumers and businesses. This includes providing competitive prices, product/service choice and information to make informed purchasing decisions. Competition is one of the ten G20 high-level principles on financial consumer protection and includes the promotion of competitive markets to enhance innovation and service. MSBs in particular, play an important role in providing competition and provide many direct benefits to consumers including lower prices, increased choice, convenience and product/service innovation.

[32] https://www.worldbank.org/en/news/press-release/2019/04/08/record-high-remittances-sent-globally-in-2018
[33] https://www150.statcan.gc.ca/n1/en/pub/89-657-x/89-657-x2019007-eng.pdf?st=IoLaOQil, p. 3
[34] https://www150.statcan.gc.ca/n1/pub/89-657-x/89-657-x2019007-eng.htm, p. 4
[35] https://www.budget.gc.ca/2019/docs/plan/chap-04-en.html

A potential roadblock to competition from MSBs is de-risking. The Competition Bureau of Canada has noted that financial institutions are in a unique position to potentially block the entry of new competition from MSBs. Financial institutions can provide the same services as MSBs and could in theory close MSB accounts in order to exclude an existing or potential competitor. This may make it more difficult for MSBs to act as a competitive constraint on incumbent financial institutions, which may ultimately lead to higher prices as well as reduce innovation, quality and choice for consumers.

Technological Innovation

New competitive pressures are being introduced in the money services sector with the growth of online business models, as well as new MSB related FinTech firms. This has led to lower costs and the application of new technologies for some services. FinTech companies have specifically targeted remittances and money transmission and have devised ways to lower costs through aggregation as well as adopting new technologies such as machine learning and distributed ledgers. These firms are also often entirely digital, which reduces costs compared to more traditional business models. Recent Fintech entrants have been able to keep remittance fees below 2% or even less on high volume routes.[36,37] Large incumbent MSBs are also building their digital business and have been partnering with FinTech companies to execute foreign currency trades as well as for liquidity related purposes.

Rapidly changing markets that are unregulated may pose consumer protection challenges. The G20 principles note that rapid financial market development and innovation combined with unregulated or inadequately regulated financial service providers can increase the risk of consumer fraud, abuse and misconduct. These risks are particularly significant for certain low income and less experienced consumers. The OECD has found that growing digitization of financial decisions is not necessarily matched by increasing digital and financial literacy levels, even for younger consumers. New types of fraud are possible in the digital environment which take advantage of consumer uncertainty and may lead to new types of financial exclusion for certain groups such as the elderly.

Questions:

8) Should consumer protection and market conduct be part of a potential provincial MSB regulatory regime? Are there other more effective ways to ensure consumer protection, especially for vulnerable groups?

Solvency and Systemic Risks

Many MSBs hold their customer's money on account as part of the service they provide. For example, in a wire transfer, a customer provides the service provider or agent money to be transferred. The service provider or agent sends a message to another branch or agent where the money is then given to a transferee. The service provider holds the money

[36] https://www.economist.com/finance-and-economics/2019/04/11/fintech-takes-aim-at-the-steep-cost-of-international-money-transfers
[37] https://www.reuters.com/article/us-crypto-currencies-remittances/bitcoin-start-ups-in-asia-take-aim-at-remittances-market-idUSKCN1GP117

between when they have received the money and when it has been provided to the transferee. This potentially raises the risk of the solvency of the provider for its customers and therefore prudential supervision may be appropriate to ensure adequate capital and liquidity of the MSB.

Flowing from the solvency risk, is systemic risk. Any time money can be moved around or converted, there are opportunities for arbitrage and speculation. As persons take larger and larger positions in any one asset through a single service provider, the solvency of the service provider is no longer just a concern for individual customers; it becomes a concern for the entire financial system.

Given that MSBs may engender concerns about the stability of the financial sector like those of other financial services, supervision of capital and liquidity may be warranted and rules about clearing and settlement may be required for some of the services. Traditionally such specialized supervision is the responsibility of financial regulators.

The FATF Guidance for a Risk-Based Approach for Money or Value Transfer Services[38] includes financial stability as a broad policy objective. The FATF also notes that prudential supervision of MSBs can facilitate regulators obtaining information on an MSB's risk levels related to their products, services and business model, and can also facilitate AML/ATF measures when shared among appropriate regulators.

Evolving Risks

Technological innovation among MSBs and related FinTech companies may lead to increased prudential and financial stability risks. The International Monetary Fund has suggested that while the evolving FinTech market could boost competition and efficiency, it may also raise new risks to financial stability and integrity. For example, new ways of transmitting money may change the nature of cross-border financial capital flows and could make enforcing macroprudential measures more challenging.[39]

The rise and rapid growth of virtual currencies may also eventually pose a risk to financial stability. In 2018, the FSB reported to the G20 that crypto-assets did not currently pose risks to global financial stability, as their market capitalization levels remain small compared to the global financial system and they are not currently widely used for financial transactions. However, the FSB is monitoring the growth and development of crypto-assets for potential new risks to financial stability. If there were significant growth in virtual asset markets, the risks that could ultimately lead to financial stability implications could include market liquidity, volatility, leverage and technological and operational risks.

[38] https://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-RBA-money-value-transfer-services.pdf, p. 37

[39] https://www.imf.org/en/Publications/Policy-Papers/Issues/2019/06/27/Fintech-The-Experience-So-Far-47056, p. 38

Questions:

9) Should prudential and financial stability regulation be part of a potential MSB provincial regulatory regime? If so, what types of measures should it include? Are there specific types of MSBs that have a greater solvency and/or stability risk?

OTHER IMPLICATIONS OF REGULATING THE MSB SECTOR

Minimizing Regulatory Overlap

It would be important for any provincial MSB regulatory regime to minimize regulatory overlap with other regulators. Cooperation, coordination and information sharing with other regulators and relevant parties would be critical to ensure an effective and efficient provincial regulatory regime. This would include closely cooperating with FINTRAC, the Canada Revenue Agency, police and local law enforcement as well as other provincial and federal entities. The level of cooperation and coordination would likely depend on the objectives of a provincial regime.

Working with FINTRAC would be especially important given its existing registry and reporting regime. FINTRAC has demonstrated a willingness to work with other regulators and parties and has signed over 20 MOUs with federal and provincial partners.[40] These agreements have allowed FINTRAC to coordinate examinations with regulatory bodies, share results, minimize overlap and duplication as well as coordinate the monitoring of trends and emerging risks. For example, the AMF and FINTRAC have an MOU which allows for the sharing of compliance information, minimizes duplication and reduces the regulatory burden for stakeholders subject to the two bodies. Similarly, FINTRAC signed an MOU with FICOM (now the BCFSA) to exchange compliance information, minimize overlap and reduce administrative requirements with respect to credit unions, life insurance companies and trust companies in British Columbia. Other examples of FINTRAC MOUs include those with the Real Estate Council of British Columbia (RECBC) and the Investment Industry Regulatory Organization of Canada (IIROC).

Virtual Currency

Virtual currency dealer regulation may require enhanced cooperation with securities regulators. In March 2019, the Canadian Securities Administrators (the CSA) and IIROC released a joint consultation paper to seek feedback on the requirements for trading platforms (which are used for the buying, selling or transferring of crypto-assets) in Canada whose operations engage securities law. The paper outlined a proposed framework with tailored regulatory requirements for the platforms. Securities regulators will use the feedback to establish a framework that will provide regulatory clarity, investor protection and market integrity.[41] This would likely require coordination with FINTRAC's

[40] https://www.fintrac-canafe.gc.ca/new-neuf/nr/2019-05-30-eng
[41] https://www.bcsc.bc.ca/Securities_Law/Policies/Policy2/PDF/21-402__CSA_IIROC_Consultation_Paper__March_14__2019/

upcoming requirement that dealers in virtual currency register as MSBs as well as any provincial MSB regimes.

U.S. regulators have recently addressed the issue of regulatory overlap of virtual currencies. In October 2019, the U.S. Commodity Futures Trading Commission (CFTF), FinCEN and The U.S. Securities and Exchange Commission (SEC) issued a joint statement regarding digital assets and related AML/AFT obligations under the BSA.[42] FinCEN's 2019 Guidance set out that any person registered and functionally regulated or examined by the SEC or the CFTF is not subject to the BSA obligations applicable to MSBs but is instead subject to the BSA obligations of the regulated entities' type.

<u>Questions</u>:

10) What steps should be taken to avoid regulatory overlap with FINTRAC and other regulators/entities with a provincial MSB regulatory regime?

Minimizing Regulatory Burden

Provincial regulation of MSBs could lead to increased regulatory costs for those MSBs operating in BC. MSBs may in turn pass these increased costs on to consumers by raising prices or reducing available products and services. This could ultimately lead to some MSBs exiting the BC marketplace in the longer term, which would further reduce competition and lead to increased prices. Regulatory costs may also act as a disincentive for new MSB related FinTech companies to enter the BC market thereby further reducing potential new competition. Increased prices and reduced products and services would likely have the biggest impact on vulnerable groups and may negatively impact financial inclusion.

During Quebec's consultation[43] on an MSBA regulation, some MSBs submitted that an increase in compliance costs would impose a competitive disadvantage on MSBs and would act as a disincentive to enter the Quebec market. Stakeholders noted that the regulation of WLATMs in particular would result in less ATMs being available in Quebec and would lead to higher transaction fees, reduced competition and lower employment in the ATM industry.

Risk-Based Approach / Harmonization

A Risk-Based Approach (RBA) to regulation could help to ensure a more flexible regulatory framework that would help to minimize regulatory costs for MSBs. The FATF has increased its emphasis on a RBA to AML/ATF, which allows regulators to target their resources more effectively as well as apply preventative measures that are commensurate

[42] https://www.cftc.gov/PressRoom/SpeechesTestimony/cftcfincensecjointstatement101119
[43] https://lautorite.qc.ca/en/professionals/regulations-and-obligations/public-consultations/topic/money-services-businesses/finished/

with the nature of the risks.[44] This allows for reduced AML/ATF measures where the risk is assessed to be lower.

Coordination and harmonization with other regulators and jurisdictions would also help to minimize regulatory burden and costs. Examples include the Canadian securities regulators' harmonization efforts as well as those of U.S. state supervisors. For example, the U.S. state regulators have launched Vision 2020, an initiative to modernize and harmonize state regulation of non-bank financial companies including MSBs.[45]

Questions:

11) What measures could BC take to minimize regulatory costs and burden for MSBs in a provincial regime? How can BC ensure that competition and access to MSBs are not adversely impacted by a potential regulatory regime?

12) Are there alternatives to direct regulation of MSBs that would be more efficient and/or more effective?

13) Are there any other implications or unintended consequences of a provincial MSB regulatory regime? What measures could mitigate these?

[44] https://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-RBA-money-value-transfer-services.pdf, p. 14

[45] https://www.csbs.org/vision2020

Response to Provincial Consultation on Money Services Businesses Regulation

1) *How would you describe the current state of the MSB industry in BC? Are the trends presented here representatives of the BC marketplace?*

Money Service Businesses (MSBs) are currently unregulated in BC and are only required to register with FINTRAC. The FINTRAC registry appears to lack basic enforcement and intelligence sharing with government partners and local law enforcement. This lack of regulation and enforcement has led to the proliferation of an underground MSB industry and unprecedented money laundering problem that has come to be recognized as the "Vancouver Model". The Province must establish legislation that will create a department which will oversee the regulation MSBs. The mandate of this new MSB regulatory department should include:

a) a robust licencing regime similar to that of Quebec, which generates enough revenue to pay for the department that oversees it;
b) the authority and investigative tools to conduct inspections of MSBs and detect suspected underground MSBs;
c) adequate resourcing levels and trained staff to proactively conduct inspections of both licenced and suspected underground MSBs;
d) the ability to develop and share intelligence on suspected underground MSBs with local law enforcement, local government and FINTRAC;
e) the technology and staff trained in data analytics and intelligence analysis to monitor suspicious activity around MSBs;
f) education and outreach towards MSB operators as well as the banking and credit union industry regarding new trends, "red-flags", and modalities of criminal activity; and
g) regular consultation with key government and private sector stakeholders to develop strategic plans, which establishes clear performance metrics.

The MSB industry, as described by the Money Services Business Public Consultation Paper (Paper), plays a key role in providing financial services outside of the banking and credit union sector in BC. While the paper notes that many MSBs serve population groups from low-income, rural and undocumented migrants, it is also important to consider that MSBs serve middle to upper income individuals from economically advanced countries. Canada, in particular BC, differs from Europe and the United States as it has experienced substantially more foreign migration from economically advanced countries. Foreign born Canadians, permanent residents and temporary residents often originate from countries where the banking sector is dominated by what are perceived to be corrupt and authoritarian regimes. MSBs provide a degree of anonymity for individuals who fear retribution from authoritarian countries where one's wealth and civil rights can be swept aside without due process. Given the global proliferation of authoritarian regimes and the attractiveness of Canada as a democratic safe haven for immigration, MSBs will likely continue to serve as a valuable economic service.

At the same time, the Paper as well as the recent BC government sponsored Peter German and Expert Panel reports note that MSBs have also been spectacularly exploited by organized crime groups. Money laundering, terrorism financing and tax evasion have afflicted MSBs to a greater extent than the traditional banking sector. The aforementioned studies, as well as the Financial Action Task Force, point to recent cases in Canada where MSBs have served as conduits for millions and even billions of dollars of proceeds of crime. The socio-economic harm of money laundering has been acutely felt in the BC where organized crime groups have fueled an unprecedented opioid crisis and laundered billions of funds through the real estate market.

The trend in FinTech or technology-enabled innovation in financial services is of particular concern to law enforcement as it is far easier to exploit by organized crime and difficult to detect. FinTech is also increasingly utilized to facilitate money transfers between countries in order to circumvent capital controls. Smart phones and social media applications that ensure anonymity through encryption are being utilized to transfer considerable sums of money. The trend in increased usage of crypto currencies is likely to accelerate and will continue to be exploited by organized crime.

2) Are there any other trends, challenges or industry development in BC outside of what is presented here? Is de-risking a concern for MSBs operating in the province?

As noted in the above answer to question one, MSBs, Casinos and FinTech have recently been exploited by organized crime. Recent BC government studies as well as expert witness testimony in the Cullen Commission Inquiry have noted that underground MSBs in the Lower Mainland are vital to facilitating the "Vancouver Model" of Money Laundering.

While the Paper notes the adverse impact that "de-risking" has had on MSBs, it is necessary to explore more comprehensively why banks and credit unions have felt the need to de-risk so aggressively. De-risking is clearly linked to the fact that MSBs in BC have an international reputation as being associated with the Vancouver Model. Banks and credit unions are regulated and subject to quite substantial national as well as international consequences if they do not implement strict anti-money laundering, anti-terrorism financing and anti-tax evasion measures. The de-risking trend could be reversed, if banks and credit unions were satisfied that appropriate regulatory and due diligence measures were in place for MSBs. In short, if MSBs are not regulated then it is increasingly likely that banks and credit unions will accelerate de-risking.

3) *If BC were to regulate MSBs, what kind of customer identification, record keeping, transaction reporting, and other compliance requirements should a provincial regime have?*

BC should adopt similar customer identification requirements and record keeping regulations as regulations under the Quebec's *Money Service Business Act* Division IV section 7-17.[9] Ensuring proper customer identification is a vital first step to most due diligence regimes. To facilitate the verification of customer IDs, consideration should be given to developing or adopting a similar software client verification solutions which many banks and credit unions currently utilize.

Moreover, operators of MSBs and their beneficial shareholders should be thoroughly vetted through criminal background checks. The acceptability of these operators should not only be assessed through a criminal check but a comprehensive risk based approach as advocated by the Financial Action Task Force's due diligence process.

4) *If BC were to regulate MSBs, what entity should be the provincial regulator and why?*

[9] http://legisquebec.gouv.qc.ca/en/ShowDoc/cr/E-12.000001,%20r.%201

The BC Financial Services Authority (BCFSA), formerly Financial Institutions Commission, should be the regulator for MSBs. Much of BCFSA's personnel have recent experience regulating credit unions under the Financial Institutions Commission. BCFSA will likely require an increase in resources, new training and development of separate policies for MSBs, however, its familiarity with regulating financial services and knowledge of the Proceeds of Crime (Money Laundering) Terrorism Financing Act is essential. However, BCFSA will require substantially more resources and staff who have the legislative authority and training to conduct thorough investigations and inspections of underground and suspicious MSBs. BCFSA will also likely be able to leverage its strong relationship with the credit unions, FlNTRAC, law enforcement and tax regulators.

5) *Should agents and mandataries have to report in a potential provincial MSB regulatory regime?*

If the mandatary or agent is a part of the provincial or federal government, for example, Canada Post, they can be exempt. However, if the agent or mandatory is not a government agencies and are fulfilling a nominal role or function they should be subject to a similar MSB regulatory regime. For example, armoured car services should be fall under the MSB regulatory regime.

6) *Should White Label or Generic Automated Teller Machines (WLATMS) be included in a provincial definition of MSBs? Are there any other business activities that should be included or excluded beyond FINTRAC's definition?*

There are an estimated 43,100 White Label or Generic Automated Teller Machines (WLATMS) in Canada. These generic ATMS are not linked to banks or credit unions and are typically operated by small businesses. They are often found in small retail establishments, gas stations, bars/pubs and restaurants. WLATMS should be included in the provincial definition of MSBs and regulation. A 2018 Federal government report recommended that the "Government of Canada amend the PCMLTFA so that the armoured car and white label ATM sector be subject the Anti-Money Laundering/Anti-Terrorism Financing regime, as is the case in the United States and the province of Quebec, respectively."[10] RCMP, FINTRAC and a 2016 Financial Task Force report on Canada identified that WLATMS as having been exploited by organized crime who often infiltrate businesses or utilize proxies known as "mules" or "smurfs" to exploit these machines for money laundering purposes.[11]

7) *Should Anti-Money Laundering be the primary or only focus of a provincial MSB regulatory regime? Why or why not?*

Anti-money laundering, anti-terrorism financing and tax evasion detection should be the focus of the Provincial MSB regulatory regime. Critically, the focus should also be on the detection of underground MSBs through proactive inspection and intelligence collection. International agencies such as the Financial Task Force, the European Union, the United States as well as the Canadian and BC government have identified how organized crime, terrorist groups and

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[10] https://www.ourcommons.ca/Content/Committee/421/FINA/Reports/RP10170742/finarp24/finarp24-e.pdf
[11] https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Canada-2016.pdf

criminals have utilized MSBs to launder money, evade tax and finance terrorism. The Provincial MSB regulators should work closely with the MSB operators, local law enforcement, financial sector, revenue Canada and FINTRAC to identify suspicious behaviour, share intelligence and enforce regulations. In Quebec, MSB regulators work seamlessly with the aforementioned agencies and routinely share intelligence which has disrupted serious criminality related to money laundering, tax evasion and national security.

8) *Should consumer protection and market conduct be part of a potential MSB regulatory regime? Are there other more effective ways to ensure consumer protection, especially for vulnerable groups?*

One of the most effective ways to ensure consumer protection and good market conduct is to have regular enforcement of regulations, intelligence sharing between various law enforcement agencies and other regulators, robust background checks of operators and routine inspections of MSBs. As noted in the Paper, the emergence of digitization has led to lower costs and lower remittance fees being charged by online Financial Technology companies MSB firms. At the same time virtual currencies are at a greater risk of identity theft, cybercrime and fraud. The Provincial regulator of MSBs should work with business operators and consumers to generate awareness campaigns regarding the aforementioned risks. Criminal schemes and other predatory behaviour are constantly evolving and it is vital that these new modalities are shared both with MSB operators and consumers.

9) *Should prudential and financial stability regulation be part of a potential MSB provincial regulatory regime? If so, what types of measures should it include? Are there specific types of MSB that have a greater solvency and/or stability risk?*

MSBs should be subject to prudential supervision and regulators should strive for financial stability as an objective. As noted in the Paper, the Financial Action Task Force has found that prudential supervision also enhances improved intelligence collection, identification of risk and ultimately enforcement. It is conceivable that virtual currencies and other financial technology companies could pose systemic risks to the financial markets, particularly, if they continue to experience exponential growth.

10) *What steps should be taken to avoid regulatory overlap with FINTRAC and other regulators/entities with a provincial MSB regulatory regime?*

Quebec’s MSB regulators have proven to work effectively with FINTRAC, law enforcement and the Canadian Revenue Agency with minimal issues. Regular intelligence sharing, joint-task forces and strong relationship are key to ensuring an integrated approach between regulators. It would be prudent to ensure that there is regular stakeholder consultation with other provincial and national regulators of MSBs to mitigate regulatory overlap and align strategic objectives. To date, there has been little issue with overlap in mandate given the relative lack of enforcement resources devoted to Anti-Money Laundering and Anti-Terrorism Financing at both the provincial and national level.

11) *What measures could be taken to minimize regulatory costs and burden to MSBs in a provincial regime? How can BC ensure that competition and access to MSBs are not adversely impacted by a potential regulatory regime?*

Researching and investing in the use of cost effective technology that automates client identity verification and financial transactions/records keeping could be used to offset regulatory costs and burdens. Much of the banking and credit union industry has applied technological solutions to automate risk analysis and suspicious transaction reporting. The Provincial regulator could employ similar data analytics and machine learning as the private sector and FINTRAC to build better risk matrices, track threats, and identify emergent trends.

12) *Are there alternatives to direct regulation of MSBs that would be more efficient and/or more effective?*

Multiple provincial, national and international studies have shown direct regulation of MSBs as essential and effective to ensuring Anti-Money Laundering, Anti-Terrorism Financing, tax enforcement, and even the stability of financial markets. There are no more effective and efficient means to reducing the risk of Anti-Money Laundering, Anti-Terrorism Financing and tax evasion in MSBs other than direct regulation.

13) *Are there any other implications or intended consequences of a provincial MSB regulatory regime? What measures could mitigate these?*

The United States and Quebec have regulated MSBs with minimal consequences. As was noted above, a lack of regulation leading to increasing de-risking from banks and credit unions poses a far greater risk and consequence to the MSB industry.