

April 25, 2021



The Honourable Chrystia Freeland  
The Minister of Finance - Canada  
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RE: Seeking a nine-month deferral of the Coming into Force dates for selected changes to the PCMLTFR<sup>1</sup> and PCMLTFRR<sup>2</sup>

Rationale: To give FINTRAC and Reporting Entities (RE) the opportunity to provide adequate notice for Canada to align with international standards and expectations

Dear Honourable Chrystia Freeland;

On behalf of the Canadian Money Service Business Association (CMSBA) and its MSB members that are Dealing in Virtual Currencies (DiVC) we are writing to request the government shift the coming into force date for new requirements to compensate for a lack of guidance and regulatory infrastructure to support an effective and efficient implementation of the new requirements.

In this letter, we will highlight recent challenges and concerns that are facing many of the DiVC as related to timelines and expectations for Large Virtual Currency Transaction Reporting (LVCTR) and the related "Travel Rule" implications coming into force June 1, 2021.

Your attention is required as FINTRAC may have the ability to provide direction on their interpretation of regulatory matters, and some relief, they remain bound to adhering to the regulations as written. The proposed relief provided by FINTRAC leaves DiVC with unreasonable liability and poses risks to RE trying to implement changes with limited time frames which we will outline below.

Accordingly, we respectfully request the Government consider updating the Coming into Force provisions for the PCMLTFR and PCMLTFRR for DiVC for a nine-month period to empower the sector the time to adequately build, test and implement a more robust compliance regime.

### **Background on the Canadian Money Services Business Association (CMSBA) and DiVC**

The CMSBA membership is made up of a wide variety of MSBs, including DiVC. Our mission is to provide support for organizations who are governed by the MSB regulations under the PCMLTFA/R in Canada. These MSBs are governed by 4 main activities that include, Money Transferring, Issuing and Redeeming Money Orders, Foreign Exchange Dealing, and Dealers in Virtual Currencies. They collectively employ over 25,000 people in Canada, and include over 17,000 agents. As of a recent information request response from FINTRAC, the landscape of MSB is made up of over 1,851 organizations, out of which there are over 500+ MSBs that are DiVC.

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<sup>1</sup> Proceeds of Crime (Money Laundering) And Terrorist Financing Regulations

<sup>2</sup> Proceeds of Crime (Money Laundering) And Terrorist Financing Reporting Regulations

## **Background on the timeline and lost opportunity of the two-year notice period**

Although most aspects of recent changes to the PCMLTFR had either a one year, or a two-year period of time prior to coming into force, the critical guidance and technical schema needed to delivery reporting gave only weeks of time to design, test and implement the requirements for DiVC and other RE.

The Department of Finance is active in providing avenues for outreach with consultation meetings and the ACMLTF Steering and Working groups to keep the lines of communication open with the Government, FINTRAC and industry. In every steering meeting since prior to the release of the regulations in 2020, feedback has consistently been provided in these forums that FINTRAC’s guidance was critical to meet the policy intent of the two-year notice period to provide enough time to deliver both an effective and efficient update to the AML compliance regime in Canada.

To be precise, this in relation to the notice published on the FINTRAC website on February 19, 2021<sup>3</sup> for “*Large Virtual Currency Transaction Report Upload documentation*”. This notice provided guidance to RE for reporting LVCTR, validation rules, and the schema. It also indicated that testing is available from March 15, 2021 to May 28, 2021, a mere 10 weeks for RE, including DiVC.

While we understand there were delays related to COVID and other difficulties, the tight timelines pose a serious challenge to most DiVC. It is understood that there may be other RE impacted by these tight timelines, the focus here is in the newly minted DiVC who have never dealt with FINTRAC reporting.

## **Testing and Implementation Challenges**

Many of the members that are part of the CMSBA’s sub-committee for DiVC and the FINTRAC DiVC working group have received the information as per the notice above and the email received from FINTRAC on March 15, 2021 announcing “*Access to testing*”. In the email, it states;

*REs that expect they will be required to submit a low volume of reports to FINTRAC can do so through the paper form starting on June 1, 2021. When FINTRAC Web reporting (formerly known as F2R) is updated to include the LVCTR form later this year, users will be invited to submit their reports through that means instead of filing paper reports.*

This infers that low volume entities would be able to satisfy the filling out of the reports in paper format rather than the electronic method that is coming “*later this year*”. It also infers an

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<sup>3</sup> <https://www.fintrac-canafe.gc.ca/covid19/lvctr-eng>

obligation for high volume RE to immediately begin submitting LVCTRs via the upload function using JSON formatted scheme. FINTRAC should be commended for this and the DiVC are not opposed to such innovation as it is an incredible leap forward in reporting, and brings reporting most closely aligned with modern industry standard. This does however produce added infrastructure and development time requirements in an exceptionally small window of time for DiVC.

For paper filing, the challenge will produce a significant burden for many smaller (low volume) DiVC, and creates a novel method of reporting. Many transactions, especially LVCTRs, can have up to 300 input addresses. This is due to the nature of many wallets and exchanges where smaller amounts are consolidated as part of the unspent outputs (UTXO) into the larger outputs. This means that if a “low volume” entity were to receive a Virtual Currency (VC) which had many inputs, they would have to physically write down, or provide a printed attachment of all the input addresses. This will also be true for the electronic method coming “*later this year*”.

For electronic submissions (JSON format), which are needed for efficient and accurate reporting, the challenge relates to the timelines and expectations for testing and implementing within 10 weeks. Very few software applications can be built that quickly without bugs or errors. As many CMSBA members recall, and as is the normal practice for any form changes and/or technical implementation requirements in the past with FINTRAC, the RE were provided at least a 9–12-month window to test, implement, and begin using the new features.

In various FINTRAC working group meetings, it was understood that there may be some leniency in implementing systems to deliver LVCTR in electronic submissions (JSON format), however, there is no clear guidance as to providing a reasonable timeline for implementing this new technological innovation for reporting.

Further, these discussions in the FINTRAC working group meetings revealed that relief would most likely be given if the DiVC document why the June 1, 2021 deadline was not met, however, RE are still expected to file the LVCTRs that started June 1, 2021. We take that to mean that if DiVC are able to test after May 28, 2021 and have implemented some time after the June 1, 2021, they would be expect to back file reports from June 1, 2021. This also implies that the DiVC are gathering all the mandatory information to provide in the LVCTRs, regardless of whether they discover during the implementation process they have not gathered all this information. We ask that the timeline and corresponding deadline for the implementing the LVCTRs be extended to at least November 1<sup>st</sup> 2021 with enforcement beginning in early 2022 in order for DiVC to properly test and orient their processes towards compliant operation.

### **Previous precedence for coming into force**

The MSB members that are DiVC feel that the delay to later in 2021 is a reasonable request given that this is not the first time that tight deadlines were initially proposed and put into law. We simply point to the “*Regulations Amending the Regulations Amending Certain Regulations Made*

*Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, 2016 (Transitional Provision)”<sup>4</sup> that stated the issue as;*

*Reporting entities require a longer transition period to prepare to comply with the dual-method identity verification requirements introduced through the Regulations Amending Certain Regulations Made under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, 2016 (the Regulations), which were made by the Governor in Council on June 17, 2016. The Regulations require amendment to extend the duration of the transitional period.*

It was concluded that “*there was not enough time left in the transitional period for reporting entities to fully prepare to operationalize the new requirements*” and that extending the transitional period to January 23, 2018 would alleviate this burden for RE and FINTRAC.

### **Travel Rule Challenges**

For both the low volume paper and JSON electronic submission of LVCTRs, the “Travel Rule” portion, will be an even more difficult requirement to fulfill. This is in relation to subsection 124.1(1) of the PCMLTFR and is further clarified in subsection 124.1(2) of the PCMLTFR, which states;

*Every person or entity referred to in subsection (1) shall develop and apply written risk-based policies and procedures for determining, in the case of a virtual currency transfer received by them that, despite reasonable measures taken under paragraph (1)(b), does not have included with it any of the information required under paragraph (1)(a), whether they should suspend or reject the virtual currency transfer and any follow-up measures to be taken.*

Where section (1)(a) and (b) state;

*(a) include, with the transfer, the name, address and, if any, the account number or other reference number of **both** the person or entity who requested the transfer and the beneficiary; and*

*(b) take reasonable measures to ensure that any transfer received includes the information referred to in paragraph (a).*

While this is a lofty goal for many MSBs that are DiVC to try and achieve, it is not a realistic goal given the nature of VC as it relates to the decentralized and pseudonymous aspects of the blockchain and ecosystem that supports it. This also applies to other RE that have obligations related to VC. While there are many initiatives including industry lead groups like TRISA<sup>5</sup>, and

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<sup>4</sup> <https://gazette.gc.ca/rp-pr/p2/2017/2017-06-14/html/sor-dors115-eng.html#footnote.51268>

<sup>5</sup> <https://trisa.io/>

interVASP<sup>6</sup>, or vendor specific solutions from the likes of Chainalysis<sup>7</sup>, Bitgo<sup>8</sup>, Elliptic<sup>9</sup>, the fact remains the industry is still very fragment. Most of these commercially available systems are not fully live or ready for any significant delivery of the prescribed information as part of 124.1 (1) (a).

To take this a step further, there is an uncertainty among DiVC with respect to 124.1 (1) (b) and taking “*reasonable measures*” in that most times the person or entity requesting the transfer claims to also be the beneficiary of the transaction and there is no way to verify the validity of such a claim. Therefore, there is no further action to be taken, and one could say “*reasonable measures*” have been achieved. Additionally, it seems an assumption has been made in draft guidance and the regulations that are coming into force June 1, 2021, that DiVC have the ability to reverse or suspend a VC transaction once its “in-flight”. Given the way blockchain has been designed it is impossible to reverse or suspend, thus many DiVC feel this is an unknown that threatens their next FINTRAC review with violations, or worse, AMPs for non-compliance. There has been little or no guidance related to reasonable measures.

It is our understanding that Section 124.1 is the enhancement in the PCMLTFR to section 66.1 and its relation to replicating the SWIFT MT 103 message that carries the prescribe information in relation to the person or entity ordering the transaction or the beneficiary.

Most DiVC only see one or the other side of the VC transaction, and to be very frank, there is no assurance private wallets, unidentified DiVC exchanges, and now even Decentralized Finance (DeFi) transaction will be providing the other side of the prescribed information. Guidance and/or exemptive relief would be welcome by DiVC until, if or when, a global industry wide solution is adopted. Until then, it should be expected that only one side or the other of the prescribed information would be required under “*reasonable measures*”.

### **Where to go from here?**

The CMSBA recognizes the significant role which RE have in protecting Canada from the proceeds of crime and terrorist financing. The compliance regime in Canada has and will continue to evolve to meet regulatory expectations as it has in the past.

In summary, the CMSBA, on behalf of its MSB members who are DiVC, are seeking redress and relief from the burden of not knowing if an extension will be provided for the many who will simply not be able to meet the high standards which Canadians expect in the imposed tight deadline for testing and implementation of the LVCTRs and Travel Rule. Accordingly, the DiVC

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<sup>6</sup> <https://intervasp.org/>

<sup>7</sup> <https://blog.chainalysis.com/reports/chainalysis-notabene-travel-rule-integration#:~:text=The%20Travel%20Rule%20dictates%20that,users%20above%20a%20certain%20size.>

<sup>8</sup> <https://www.bitgo.com/newsroom/press-releases/travel-rule>

<sup>9</sup> <https://www.elliptic.co/blog/the-travel-rule-compliance>

are seeking relief of at least a nine-month deferral of the Coming Into Force dates for the selected changes to the PCMLTFR and PCMLTFRR.

The CMBSA looks forward to continuing to work with the Department of Finance and FINTRAC in the strengthening of the compliance regime in Canada.

Joseph Iuso  
Executive Director  
Canadian MSB Association

Further endorsed by DiVC:

Aubrey Jesseau	Beaver Bitcoin
Eric Kryski	Bidali
Dean Skurka	Bitbuy Technologies Inc.
Frank Maione	Bitcoin4U
Adam O'Brien	Bitcoin Well
Xavier Humblet	Coinberry
Lawrence Truong	Coinsquare
Ryan Johnson	Just Wallet Ltd
Adam Reeds	Ledn
Charlene Cieslik	Localcoin
Julia Baranovskaya	NDAX
Samih Mokbel	Netco Digital Services Inc.
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