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To: The Government of Canada – Department of Finance

Submitted to The Canada Gazette, Part I, Volume 157, Number 7: Regulations Amending Certain Regulations Made Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act

Re: Amending the Proceeds of Crime (Money Laundering) and Terrorist Financing Act

Canada’s Department of Finance proposed certain amendments to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (“PCMLTFA”), which would impact private mortgage lenders for the first time.¹ The public may comment on the proposal. Our opinion follows.

Introduction

Assadi Private Capital, Inc. is a private corporation that, among other investments, issues secured and unsecured loans in several provinces. We work alongside mortgage brokers, real estate appraisers, lawyers and other professionals to provide financing to people and businesses who may not qualify for bank loans.

Many in financial hardship can only source funds from private lenders. They are high-risk customers, to be sure. But they don’t represent the entire private borrower pool. Others are solvent (even wealthy) entrepreneurs and income-earning Canadians who need short-term funding. They often fall outside “the box” required for bank financing but, in our view, are still viable candidates. Private lenders can serve people and companies in complex, exigent financial circumstances. Our customers have included budding entrepreneurs, people from marginalized communities and those in need of a second chance.

Unfortunately, Canadian real estate is frequently used by criminals to “clean” illicit funds. This threatens our economic and national security. Money launderers lengthen the tentacles of despots, fugitives, gangsters, hostile governments and authoritarians. They could use private mortgage lenders (by becoming either an investor or a borrower) to further their crimes. We generally support laws intended to constrain this illegal activity.

As well, mandatory due diligence could have commercial benefits: the more a lender knows about a borrower, the safer the loan should be.

¹ <https://www.gazette.gc.ca/rp-pr/p1/2023/2023-02-18/html/reg2-eng.html#finalStep>

However, we have three primary comments and concerns about the proposed amendments to the PCMLTFA:

1. Steep regulatory fees would immediately put small lenders (like us) out of business.

Annual fees in the tens of thousands of dollars would put Assadi Private Capital and comparable lenders out of business. We are a small, family-owned company with two operating staff and no investors. We do not have the resources available to many investment funds, mortgage investment corporations, family offices and institutionally-backed firms.

Indeed, there are risks and rewards that accompany business ownership. But forcing a company to close because it is not large enough to afford newly-introduced fees payable to the Government would be unjust. When starting a business, entrepreneurs should not have to fear whether the Government might later enter the industry and impose unaffordable tariffs. High regulatory fees would eliminate modest mortgage lenders to the benefit of bigger firms. It would be anticompetitive in a country that depends on small businesses to employ two-thirds of the private labour force.²

Therefore, regulatory fees should be proportional to the size of each private mortgage lender. Reporting lenders could be categorized via:

- Portfolio size (assets under management)
- Number of mortgage loans originated annually
- Size of mortgage loans issued

The lender's ownership structure should also be considered. A privately-held lending firm runs a different business than a pooled fund. In addition to giving loans, the latter solicits investors and could be used to "wash" tainted money from shareholders. While they may share some of the same borrowing customers, private and investor-backed lending businesses do not have much in common.

Ownership could be divided by:

- Privately held
- Funded by retail investors
- Funded by institutions

Moreover, Canadian retail investors invest in mortgages for portfolio diversification. However, most lack "back office" support and industry-specific knowledge. Strict compliance rules would thus choke access to this asset class. Instead, retail investors' representatives, such as brokers and financial advisors, should be responsible for regulatory adherence.

² <https://ised-isde.canada.ca/site/sme-research-statistics/en/key-small-business-statistics/key-small-business-statistics-2021>

2. Increased regulation will make it harder for non-bank borrowers to secure financing.

New regulations will cause funding delays, especially in the near-term as lenders adjust. It will become harder to qualify for loans. Capital will be even less available to the millions of Canadians who rely on private financing. The effects will be profound in today's interest rate environment. It is already challenging to secure funding. More rules will make it increasingly arduous. Therefore, an updated administrative rollout should be done over time.

3. Private mortgage lenders already operate within an ecosystem of licensed professionals.

The private lending space should be viewed as an ecosystem, not a siloed industry. We do not work in a regulatory "Wild West." In fact, it is virtually impossible to issue a secured loan without the assistance of licensed professionals. For example, in each of our mortgage transactions there will usually be:

- a. Two lawyers (one for us and one for the borrower); and
- b. A property appraiser; and
- c. At least one mortgage broker.

Accountants and realtors may also be involved.

We rely on these professionals for their expertise. They also serve as a bulwark against criminal activity because of their own regulatory obligations.

Accordingly, there can be several independent layers of diligence in each mortgage granted.

Conclusion

The Government of Canada is right to crack down on money launderers and illicit financiers by adding rules to the private mortgage lending space. We simply ask that it does not paint our industry with a broad brush. Compliance fees and FINTRAC cost recoveries should be proportioned by the lender's size. The companies who grant most of the private mortgages should shoulder their fair share of the expenses.

Further, updates to the regulatory regime will cause a tightening of capital. More borrowers than ever need private lenders for real estate, consumer, auto and business financing. Some (not all) experience severe financial distress and require immediate relief. These Canadians deserve fair access to loans, too.

Thank you for your consideration,



Alexis Shahriar Assadi, Director