



Le 8 juillet 2011

Me Anne-Marie Beaudoin
Secrétaire corporative
Autorité des marchés financiers
800, Square Victoria, 22^e étage
C.P. 246, Tour de la Bourse
Montréal (Québec) H4Z 1G3

Madame Beaudoin,

Veillez trouver ci-joint nos commentaires sur l'intégration des guichets automatiques bancaires (*ATM*) dans la *Loi sur les entreprises de services monétaires*, ainsi que sur le projet de réglementation assortie à cette loi.

Nous vous soumettons le document ci-joint dans sa seule version anglaise, pour l'instant, afin de nous conformer à la date butoir du 11 juillet 2011. Tel que convenu entre l'AMF et madame Josiane Hébert, chez H&K, nous vous en ferons parvenir une version française complète et vous consentez à tenir pour valable notre soumission dans cet important processus.

Si vous avez des questions, n'hésitez pas à communiquer avec moi en tout temps.

Je vous prie d'agréer, Madame, l'expression de mes salutations distinguées.

CANADIAN BANK MACHINE ASSOCIATION



Chris Chandler, Président

Copie à : M. Alain Paquet, Ministre des Finances



July 8, 2011

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, Square Victoria, 22^e étage
C.P. 246, Tour de la Bourse
Montréal (Québec) H4Z 1G3

Re: Comments on inclusion of automated teller machines (“ATMs”) in the *Money-Services Businesses Act* and on the draft regulation regarding the *Money-Services Businesses Act*.

Dear Mrs. Beaudoin,

It is with great interest that the CBMA read the three documents related to the regulatory framework of the *Money-Services Businesses Act* made public on June 10th by the Autorité des marchés financiers (AMF). We want to thank you for giving us the opportunity to send you our comments and recommendations on these proposed regulations which are very important to our industry.

Let me remind you that the CBMA, the ATM Industry Association of Canada (ATMIA) and several members of the ATM industry at large have been active participants in the process surrounding Bill 128 and the MSBA since early November, 2010.

In this submission, we present a unified position for consideration by the Government of Quebec and the AMF regarding ATMs and the MSBA.

We understand that the MSBA has two primary objectives, as follows:

1. to mitigate the likelihood of criminal money laundering and having strong documentation to aid in any potential prosecutions of same; and,
2. to mitigate the likelihood that money service businesses are used for fiscal evasion

Based on our extensive involvement in this process, and deeper understanding of the objectives of the MSBA, we strongly believe that the objectives of the Act, with respect to ATMs will be best met by either:

- a) including the existing Interac Regulations for ATM Anti-Money Laundering as a qualifying regulation/law to permit exemption from the MSBA; or,
- b) removing ATMs from the MSBA and relying on the existing or potentially modified Interac ATM Anti-Money Laundering Regulations.

If, after giving full consideration to the rationale for making Interac compliant ATMs exempt or removing ATMs from the MSBA, it is determined that ATMs must remain in the Act, then we suggest, at a minimum, the changes noted below, however we strongly believe this will continue to result in significant redundant burden on thousands of Merchants and small businesses without adding any material improvement towards meeting the objectives of the Government in the MSBA.

Key Drivers supporting exemption or removal of ATMs from the MSBA

The key drivers for this strong recommendation that ATMs be removed or exempted from the MSBA are three fold, as follows:

- first, ATMs do not share the key characteristics of the other businesses covered under the Act with respect to the risks for money laundering and fiscal evasion;
- second, ATMs are already subject to strict and comprehensive Anti-Money Laundering regulations in Quebec and across Canada through Interac mandated regulations, and;
- third, the detailed record keeping by third parties of all cash transactions and the related AML documentation mitigates the potential use of ATMs for fiscal evasion.

Each of these areas will be expanded on below.

By relying on the existing Interac ATM Anti-Money Laundering regulations, which include strict audits of the information and facilitate effective police investigation and prosecution, we believe that the Government of Quebec can effectively achieve the objectives of the MSBA with respect to ATMs, can minimize disruption and duplication of efforts for thousands of merchants in Quebec, and can streamline and cost effectively implement the MSBA in a timely manner.

1. ATMs do not share the same characteristics as the other businesses covered by the MSBA

While it is true that ATMs process and deposit significant amounts of cash in Quebec each year, the ATM industry does not share the characteristics of other money handling businesses that would give rise to the higher risks associated with potential money laundering or fiscal evasion.

There are five businesses covered by the Act. Four of them (cheque cashing, FOREX, wire transfer and travelers cheques) bear similar characteristics:

- Handle large volumes of cash
- Ability to conduct anonymous cash transactions
- Possibility for “off the books” transactions – “cash in- cash out”
- Possibility to maintain “two sets of books”
- Possibility of private cash handling - no third party intervention in cash transactions
- Possibility of private cash record keeping - no third party record keeping of each and every cash transaction
- May or may not have current regulations that meet the objectives of the MSBA

The fifth category of “business” included in the MSBA, automated teller machines, does not share these characteristics with the exception of handling large volumes of cash. Specifically, with “white

label” ATMs it is not possible:

- For ATM owner/operators to conduct anonymous cash transactions through an ATM regarding the cash placed in the ATM. While it is sometimes thought that this is simple to do and would go unnoticed reality is quite different as described in **Appendix A “ATM Myth vs. Reality”**. To conduct anonymous cash transactions in ATMs, a criminal would need to create a conspiracy of collusion by having the cooperation of independent third-parties at the Interac processor and/or the settlement bank. Such elaborate collusion if it existed would also have to go unnoticed by the regular Interac Audits of these third party switch processors. Accordingly, there is NO opportunity for anonymous deposits from the cash filled in an ATM as each and every ATM must deposit to a Canadian bank account, that Canadian bank account number and location is known to the third party Interac switch processor and detailed records are maintained of each and every dollar cash from the ATM deposited into the specific bank account. Not only is this data maintained by third parties, but it is retained for at least 7 years and, through Interac’s law enforcement liaison it is accessible, along with all AML documentation including source of funds declarations, to Police and Prosecutors with a warrant in a discreet manner. **See Appendix B for a description of the participants and flow of data for an ATM in Canada.**
- For ATM owner/operators to maintain “off the books” transactions for an ATM owner filling cash in the ATM. The activity of a criminal or tax evader keeping transactions “off the books” to facilitate money laundering and/or fiscal evasion is not possible in an ATM. Given the nature of an ATM transaction as being two sided from the ATM in question to the bank of the debit card holder – EVERY transaction is recorded in detail and such detailed record is maintained by highly regulated third party Switches (as described in Exhibits A and B). Accordingly, ATMs do not present any material risk of facilitating or assisting in “off the books” transactions.
- For ATM owner/operators to maintain two sets of books over the cash loaded into ATMs. As per Interac AML regulations (see Exhibit C), each bank account authorized to accept deposits from an ATM must be in the name of the business that contracts for the ATM. This is further verified by obtaining and retaining copies of the business license and a copy of a void check on the bank account confirm it is all the same entity as the merchant or party contracting for the ATM. ATMs cannot be obtained without providing these records to the ISO and/or Interac Member and the records are subject to comprehensive Audit on an annual basis. Accordingly, ATMs are not a useful tool for fiscal evasion as the merchant would immediately be depositing their cash proceeds into a bank account of the business and have clear records for the tax authorities to review. Likewise a potential money launderer may not maintain two sets of records as the bank account is known to third parties.
- For ATM owner/operators to conduct private cash handling with an ATM – that is a criminal cannot receive cash proceeds and use those cash proceeds for another purpose without detailed third party records. With respect to the cash loaded into the ATM, there is an independent third party, that is a Member of the Interac Association, a Federal Government SRO, which is owned and operated by Canada’s financial

institutions including Desjardins and National Bank that receives and retains a record of each and every cash transaction through the ATM. These third parties intervene in ALL transactions from ATMs keeping detailed records of the transactions, and directing the funds to specific Canadian Bank accounts that they have the detailed information on. There is NO possibility of a criminal directly using an ATM for anonymous funds transfer from ATMs to unknown bank accounts

- For an ATM owner/operator to conduct cash transactions on ATMs that do not have third party intervention and record keeping. The records for each and every cash withdrawal, which is the action that could potentially create a money laundering or tax evasion event with a merchant or ATM owner, are recorded and maintained by independent third parties, that are required to be both PCI compliant and to withstand intensive Interac, Mastercard, and Visa audits on an annual basis as to their integrity and compliance. Each of these entities has segregated duties and internal controls, checks and balances to mitigate any opportunity for collusion with criminals that may own or cash load an ATM.

In addition, all white label ATMs in Quebec and Canada are already subject to comprehensive Anti-Money Laundering regulations. In 2007, as part of their regular review of the entire Canadian payment system, the global Financial Action Task Force (FATF) identified that Canada did not have a specific regulation against money laundering in ATMs. A Federal Government task force was struck led by the Department of Finance and including Fintrac, Mastercard, Visa, AMEX, RCMP, OPP, SQ, Interac and ATM industry. After more than one year of regular meetings and sub-working groups, Interac rules were approved by the task force and were accepted by FATF. These new regulations were implemented in March 2009. These rules are comprehensive, compliance is audited each year and there are strict penalties including turning off the ATM for non compliance. There is also a secure law enforcement liaison at Interac to assist police with investigations into suspicious ATMs as part of an investigation.

While it is critical for the Government of Quebec to both achieve its goals against money laundering and tax evasion, we believe these objectives can be achieved by exempting or removing ATMs from the MSBA and relying on the Interac regulations. This approach is sensible for the government as ATMs are:

- not like the other businesses covered in the act
- have detailed tracking of records by independent third parties
- already have strict, audited rules in place with tough consequences and police access to help with investigations managed by Interac - a Federal SRO that is open and willing to co-operate with the SQ and the Government of Quebec.

We believe that the government will be accomplishing its goals while exempting or removing ATMs from the MSBA as follows:

- by indicating that ATMs are a critical element of the cash society and needed to be fully investigated and understood as part of the MSBA process, which they were in the AMF and government comprehensive analysis through this public consultation period;

- by indicating that while there was awareness of the Interac rules prior to passing the MSBA, there was additional work necessary to be done and the AMF was tasked with conducting an extensive review of the Interac rules and the operations of the ATM industry while in parallel advancing the MSBA as written;
- As a result of that considerable analysis, public hearings, review of Interac rules, discussions with Interac and industry, and greater comprehension of ATMs and how they can be, and are likely to be used by criminals for money laundering and tax evasion, the AMF could determine that Interac rules met the requirements of the MSBA and thus will be relied upon by law enforcement in Quebec.
- Note also that Interac and the Government have agreed on mechanisms whereby law enforcement will have streamlined access to ATM data and information on their criminal investigations
- We believe it would also be a worthwhile exercise to promote the understanding of the above to the public to ensure that ATM users understand the detail tracking of their information to help prevent criminals from exploiting them and also to ensure that any prospective criminal or tax evader will be well aware of the data tracking and capabilities of law enforcement and tax authorities to identify and prosecute them for any inappropriate behavior with ATMs.

While reading this submission, it is possible that some readers will be trying to reconcile our strong position that ATMs are adequately regulated today and are not a likely source of material money laundering or fiscal evasion with the view of law enforcement that ATMs are frequently used by Criminals. The two positions are not inconsistent. It is our view that criminals are using ATMs, along with many other tactics and techniques to aid their criminal enterprises; however they are using ATMs largely in ways OTHER than those contemplated in the MSBA. The key is that these crimes using ATMs are not likely the types of crimes contemplated in the act and if they are, the transparent records maintained by independent third parties along with the know your client, source of funds and criminal check information obtained under Interac regulations is effective to support police and prosecutors in any investigation of same.

How are ATMS used by criminals? A recent presentation by Garry W.G. Clement, CFE,CAMS, AMLP, President and CEO, Clement Advisory Group highlighted the following methods ATMs are used:

1. **ATMs used for withdraws of cash by criminals** - Money is deposited into bank accounts through branch deposits, wires and various other methods, then criminals in another country, Columbia for example, withdraw the cash using atms. This form of using ATMs to withdraw illicit cash that has otherwise been put into the financial system is important for law enforcement to monitor and address, however the source of the funds IN THE ATM is not relevant to this, nor is the ATM in any way part of the criminal activity.
2. **ATMs used by criminals to deposit cash into bank accounts** - Money is deposited into bank accounts through ATM machines, rather than at a bank teller, by a variety of criminals in amounts below the ATM threshold. This is a way criminals can more anonymously use ATMs to get money into the financial system that should be monitored. The non-bank or "white label" ATMs contemplated for coverage in the MSBA DO NOT ACCEPT DEPOSITS and are thus not capable of being used for his purpose, only bank ATMs in Canada have this capability.

3. **White-label ATM used by criminals to launder cash into banking system** – this is usually presented in a scenario as follows: “A white-label ATM operator loads the ATM with ill-gotten cash. Over time, unknowing customers empty the machine. When the ATM runs dry, it's replenished with clean money. At this point, the proceeds of crime seem like legitimate funds”. This is the area that the MSBA is attempting to address and is better illustrated in Appendix A. There is no evidence that this is a widespread activity in Canada and, as we have noted above, the detailed and independent record keeping of such activity would suggest it would not be a smart place for criminals to conduct any large scale money laundering. The Interac regulations more than meet a high standard for compliance and management of this risk and continuing to include ATMs in the MSBA is creating a layer of administration and cost with unknown potential benefits.

For these reasons, we ask that ATMs that meet the Interac regulations be exempt from the Act or that ATMs be removed from the Act (as ALL white label ATMs are required to meet the Interac regulations and are audited annually to confirm same). We are confident that the Government can efficiently meet or exceed the objectives of the MSBA by relaying on the existing Interac ATM Anti-Money Laundering regulations.

Comments and recommendations in the event that ATMs are not exempted or removed from the MSBA

If, after giving full consideration to the rationale for making Interac compliant ATMs exempt or removing ATMs from the MSBA it is determined that they must remain in the Act, then we suggest at a minimum the changes noted below, however we strongly believe this will continue to result in significant redundant burden on thousands of Merchants and small businesses without adding any material improvement in meeting the objectives of the Government in the MSBA.

Our comments and recommendations in this section focus more specifically on the *Policy Statement to the Money-Services Business Act* and the *Regulation under the money-services businesses Act*.

Policy Statement to the Money-Services Business Act

Section I

Paragraph 5 – Operation of Automated Teller Machines

The definition in this section applies to those “responsible for keeping the ATM supplied with cash”. This definition was examined deeply in the development of the Anti Money Laundering Regulations for Interac. During that analysis it was agreed that a definition that is broad such as this is very difficult to track or manage as it is really only as reported by the operator. It was also revealed that ATM machines have very clear, detailed third party tracking of cash flows and deposits built into the system by definition, unlike other money services businesses that maintain their own financial records of the business transactions.

Having these arms-length third party detailed transaction records of every dollar that passes through the ATM and the exact Canadian Bank account that each dollar was deposited into resulted in a narrowing of the definition to the “cash owner being the person or entity that owns the bank account the funds are deposited into”. This definition is preferable and is recommended for the MSBA for ATMs because:

1. it is measurable and objective, AMF can confirm whose name the bank account is in and obtain the information on those persons. Rather than rely on the operator saying who “keeps the ATM full of cash” it is much more important and measurable to focus on who receives the deposits of cash from the ATM.
2. it has clear detailed records of each and every ATM dollar attached to it that make it uncomfortable for large scale criminal activity. There is NO possibility of having “two sets of books” or moving cash around without detailed third party records of same.
3. the person or entity that is responsible for keeping the ATM supplied with cash is also disclosed on the Interac “Source of Funds Declaration” signed by the merchant this information does form part of the documentation.

CBMA recommendation :

That the definition of the operator of a money services business in ATMs be amended to be the owner of the bank account where the funds are deposited from the ATM or ATMs

to make improve quality of measurement, accuracy and effectiveness of the MSBA for ATMs.

Paragraph 5 – Temporary or event-based service offerings

CBMA would like to clarify the operation of this paragraph for ATM machines. For example, for the upcoming U2 concert, 30 ATMs will be deployed at the concert grounds for 2 days. If there were a permit fee of \$350 per atm or approximately \$10,500 for this 2 day event would eliminate ATMs from the concert grounds completely as they would not be economical. However, if the operator, who is having all the atms deposit cash into a single bank account, needed only one license it could work. It is not clear in the current draft how the Act will be applied for such ATMs that are at events such as concerts, F1, etc?

CBMA recommendation:

We believe that this measure would be corrected with the change in definition of cash owner to the bank account owner as there will be only one permit required for multiple ATMs at such events or temporary activities.

Section II – Licenses

Single License – Multiple Classes

This section references a single license for multiple money service businesses. It does not yet speak to single license for same operator of multiple ATM machines. For example, if one company operates and cash fills and owns the bank account for 100 ATMs in Quebec, while they could keep the detailed records of each of these locations etc, they should all fall under a single license as it is the same cash owner, same bank account, same source of funds etc.

CBMA recommendation:

We believe that this measure would be corrected with the change in definition of cash owner to the bank account owner as there will be only one permit required for multiple ATMs at such events or temporary activities.

Employees whose functions are related to the operation of automated teller machines

As described above for Section I, paragraph 5, and based on the extensive analysis and work of the government/regulator/industry working group in developing the Interac AML regulations, ATMs have different operational characteristics than the other money services businesses. In particular, they have a single line for depositing cash electronically that is recorded and tracked by independent third parties (switch, interac, bank) and is retained. For purposes of the MSBA, the focus for ATM operations should be focused on the bank account owner who is the recipient of any and all funds that are placed in an ATM. Any activities that employees may or may not do with cash prior to placing in the ATM

have little to do with the ATM. Any act of money laundering or fiscal evasion occurs only when the funds are withdrawn from the ATM and thus electronically transferred into a Canadian Bank account – the owner of this bank account should be primary focus to meet the objectives of the MBSA. However, once funds are placed into the ATM they are then subject to detailed transaction records by third parties and the bank. All funds are deposited only into Canadian bank accounts which, themselves have additional layers of AML protection. Note also that there should be a source of funds declaration, similar to the one used in the Interac regulations that requires the ATM operator to disclose which persons or entities do supply the cash going into the ATM. While we do not believe this should be the focus of the Act, it is important to have this declaration as another piece of evidence as to source of ATM funds in the event of a criminal prosecution of a criminal mis-using an ATM.

CBMA recommendation:

That the employees for atm section here be amended to focus solely on those persons or entities that own the bank account that receives the ATM funds due to the excellent and transparent third party record keeping of each and every dollar through each and every ATM machine. That a source of funds declaration be required wherein the ATM cash owner provides a signed declaration of the source of funds used in the ATM.

Co-contracting parties

This definition includes “parties that lease or sell atms or connects them to a network”.

CBMA recommendation:

We request clarification what constitutes “verify the identity of the co-contracting party” and if there are any other uses of the term co-contracting parties. (In Regulations para 14 it makes some reference but not 100% clear for ATMs as the prior paragraphs referenced in para 14 are not applicable to atms)

Regulation under the money-services businesses Act

Division III – General Obligations

Article 8

The application of this article makes us confused. Is it intended that each convenience store, restaurant etc that has an ATM provides a \$10,000 security deposit? Is this intended to be on a per ATM basis? Or once for all ATMs under same operator? What is it intended to secure against with respect to an ATM operator?

CBMA recommendation:

We request clarification of the intention and purpose and application of this section. It is not at all clear that this has any practical application or adds value to the legislation.

Conclusion

Based on the above, we do not believe our position on criminal activity in ATMs is inconsistent with law enforcements. However we strongly believe that these different methods need to be looked at in detail and in doing so it becomes clear, in our belief, that white-label ATMs are properly regulated today under Interac AML regulations as is, or potentially amended.

We hope that our comments and recommendations will be considered as they contribute to improve the regulatory framework of the Money-Services Businesses Act which should enter into force in 2012.

In addition, we request the establishment of a round table discussion of this with the AMF, the relevant minister(s), ministerial staff, deputy minister, Interac, and the key players for management of non-bank ATMs in Quebec which will all attend.

We are available if you wish to meet us to discuss the contents of this letter.

CANADIAN BANK MACHINE ASSOCIATION



Chris Chandler, Chairman

Copy : Mr. Alain Paquet, minister for Finance