

COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

IN THE MATTER OF an application by B-Filer Inc., B-Filer Inc. doing business as GPAY GuaranteedPayment and Npay Inc. for an order pursuant to section 103.1 granting leave to make application under sections 75 and 77 of the *Competition Act*;

AND IN THE MATTER OF an application by B-Filer Inc., B-Filer Inc. doing business as GPAY GuaranteedPayment and Npay Inc. for an interim order pursuant to section 104 of the *Competition Act*.

BETWEEN:

**B-FILER INC., B-FILER INC. doing business as
GPAY GUARANTEEDPAYMENT and NPAY INC.**

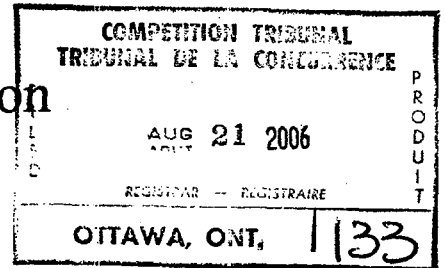
Applicants

- and -

THE BANK OF NOVA SCOTIA

Respondent

Affidavit of Jack J. Bensimon

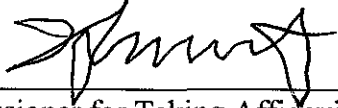


I, **Jack J. Bensimon**, of the City of Toronto, in the Province of Ontario, **AFFIRM**:

1. I am a Certified Anti-Money Laundering Specialist with my own independent regulatory risk management consulting practice, Risk Diagnostics Inc.
2. I have been asked by counsel to the applicants B-Filer Inc. and NPAY Inc. ("B-Filer") to provide an expert opinion relating to anti-money laundering and related issues arising from B-Filer's application under s. 75 of the *Competition Act* for an order that Bank of Nova Scotia supply it with certain banking services.

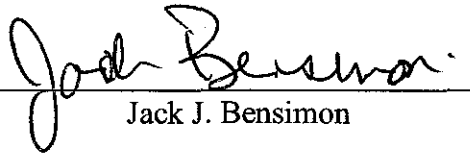
3. I attach my report setting out my opinion on the economic issues raised by this application as exhibit "A" to this affidavit.

AFFIRMED BEFORE ME
at Toronto, Ontario
on August 21, 2006.



Commissioner for Taking Affidavits

Harry McMurtry



Jack J. Bensimon

File No. CT 2005-006

IN THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C., 1985, c. C-34, as amended;

IN THE MATTER OF an application by B-Filer Inc., B. Filer Inc. carrying on business as GPAY GuaranteedPayment and NPay Inc. for an order pursuant to section 103.1 granting leave to make application under sections 75 and 77 of the *Competition Act*;

AND IN THE MATTER OF an application of B-Filer Inc. carrying on business as GPAY GuaranteedPayment and NPay Inc. for an interim order pursuant to section 104 of the *Competition Act*.

BETWEEN:

**B-FILER, B-FILER INC. carrying on business as
GPAY GUARANTEEDPAYMENT and NPAY INC.**

Applicants

and

THE BANK OF NOVA SCOTIA

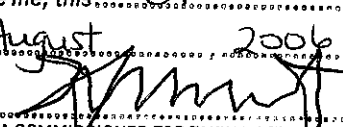
Respondent

AML EXPERT REPORT

Regarding

Applicants Money Services Business (MSB)

PREPARED AT THE REQUEST OF: Michael Osborne, Barrister, Affleck Greene Orr LLP

This is Exhibit ^{"A"} referred to in the
affidavit of Jack J. Bensimon
sworn before me, this 21st
day of August 2006

A COMMISSIONER FOR TAKING AFFIDAVITS

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I BRIEF CURRICULUM VITAE**Professional Qualifications and Experience**

1. I have provided in-depth training in Anti-Money Laundering (“AML”) to senior representatives of private sector companies since 2001 ranging from scholarship plan dealers, investment banks, to domestic and foreign Schedule I/II banks. My experience and exposure to AML risks and issues is primarily with US and Canadian financial institutions that are dual-regulated under the dictates of US and Canadian securities legislation.
2. I am registered and licensed with US and Canadian securities regulators, SEC (Securities & Exchange Commission)/NASD (National Association of Securities Dealers), Ontario Securities Commission (OSC) and Investment Dealers Association (IDA), respectively, as a General Securities Principal and as Partner, Director and Senior Officer (PDO).
3. I have over thirteen years experience in the securities industry. Since 2001, I have operated my own independent regulatory risk management consulting practice, Risk Diagnostics Inc. Through Risk Diagnostics Inc., I secured contract engagements with various Fortune-500 firms in the capacity of Chief Compliance Officer and other risk management posts. Specifically, I have worked in the capacity of Chief Compliance / AML Officer for Canadian Scholarship Trust Foundation, BCI Canada Securities Inc., Swift-Trade Securities, and most recently, Wellington West Capital Markets (USA) Inc.
4. In addition, I have lead and contributed to several Sarbanes-Oxley / Bill 198 corporate governance projects for companies publicly traded on major US and Canadian stock exchanges, including CIBC, ICICI Bank, CB Richard Ellis, Canadian Tire Corp., Flint Energy Services Ltd., and Universal Music Studios. The corporate governance engagements have often included the development, implementation and monitoring of anti-money laundering risk assessments and programs, most notably with financial institutions.
5. I am a founding partner in a software security company, Clickrisk LLC, which has developed and commercialized proprietary software in detecting and analyzing online fraud and other

security forensic anomalies. We have provided expert security reports to assist law firms during the resolution of claims against defendants.

6. I have secured membership, professional competency and certification as a Certified Anti-Money Laundering Specialist (CAMS) through the accredited and global AML industry standard, *The Association of Certified Anti-Money Laundering Specialists (ACAMS)* based in Miami, FL.
7. I have secured membership, professional competency and certification as a Certified Financial Services Auditor (CFSA) through the accredited and global internal audit standard, *The Institute of Internal Auditors (IIA)* based in Altamonte Springs, FL.
8. Attached hereto and marked as Appendix “A” is a recent copy of my Curriculum Vitae.

II SUMMARY OF CONCLUSIONS

9. The Respondent has failed to conduct an appropriate risk assessment. An appropriate risk assessment would include, while is not limited to, AML risk assessment, account risk assessment, and account risk profiling. These are consistent with using the well-established risk-based industry standard approach for evaluating the relative risk of conducting business with MSBs. They form the basis for the overall risk assessment of the Applicants AML risk to the Bank of Nova Scotia.
10. The Respondent’s expectations as they relate to meeting specific AML regulatory thresholds go far beyond what is reasonably mandated by FINTRAC, and impose an unnecessary regulatory burden that places the Respondent as an implicit *de facto* regulator of MSBs, rather than a facilitator to the MSB customer. It is important to note that by virtue of the Applicant operating an MSB, it is a customer of the bank and not an agent of the bank. The Respondent by no means has regulatory jurisdiction over the supervision of MSBs. The Respondent is required, however, to perform reasonable due diligence

procedures to ensure that MSB customers meet minimum acceptable FINTRAC requirements (see Appendix B-D).

11. The Respondent's position that the UseMyBank MSB does not comply with FINTRAC requirements, sufficient to warrant account maintenance, does not stand up to the scrutiny of established AML guidelines. The Respondent appears to be using AML regulatory arguments to justify the closing of MSB accounts on the basis that they failed to generate sufficient revenues. There is limited Canadian based empirical MSB research. However, recent research published by the American Bankers' Association (ABA) in June 2006 can be used as a point of reference. The ABA indicates that legitimate MSBs generate relatively marginal revenue (relative to other types of businesses) for banks, and consequently, do not make for a favorable cost-benefit tradeoff. The independent risk assessment conducted as part of this opinion sheds light on the *overall* low risk exposure of the UseMyBank MSB.
12. While the Applicants have several AML regulatory compliance gaps, the conducted and attached independent risk assessment show that these are considered to be low inherent risk in the *aggregate*. It is strongly recommended that remedial efforts be made to close such gaps. This should further reduce the risk exposure to the Respondent, comply with all FINTRAC requirements, and impose internal controls to mitigate further risks.

III INSTRUCTIONS

13. I, Jack J. Bensimon, have received instructions from the Applicants counsel, Michael Osborne, Barrister, Affleck Greene Orr LLP to provide an opinion on the Applicants joint venture partner, UseMyBank, its practices as they relate to AML risks and issues in using banking services. The following were issues to consider as part of the assessment:
 - (a) Does the Applicants business fall under the classification of a "Money Services Business" (MSB) for purposes of the Proceeds of Crime and Anti-Money Laundering Terrorist Financing (PCAMLTF) legislation?

- (b) Does the Applicants processes for transacting online payments comply with established standards for MSBs?
- (c) Is the Applicant operating a business by or on behalf of third-parties?
- (d) Is the Applicants business conducted in a manner that is conducive to facilitating money launderers or terrorist financiers in offshore jurisdictions?
- (e) What are the underlying risks that the Bank of Nova Scotia is exposed to if they continue to do business with the Applicants?
- (f) What regulatory obligations or anti-money laundering protocols is the Bank of Nova Scotia expected to comply with if they were to conduct business with the Applicants?
- (g) Does the Applicants business maintain a level of transparency comparable to the banks, including the implementation of AML controls required under FINTRAC?

IV ISSUES

14. There are a number of salient issues in determining the underlying AML risks the Respondent is exposed to as a result of conducting business with UseMyBank. Some of these issues have been identified by the instructing counsel, Michael Osborne.

- (a) Does the Applicants business fall under the classification of a “Money Services Business” (MSB) for purposes of the Proceeds of Crime and Anti-Money Laundering Terrorist Financing (PCAMLTF) legislation?
- (b) Do the Applicants processes for transacting online payments comply with established standards for MSBs as set out by FINTRAC?
- (c) Are the Applicants operating a business by or on behalf of third parties?
- (d) Is the Applicants business conducted in a manner that is conducive to facilitating money launderers or terrorist financiers in offshore jurisdictions?
- (e) What are the underlying risks that the Bank of Nova Scotia is exposed to if they continue to do business with the Applicants?

- (f) What regulatory obligations or anti-money laundering protocols is the Bank of Nova Scotia expected to comply with if they were to conduct business with the Applicants?
- (g) Does the Applicants business maintain a level of transparency comparable to that of the Bank of Nova Scotia, including the implementation of AML controls required under FINTRAC?
- (h) Has the Bank of Nova Scotia conducted an appropriate risk assessment consistent with its MSB policies and procedures manual on the Applicants account based on established guidance provided by FINTRAC for MSBs?
- (i) Are there any completed risk assessments concerning the Applicants account of joint venture partner, UseMyBank, documented so as to evaluate its methodology consistent with FINTRAC requirements for MSBs?

V DOCUMENTATION

15. For the purposes of preparing this Report, I have reviewed the following documentation prepared by the Applicant and submitted to the Competition Tribunal:
- (a) Third Affidavit of Raymond Grace, sworn December 2, 2005;
 - (b) Affidavit of Joseph Iuso, affirmed August 29, 2005, and the Exhibits attached thereto.
16. I have reviewed the following documents on behalf of the Respondent:
- (a) Affidavit of Robert Rosatelli, sworn July 12, 2005, and the Exhibits attached thereto;
 - (b) Affidavit of David Metcalfe, sworn July 12, 2005, and the Exhibits attached thereto;
 - (c) Responding Affidavit of Robert Rosatelli, sworn September 21, 2005, and the Exhibits attached thereto;
 - (d) Affidavit of Robert Rosatelli, sworn November 25, 2005, and the Exhibits attached thereto;
 - (e) Affidavit of Ryan Woodrow, sworn November 24, 2005 and the Exhibits attached thereto;
 - (f) Affidavit of David Stafford, sworn November 25, 2005;

- (g) Affidavit of Colin Cook, sworn November 23, 2005, and the Exhibits attached thereto;
- (h) Affidavit of Douglas Monteath, sworn November 25, 2005, and the Exhibits attached thereto;
- (i) Affidavit of Stanley Sadinsky, sworn November 22, 2005 and the Exhibits attached thereto.
- (j) Affidavit of Christopher Mathews, sworn November 23, 2005, and the Exhibits attached thereto;
- (k) Affidavit of Alex Todd, sworn November 25, 2005, and the Exhibits attached thereto.

VI ABSTRACT

17. In 1999, Mr. Grace opened several accounts at the Bank of Nova Scotia branch in Sherwood Park (Edmonton), Alberta in the name of “B-Filer Inc./ GPay”.

18. An additional account was approved and opened in the name of B-Filer Inc./GPay on April 15, 2004. By June 2004, an additional six (6) accounts were approved and opened in the name of B-Filer Inc./GPay.

In October 2004, Mr. Grace received approval to open five (5) additional accounts; fifteen (15) additional accounts were opened in November 2004 in the name of NPay Inc.

19. In the spirit of opening additional accounts and to support business expansion of UseMyBank, Mr. Grace approached Ryan Woodrow, Manager, to open additional accounts. With Mr. Woodrow declining to approve any further account

As a consequence, Mr. Grace resorted to telephone banking to open additional accounts. Over 80 accounts were opened in a span of less than a month by early 2005.

20. The Sherwood Park branch raised concerns over the multiple account openings over a short period of time. This culminated with Branch Manager Margaret Parsons recommending termination of all existing related business accounts.

21. An internal investigation at the Bank of Nova Scotia ensued shortly thereafter. The Bank of Nova Scotia officially terminated its relationship with the Applicants and its joint venture partner, UseMyBank by notice letter of May 11, 2005. The accounts were officially closed on late September, 2005.

VII TECHNICAL BACKGROUND

22. Anti-money laundering (AML) legislation is primarily concerned with the disguising of illegitimate funds for use in criminal or terrorist financing. The Proceeds of Crime and Anti-Money Laundering & Terrorist Financing (PCAMLTF) legislation is of material concern to banking institutions where legislation breaches can cause significant reputational harm to its business.

While banks are required to exercise due diligence and promote the cardinal, *Know Your Client* (KYC) rule, it is also required to directly or indirectly, assess the merits of accepting each MSB account on a risk-assessed basis. The notion of evaluating the customer account risks and account risk profiling as it relates to AML risk assessments is consistent with the Office of the Superintendent of Financial Institutions (OSFI) and Basel II banking requirements.

23. Although empirical research on MSBs in Canada is limited, US empirical research suggests the trend of uncertain regulatory expectations as it relates to the US Bank Secrecy Act (BSA) and AML obligations of insured banks with its MSB customers.

24. Against this background and context, I, Jack J. Bensimon, carried out an independent risk assessment of the Applicants MSB in order to determine the relative risk of a bank conducting business with it, consistent with established industry practice and guidance developed by both FINTRAC and FinCEN (the US counterpart of FINTRAC). All test results are included in Appendix B-D.

VIII OPINION***Does the Applicants business fall under the classification of a “Money Services Business” (MSB) for purposes of the Proceeds of Crime Anti-Money Laundering Terrorist Financing legislation?***

25. The manner in which the Applicant transfers funds to finance customer use of online services, such as online gambling casinos, is considered to be a money transmitter and falls under the classification of a Money Services Business (MSB) under FINTRAC interpretive guidance as it relates to PCAMLTF.

Do the Applicants processes for transacting online payments comply with established standards for MSBs as set out by FINTRAC?

26. The method for transacting online payments is through securing the customer's bank card information and online password, and entering into the customer's account online to effectuate any transfers to finance customer service purchases. Although this method of effectuating money transfers has privacy compliance implications, it does not violate the requirements set out by FINTRAC for MSBs. This MSB model is aimed at serving a segment of the population that either does not have or may not be able to secure a credit card (e.g., high credit risk, poor or damaged credit history). While many MSBs are legitimate businesses and serve credible market segments, banks are required under FINTRAC and OSFI regulations to take extra precautions and conduct additional testing to evaluate account risks.

Are the Applicants operating a business by or on behalf of third parties?

27. Given the method of processing transactions, the low volume of transactions, and the purpose for effectuating money remittances, it is my professional view that the Applicants are operating a business on *behalf* of third parties rather than by third parties. Given the Applicants business model, it is a processor of online transactions in which the Applicants do not have any influence nor contribution to its bill payees operations. The Applicants are not an agent of the bank, but rather a customer of the bank. Agents of banks have different AML standards and tests than an MSB who is a customer of the bank. This subtle but important distinction can often

be lost in both interpretive FINTRAC guidance or in banks applying high risk due diligence criteria as a minimum standard in serving MSBs.

28. As a classified MSB, FINTRAC rules require the Applicants to conduct reasonable due diligence in verifying customer identification through established procedure to effectuate CIPs (Customer Identification Programs). The Applicants are also required to have appropriate compliance policies and procedures and to develop, implement and maintain an effective AML program.

Is the Applicants business conducted in a manner that is conducive to facilitating money launderers or terrorist financiers in offshore jurisdictions?

29. This issue needs to be addressed from a risk-based perspective; that is, the issue is one of *relative* magnitude of the inherent risk given the Applicants MSB, its processes for effectuating money transfers, and its existing state of AML compliance policies and procedures.

The Applicants are conducting business on behalf of third parties with over 98% of its transactions directed towards online gambling casinos. Although the reputation of these businesses has generally been poor due to the nature of the gambling business, the ethical questions that it raises, and the customers they can attract, this does not present sufficient grounds to support closing accounts. In this case, the Applicants are merely facilitators to an electronic process of transferring money from one source to another.

30. The Applicants average transaction value has recently been in the \$82 area, representing a nominal amount of transfer flows to finance customer purchases of gambling services. A suspected terrorist would have to effectuate thousands of purchases at this level to provide for even a small amount of terrorist financing. Terrorist financing often requires larger aggregate sums to finance its illegal activities. Therefore, there is a possibility that through repeat use and manipulation of the Applicant's UseMyBank system, a suspected terrorist can conceivably launder funds to finance terrorist activity.

31. Terrorist financiers come from all walks of life, varied professions, and diversified types of businesses. Certain businesses, such as online casinos, may attract more suspected terrorists due to the ease of effectuating online transfers and perception of a limited verifiable audit trail. However, the Applicants have no control over its payee's AML internal compliance controls. Furthermore, their respective jurisdictions would be responsible for providing AML regulation and guidance.

What are the underlying risks that the Bank of Nova Scotia is exposed to if they continue to do business with the Applicants?

32. The risks that the Bank of Nova Scotia is exposed to if it continues to do business with the Applicants include: deploying manual or automated resources to regularly monitor the account for suspicious activity; ensuring the Applicants have strong internal compliance controls to mitigate the risk of its employees abusing their privilege of having access to customer bank card numbers and passwords; and taking reasonable steps to ensure the Applicants are complying with FINTRAC requirements as an MSB.

33. Although there may be some reputational risk exposure from being perceived as allowing the facilitation of money transfers to online gambling casinos through an MSB channel, the Applicants history with the bank has not demonstrated evidence of conducting other suspicious business activity or 'restricted businesses' so as to generate regulatory scrutiny or internal policy breaches of bank code of acceptable customer conduct.

What regulatory obligations or anti-money laundering protocols is The Bank of Nova Scotia expected to comply with if they were to conduct business with the Applicants?

34. Were the account to be maintained by the Respondent for the Applicants, the Bank of Nova Scotia would be expected to conduct a risk assessment of the account and the due diligence on the nature of the MSB. Some of the elements of such a risk assessment may include items covered in the independent risk assessment included in the Appendix.

The Bank of Nova Scotia does not appear to have conducted and documented a thorough risk assessment and AML risk ranking methodology of the account that would yield to established FINTRAC due diligence procedures and tests to determine if the account was low, medium or

high risk. Mr. Cook's affidavit sworn on November 23, 2005 asserts that the Bank of Nova Scotia carried out a 'product profile' after it was determined that the Applicants account had been escalated to commercial account status from small business account status.

35. The Bank of Nova Scotia's product profile does not seem to provide for an appropriate and documented account risk assessment that would be open to audit scrutiny and evaluation of testing methodology. The Bank of Nova Scotia would be required, at a minimum, to carry out the following procedures in determining whether to open or maintain an MSB account for the Applicants:

- (a) Obtain basic identifying information about the MSB through the application of the Applicants CIP.¹
- (b) Confirm FINTRAC registration;
- (c) Confirm compliance with provincial or federal licensing requirements (where applicable);
- (d) Conduct a basic risk assessment to determine the level of risk associated with the account to solicit additional information, as deemed necessary.

Please see Appendix B-D for additional tests that banks can conduct to assist in distinguishing low from high risk accounts.

Does the Applicants business maintain a level of transparency comparable to the banks, including the implementation of AML controls required under FINTRAC?

36. The Applicants business does not maintain the same or comparable level of transparency as the banks as they relate to AML controls required under FINTRAC. The independent risk assessment discovered in Phase I Test Results (Appendix B) indicates that the Applicants have several important gaps with respect to the development, implementation and monitoring of a compliance regime. The following weaknesses were identified and considered material and require remediation in order to reduce the inherent account risk level for an MSB customer:

- (l) The appointment of a designated Compliance Officer;

- (ii) Compliance Policies and Procedures;
- (iii) Testing of Policies and Procedure; and
- (iv) Compliance training programs.

Remediating these deficiencies and regularly monitoring their implementation would further reduce the *residual risk* of the MSB account for the Bank of Nova Scotia.²

Has The Bank of Nova Scotia conducted an appropriate risk assessment consistent with its MSB policies and procedures manual on the Applicants account based on established guidance provided by FINTRAC for MSBs?

37. The Bank of Nova Scotia has failed to conduct a detailed and documented risk assessment that is consistent with OSFI's or FINTRAC's guidance and checklists in evaluating the aggregate risk of accepting and maintaining the Applicants MSB. Although the Bank of Nova Scotia has a comprehensive document management system as it applies to various types of investigations, its 'Security & Investigative Reporting Procedures' (SIRP) do not capture an appropriate AML risk assessment in evaluating both inherent and residual risks for maintaining MSB accounts.

SIRP investigations are to include any AML issues, but there is an absence of a defined criteria for risk assessing and priority ranking such AML risk exposures as they relate to MSB accounts.

38. The Bank of Nova Scotia's 'Case Complexity Rating Grid', as part of its SIRP program, deals more with the level of case complexities for determining appropriate allocation of internal resources, rather than identifying established FINTRAC or FinCEN MSB account criteria for risk testing MSB or determining high AML risks. The banks' grid merely identifies a 'Regulator, Legal' category, but fails to capture the necessary criteria for guiding staff on evaluating AML account risks based on specific FINTRAC requirements and risk testing that banks can use for MSBs.

¹ Banks are required to implement a CIP (Customer Identification Program).

² Residual risk refers to the level of risk remaining after compliance controls have been implemented, while inherent risk includes any risk arising from fraud.

39. It is my professional view, based on the independent risk assessment conducted and documented in the Appendix, that, on balance, the MSB account of the Applicant represents a low inherent risk for the bank as far as AML risk exposure is concerned.

Are there any completed risk assessments concerning the Applicants account of joint venture partner, UseMyBank, documented so as to evaluate its methodology consistent with FINTRAC requirements of MSBs?

40. The affidavit provided by Mr. Cook's sworn testimony of November 23, 2005 indicates that the Bank of Nova Scotia determined the Applicants account was operating in a "restricted business", while offering no documentation as to how that was integrated into the wider risk assessment of the account.

The Bank of Nova Scotia's 'Case Complexity Rating Grid', as part of its SIRP program, deals more with the level of case complexities for determining appropriate allocation of internal resources, rather than identifying established FINTRAC or FinCEN MSB account criteria for risk testing MSB or determining high AML risks. The banks' grid merely identifies a 'Regulator, Legal' category, but fails to capture the necessary criteria for guiding staff on evaluating AML account risks based on specific FINTRAC requirements and risk testing that banks can use for MSBs.

41. The Respondent had an obligation to conduct a detailed risk assessment and include guidance questionnaires and checklists provided most notably by FinCEN. This test could have provided additional insight into the account of the Applicants in accurately and appropriately profiling the risk of this specific MSB account.

IX REFERENCES

American Bankers Association (ABA), Testimony of Wayne A. Abernathy, Subcommittee on Financial Institutions Consumer Credit of the Committee on Financial Services United States House of Representatives. *“Bank Secrecy Act’s Impact on Money Services Businesses”*. June 21, 2006.

Djinis, Peter J. and Intriago, Charles. *Guide to the U.S. Bank Secrecy Act Regulations: 2006 Edition (Revised and Updated)*. Alert Global Media, 2006.

FinCEN Publication. *“Interagency Interpretive Guidance on Providing Banking Services to Money Services Businesses Operating in the United States.”* April, 2005.

FINTRAC Publication. *“Money Services Business: Legislative Requirements”*. Government of Canada, 2005.

Office of the Superintendent of Financial Institutions (OSFI). *“Deterring and Detecting Money Laundering and Terrorist Financing”*. Government of Canada, November 2004.

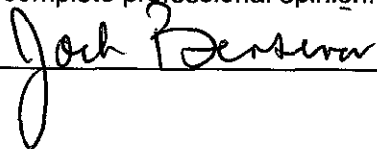
X EXPERT'S DECLARATION

1. I understand that my overriding duty is to the tribunal, both in preparing reports and in giving oral evidence. I have complied and will continue to comply with that duty.
2. I have set out in my report what I understand from those instructing me to be the questions in respect of which my opinion as an expert are required.
3. I have done my best, in preparing this report, to be accurate and complete. I have mentioned all matters that I regard as relevant to the opinions I have expressed. All of the matters on which I have expressed an opinion lie within my field of expertise.
4. I have drawn to the attention of the tribunal all matters, of which I am aware, which might adversely affect my opinion.
5. Wherever I have no personal knowledge, I have indicated the source of factual information.
6. I have not included anything in this report which has been suggested to me by anyone, including counsel instructing me, without forming my own independent view of the matter.
7. Where, in my view, there is a range of reasonable opinion, I have indicated the extent of that range in the report.
8. At the time of signing the report I consider it to be complete and accurate. I will notify those instructing me if, for any reason, I subsequently consider that the report requires any correction or qualification.
9. I understand that this report will be the evidence that I will give under oath, subject to any correction or qualification.
10. This report includes a statement setting out the substance of all facts and instructions given to me which are material to the opinions expressed in this report or upon which those opinions are based.
11. That I have no conflict of interest of any kind, other than any which I have disclosed in my report.
12. That I do not consider that any interest which I have disclosed affects my suitability as an expert witness on any issues on which I have given evidence.
13. That I will advise the party by whom I am instructed if, between the date of my report and the trial, there is any change in circumstances that affect my answers to either of the above two points.

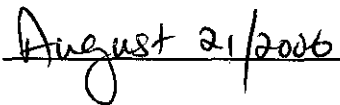
XI STATEMENT OF TRUTH

I confirm that insofar as the facts stated in my report are within my own knowledge I have made clear which they are and I believe them to be true, and the opinions I have expressed represent my true and complete professional opinion.

Signature: _____



Date: _____



XII APPENDICES

APPENDIX A

Curriculum Vitae

APPENDIX B

Phase I Test Results—AML FINTRAC Compliance Risk Assessment

APPENDIX C

Phase II Test Results—MSB Bank Account Risk Profiling

APPENDIX D

Phase III Test Results—MSB Bank Account Risk Assessment

APPENDIX A: Curriculum Vitae**Jack J. Bensimon, B.A. (Hon.), CFSA, CCSA, CAMS****Executive Summary**

This Risk Management professional has over 13 years of experience in the financial services, securities compliance and audit sector. His extensive and diverse background spans areas such as securities trading, research, compliance, financial controls, risk & project management including Sarbanes-Oxley Act (SOX) and Bill 198 audits. Jack has demonstrated strong project management skills with in-depth hands-on knowledge making him an invaluable subject matter expert.

Key Career Accomplishments

- Developed, implemented and monitored Anti-Money Laundering (AML) programs for Canadian Scholarship Trust Foundation, Wellington West Capital Markets (USA) Inc., Swift-Trade Securities and Biremis USA.
- Provided AML training to senior management of Wellington West Capital Markets (USA) and advised on continuing education and regulatory firm element programs to meet NASD compliance.
- Founding partner of security software firm, Clickrisk LLC, assisted in developing and commercializing proprietary software to detect and analyze online fraud and other online security anomalies.
- Managed Canada Depository for Securities (CDS) audit work team of compliance auditors/accountants to ensure SOX 302/404 financial controls certification as well as other internal controls.
- Developed, implemented, tested and lead entity-level controls and corporate governance initiatives for Sarbanes-Oxley projects with Flint Energy Services Ltd. and Canadian Tire Corp.
- Provided Quality Assurance for internal controls/regulatory compliance oversight for Flint Energy Services Ltd. and Canadian Tire Corp. CEO/CFO Certification Program.
- Developed and implemented audit Work Programs for substantive Legislative Compliance Management (LCM) testing for CIBC (banking unit).
- Developed Written Supervisory Procedures (WSP) compliance manuals and reporting tools for both trading officers and branch managers.
- Provided business risk management advisory for online forensic investigations.
- Consulted to the Ontario Securities Commission (OSC) on the future of Proprietary Electronic Trading Systems (PETS).

Professional Experience

- Canada Depository for Securities (CDS) Inc. – SOX/Bill 198 Project Manager & Lead Auditor
- Clickrisk LLC – Chief Risk Officer
- Protiviti Risk Consulting – SOX Regulatory Compliance Auditor
- Swift-Trade Inc. & Biremis LLC – Chief Financial & Compliance / AML Officer
- Wellington West Capital Markets (USA) Inc. – Chief Compliance / AML Officer
- Canadian Scholarship Trust Foundation – National Compliance / AML Manager
- Flint Energy Services Ltd. – Entity-Level Controls (Corporate Governance) C-SOX Lead
- Canadian Tire Corp. -- Entity-Level Controls (Corporate Governance) C-SOX Lead
- StockHouse Media Corp. – US Financial Institutions Research Analyst
- BCI (Banca Commerciale Italiana) Bank – Compliance Officer
- TD Securities Inc. – Trader
- The Canadian Securities Institute – Course Instructor

Education, Certification, Memberships

- Honors Bachelor of Arts, Economics & Math – University of Toronto
- Certified Financial Services Auditor (CFSA); member of Institute of Internal Auditors (IIA)
- Certification in Control Self-Assessment (CCSA)
- Certified Anti-Money Laundering Specialist (CAMS); member of ACAMS (Association of Certified Anti-Money Laundering Specialists)
- Global Association of Risk Professionals (GARP) – Member since 2003.
- Numerous courses from the Canadian Securities Institute and NASD; registered General Securities Principal with NASD and PDO (Partner, Director, Senior Officer) with IDA/OSC.
- Association of Certified Fraud Examiners (ACFE) -- Member

Phase I Applicants AML FINTRAC Compliance MSB Risk Assessment

MSB Legislative Requirements	AML Risk Description	Existing AML Control	Effective? (Y/N)	Frequency (L, M, H)	AML Risk Implications	Comments
Reporting	Suspicious Transactions	Suspicious transactions are reported where there is reasonable grounds to suspect that a transaction is related to the commission of an offense.	Y	L	The filing of a STR to FINTRAC is key requirement of MSBs and for banks to ensure they are timely reported.	
	Large Cash Transactions	Large Cash Transactions involving more than \$10,000 or more received in cash must be reported.	Y	L	The average transaction recently has been \$82, with a few bundled transactions that attempted to circumvent the \$10K rule. These were identified and reported to FINTRAC.	There is a process for the Applicants reporting to FINTRAC on a timely basis with automated compliance edits built into the software platform.
	Electronic Funds Transfers	International electronic fund transfers must be reported (i.e., the transmission of instructions at the request of a client for a transfer of \$10,000 or more through any electronic, magnetic or optical device, telephone instrument or computer)	Y	L	The average transaction recently has been \$82, with a few bundled transactions that attempted to circumvent the \$10K rule. These were identified and reported to FINTRAC.	
	Terrorist Property	Where it is known there is property in your possession or control that is owned or controlled by or on behalf of a terrorist group or a terrorist group, this must be reported.	N/A	L		
Record Keeping	Large cash transaction records	Large Cash Transactions involving more than \$10,000 or more received in cash must be reported.	Y	L	All transactions are effectuated online, with no acceptance of cash or cheques.	
	Client information records	Information on all client records is expected to be maintained for a period of at least five years after the termination of the relationship.	N/A	N/A	N/A	GPay has been in business since 2003.
	Records for transactions exceeding \$3,000	Records for the sale of travelers cheques, money orders or other similar instruments in the amount of \$3,000 or more	Y	L	A record retention policy has been developed and maintained.	This policy requires annual review and monitoring.
	Money order record keeping	Records of money orders must be kept for orders cashed in the amount of \$3,000 or more	N/A	N/A		The Applicants does not deal with any money orders.
	Records for transmission or money remittances	Records for transmissions or remittance of \$3,000 or more by any means, through any person, entity or electronic funds transfer network must be retained.	Y	L	A record retention policy has been developed and maintained.	
	Official corporate records	Copies of official corporate records (binding provisions) are required to be kept.	Y	L	A record retention policy is developed and maintained, as well as maintenance of corporate records that are easily retrieved.	
Ascertaining Identification	Identification for large cash transactions	Specific measures must be taken to identify any individual or entity that conducts a large cash transaction.	Y	L	The average transaction recently has been \$82, with a few bundled transactions that attempted to circumvent the \$10K rule. These were identified and reported to FINTRAC.	The Applicants has developed and tested a real-time fraud alert system with extensive security policy to define and assess its online security threats and risks.

MSB Legislative Requirements	AML Risk Description	Existing AML Control	Effective? (Y/N)	Frequency (L, M, H)	AML Risk Implications	Comments
	Ongoing business relationships	Specific measures must be taken to identify any individual or entity with which there is an ongoing business relationship	N	M	There is a compliance exposure as existing compliance framework can be improved.	Efforts are underway to remediate this deficiency immediately. The Applicants do have a control by way of a matching process which provides for a cross-referencing of account name/addresses to the name/address registered with the bill payee.
	Amounts issued to individuals that exceed \$3,000	Specific measures must be taken to identify any individual or entity for whom an amount of \$3,000 or more is issued, redeemed, remitted or transmitted.	Y	L	The average transaction recently has been \$82, with a few bundled transactions that attempted to circumvent the \$10K rule. These were identified and reported to FINTRAC.	
Third-Party Determination	Individuals acting on behalf of a third-party	Where a large cash transaction is required, or when a client information record is generated, reasonable steps must be taken to determine whether the individual is acting on behalf of a third-party.	N	M	The existing policies and procedures framework has shortcomings and needs to be more clearly defined and independently tested.	
	Third-party information reported	In cases where a third-party is involved, specific information about the third-party and the relationship with the individual providing the cash or account holder must be obtained.	Indeterminate	M		Insufficient documentation provided to test this control.
Compliance Regime	Appointment of a designated Compliance Officer	A Compliance Officer is required to be appointed to oversee appropriate AML legislative controls.	N	M	This is identified as a compliance gap requiring timely remediation.	Remediation efforts have commenced.
	Compliance Policies & Procedures	Compliance Policies and Procedures are required to be developed, implemented and monitored.	N	M	This is identified as a compliance gap requiring timely remediation.	Remediation efforts have commenced.
	Testing of Policies & Procedures	Compliance policies and procedures should be periodically reviewed and tested to ensure operational effectiveness.	N	M	This is identified as a compliance gap requiring timely remediation.	Remediation efforts have commenced.
	Compliance Training Programs	An ongoing compliance training program is to be implemented.	N	L	This is identified as a compliance gap requiring timely remediation.	Remediation efforts have commenced.

Phase II Applicants MSB Bank Account Risk Assessment

Operational Account Dimension	Data Required	Information Provided? (Y/N)	Noted Bank Gaps/Concerns	Risk Implications	Comments
Types of products and services offered	The categories of services engaged in by the particular MSB.	Y	The Bank of Nova Scotia is concerned about MSB operations/accounts in general.	As of June 2006, the Bank of Nova Scotia appears to be conducting business with and maintaining accounts for a number of MSBs.	Traditionally, MSBs have not been lucrative sources of revenues for banks.
	Whether the MSB is a "principal" (with a fleet of agents) or an agent of another MSB	Y	The Bank of Nova Scotia raised initial concerns over multiple accounts opened via telephone banking, while internal account opening limits exist as per bank policy.	The multiplicity of accounts, in excess of over 80 by early 2005, represents a greater compliance monitoring burden.	
	Whether the MSB is a new or established operation.	Y	The Bank of Nova Scotia raised concerns over substantial monthly growth in transaction volume and resources required to keep pace with over 80 accounts.	The MSB of the Applicants was in operation for two years, with transaction history to provide bank in order to conduct an appropriate risk assessment.	GPay has three years of transaction history, allowing a bank to make a risk-based assessment on the account with several metrics to assist in its analysis.
	Whether or not MSB represent a primary or ancillary aspect of the business.	Y	No particular gaps noted by the Bank of Nova Scotia.	Applicants made it clear to the bank that there was no ancillary aspect to the business, while disclosure of expected transaction growth was made to Mr. Woodrow.	
Locations) and Markets) served by MSB	The markets it targets	Y	The Bank of Nova Scotia raised implicit concerns that Applicant was targeting online gambling casinos, which it deemed higher risk for MSBs and believed would generate reputational risk exposure	Although many online gambling sites operate offshore, there are a plethora of tax and regulatory reasons for this; the AML argument is but one amongst a series of many for such businesses operating offshore..	It is my understanding that operating an online gambling casino in Canada is legal.
	The locations it serves	Y	The Bank of Nova Scotia raised concerns over cross-border transactions that would potentially permeate online gambling casinos, one of the largest users of MSBs.	Cross-border transactions are often more difficult to trace, often leaving a limited or weak audit trail for original source customer identification. The Applicants are original source facilitators of electronic payment transactions.	The Applicants has developed and tested a real-time fraud alert system with extensive security policy to define and assess its online security threats and risks.
	Whether it offers international services	Indeterminate	The Applicants disclosed to several senior bank representatives that the transactions were not limited to local transactions, but would provide for cross-border transactions.	Over 98% of transactions are effectuated with online gambling casinos, some of which operate offshore with lax AML and terrorist financing controls.	The online gambling sector is concentrated with a few players operating offshore that dominate market share (e.g., ProxyCyber, of which the Applicants conducts business with). Limiting its business model to local residents would pose significant business risk.
	Whether it caters exclusively to local residents.	Y	The Applicants disclosed to several senior bank representatives that the transactions were not limited to local transactions, but the online platform would provide for cross-border transactions.	GPay does not accept any form of payments (e.g., cheques, money orders, travellers schques) that are not online payments involving the debiting of an account from a registered domestic Schedule I bank.	The online gambling sector is concentrated with a few players operating offshore that dominate market share (e.g., ProxyCyber, of which the Applicants conducts business with). Limiting its business model to local residents would pose significant business risk.

Operational Account Dimension	Data Required	Information Provided? (Y/N)	Noted Bank Gaps/Concerns	Risk Implications	Comments
Anticipated Account Activity	The service the business intends to use, such as currency deposits or withdrawals, cheque deposits, or funds transfers.	Y	The Bank of Nova Scotia raised concerns over the substantial growth in transaction volume over a short 3-6 month interval; it later considered the Applicants business a 'restricted business' under its internal policy guidance.	The Applicants business only deals with fund transfers, considered lower risk than currency or cheque deposits owing to lower authentication and security risks.	
	Estimated transaction amounts.	Y	The Bank of Nova Scotia concerns were less about the average per transaction amount (\$82 recent trend), but more about the growth in transaction volume that was also not making it a viable and profitable account to hold and maintain for the Applicants.	Over 98% of transactions are effectuated with online gambling casinos, some of which operate offshore with lax AML and terrorist financing controls.	Owing to fluctuations in average transaction value for online gambling casinos, this could not have been reasonably estimated with only 3 years of data.
	The branch locations the business intends to use.	N	The Applicants opened in excess of 80 accounts via telephone banking, well in excess of the limits for small business customers who generate \$5M per year in transactions.		The Applicants opened multiple accounts via telephone banking system, triggering AML account alerts.
	Any external or seasonal factors	N		The Applicants business experienced hyper-growth over a short period of time, triggering STR and FINTRAC reporting requirements.	Owing to fluctuations in average transaction value for online gambling casinos, this could not have been reasonably estimated with only 3 years of data.
Account Purpose	The MSBs AML program	N	The Bank of Nova Scotia implicitly identified this as a compliance gap.	The absence of appropriately designed AML programs can increase the inherent risk of the Applicants for the Bank of Nova Scotia.	This is identified as a compliance gap requiring timely remediation. Remediation efforts have commenced.
	The results of the MSB's independent testing of its AML program.	N	The Bank of Nova Scotia implicitly identified this as a compliance gap.	The absence of independent testing of AML programs to ensure operating effectiveness can increase the inherent risk of the Applicants for the Bank of Nova Scotia.	This is identified as a compliance gap requiring timely remediation. Remediation efforts have commenced.
	Review list of agents, including locations, within or outside of Canada, that will be receiving services directly or indirectly through the MSB account.	N	The Bank of Nova Scotia implicitly identified this as a compliance gap.	The absence of a defined process for regular and ongoing monitoring of AML programs to include existing business relationships, can increase the inherent risk of the Applicants for the Bank of Nova Scotia.	This is identified as a compliance gap requiring timely remediation. Remediation efforts have commenced.
	Written procedures for the operation of the MSB.	Y	The Bank of Nova Scotia implicitly identified this as a compliance gap.	The absence of a appropriate procedures as part of an AML program to include MSB operations, can increase the inherent risk of the Applicants for the Bank of Nova Scotia.	This is identified as a compliance gap requiring timely remediation. Remediation efforts have commenced.
	Written agent management and termination practices for the MSB.	N/A			The MSB is a principal, with an absence of agency relationships with other MSBs.

Operational Account Dimension	Data Required	Information Provided? (Y/N)	Noted Bank Gaps/Concerns	Risk Implications	Comments
	Written employee screening for the MSB.	Y	The Bank of Nova Scotia implicitly identified this as a compliance gap.	The absence of appropriate employee screening procedures as part of an AML program (e.g., Know-Your-Employee (KYE)) to mitigate internal data theft, can increase the inherent risk of the Applicants for the Bank of Nova Scotia. Cache memory does not allow bank card password to be stored in memory, providing some risk mitigation in preventing others from exploiting such data.	This is identified as a compliance gap requiring timely remediation. Remediation efforts have commenced.

Phase III Applicants MSB Bank Account Risk Profiling

Risk Level	AML Risk Indicator	Does it apply? (Y/N)	AML Risk Implications	Comments
Lower Risk Indicators	Primarily markets to customers that conduct routine transactions with moderate frequency in low amounts	Y	The MSB model is volume-based, with high velocity of accounts in denominations averaging less than \$100. This amount is considered negligible for PCAMLTF exposure.	The average transaction has recently been \$82, considered to be low by AML standards.
	Offers only a single line of MSB product (i.e., for example, only cheque cashing or only currency exchanges)	Y	There is only a single MSB product as part of its business model: money transmitting and debiting from the customer's bank account domiciled in Canada through disclosure of bank card number and online password.	Collection of customer bank card and password has privacy compliance risk implications.
	Is a cheque cashier that does not accept out-of-province cheques	N		GPay does not accept any form of payments (e.g., cheques, money orders, travellers schques) that are not online payments involving the debiting of an account from a licensed financial institution.
	Is an established business with an operating history	Y	GPay has three years of transaction history, allowing a bank to make a risk-based assessment on the account with several metrics to assist in its analysis.	GPay has been in business since 2003, with an upward bias toward significant transaction growth over the last three years.
	Only provides services such as cheque cashing to local residents.	N		GPay does not accept any form of payments (e.g., cheques, money orders, travellers schques) that are not online payments involving the debiting of an account from a licensed financial institution.
	Only facilitates domestic bill payments.	N	Facilitates transactions to many offshore jurisdictions, some of which are considered high AML risks as they have lax AML regulations.	None of these jurisdictions appear to be published terrorist financing countries, such as those listed on the NCCT (Non-Cooperative Countries and Territories) Initiative.
	Is a money transmitter that only remits funds to domestic entities	N	Facilitates transactions to many offshore jurisdictions, some of which are considered high AML risks as they have lax AML regulations. None of these jurisdictions appear to be published terrorist financing countries, such as those listed on the NCCT (Non-Cooperative Countries and Territories) Initiative.	None of these jurisdictions appear to be published terrorist financing countries, such as those listed on the NCCT (Non-Cooperative Countries and Territories) Initiative.
	Is a cheque cashier that does not accept third-party cheques or only cashes payroll or government cheques.	N		GPay does not accept any form of payments (e.g., cheques, money orders, travellers schques) that are not online payments involving the debiting of an account from a licensed financial institution.
Higher Risk Indicators	Allows customers to conduct higher-amount transactions with moderate to high frequency.	Y	Although the average transaction is \$82, the online platform allows its customers to transact at higher levels, potentially triggering FINTRAC reporting requirements.	The nature of online gambling casinos is such that variances in average dollar transactions can fluctuate considerably from period to period.
	Offers multiple types of MSB products	N		There is only a single MSB product as part of its business model: money transmitting and debiting from the customer's bank account through disclosure of bank card number and password.
	Is a cheque cashier that cashes any third-party cheque or cashes cheques for commercial businesses.	N		GPay does not accept any form of payments (e.g., cheques, money orders, travellers schques) that are not online payments involving the debiting of an account from a registered Schedule I bank.
	Is a money transmitter that offers only, or specializes in, cross-border transactions, particularly to jurisdictions posing heightened risk of money laundering or the financing of terrorism or countries identified as having weak anti-money laundering controls.	Y	Many of the online gambling casinos are off-shore. However, not all are domiciled in areas that pose high AML risks due to lax AML controls. There were several countries identified that are known to be terrorist financing havens.	GPay does not accept any form of payments (e.g., cheques, money orders, travellers schques) that are not online payments involving the debiting of an account from a licensed financial institution..

Risk Level	AML Risk Indicator	Does it apply? (Y/N)	AML Risk Implications	Comments
	Is a currency dealer or exchanger for currencies of jurisdictions posing heightened money laundering risks or the financing of terrorism or countries identified as having weak anti-money laundering controls.	N		GPay does not accept any form of payments (e.g., cheques, money orders, travellers schques) that are not online payments involving the debiting of an account from a licened financial institution.
	Is a new business without an established operating history.	N		GPay has been in business since 2003, with an upward bias toward significant transaction growth over the last three years.
	Is located in an area designated as a High Money Laundering and Related Financial Crimes Area or a High-Intensity Drug Trafficking Area. (*)	N		Facilitates transactions to many offshore jurisdictions, some of which are considered high AML risks as they have lax AML regulations. None of these jurisdictions appear to be published terrorist financing countries, such as those listed on the NCCT (Non-Cooperative Countries and Territories) Initiative.

(*) While the operation of an MSB in either of these two areas does not itself require a bank to conclude that the MSB poses a high risk, it is nonetheless a factor that may be relevant.

COMPETITION TRIBUNAL

BETWEEN:

**B-FILER INC., B-FILER INC. doing business as
GPAY GUARANTEEDPAYMENT and NPAY
INC.**

Applicants

-and-

THE BANK OF NOVA SCOTIA

Respondent

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