

**PROCEEDINGS AT HEARING  
OF  
NOVEMBER 25, 2020**

**COMMISSIONER AUSTIN F. CULLEN**

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**November 25, 2020**  
**(Via Videoconference)**

**(PROCEEDINGS COMMENCED AT 9:30 A.M.)**

THE REGISTRAR: Good morning. The hearing is now resumed. Mr. Commissioner.

THE COMMISSIONER: Thank you, Madam Registrar. Yes, Ms. Patel.

MS. PATEL: Thank you, Mr. Commissioner.

Mr. Commissioner, today we are hearing from a panel of individuals who are involved in the virtual asset industry in various advisory compliance and anti-money laundering, counterterrorist financing roles. They're appearing before the commission as witnesses with expertise in their field garnered from years of experience in both virtual currency and AML roles in the virtual currency world and traditional banking world as well and as witnesses who, because of their current and recent work, have good insight into the state the virtual currency business in Canada.

And I'll ask, Madam Registrar -- they had each, I think, indicated that they will affirm this morning.

THE COMMISSIONER: Thank you.

1 THE REGISTRAR: Witnesses, please unmute yourselves.  
2 Thank you. Would each of you please state your  
3 full name and spell your first name and last  
4 name for the record. I'll start with  
5 Ms. Cieslik.

6 THE WITNESS: (CC) yes, Charlene Cieslik. First name  
7 C-h-a-r-l-e-n-e. Last name Cieslik,  
8 C-i-e-s-l-i-k.

9 THE REGISTRAR: Thank you. And Mr. Dixon.

10 THE WITNESS: (GD) Giles Dixon. First name is  
11 spelled G-i-l-e-s. Second name is Dixon,  
12 spelled D-i-x-o-n.

13 THE REGISTRAR: Thank you. Mr. Mueller.

14 THE WITNESS: (RM) Hi. My name is Ryan Mueller.  
15 First name is R-y-a-n, last name M-u-e-l-l-e-r.

16 THE REGISTRAR: Thank you. Mr. Warrack.

17 THE WITNESS: Peter Warrack. P-e-t-e-r. Surname  
18 W-a-r-r-a-c-k.

19 **CHARLENE CIESLIK, a**  
20 **witness called for the**  
21 **commission, affirmed.**

22 **GILES DIXON, a witness**  
23 **called for the**  
24 **commission, affirmed.**

25 **RYAN MUELLER, a witness**

1 called for the  
2 commission, affirmed.  
3 PETER WARRACK, a witness  
4 called for the  
5 commission, affirmed.

6 THE COMMISSIONER: Thank you. Yes, Ms. Patel.

7 **EXAMINATION BY MS. PATEL:**

8 Q Mr. Warrack, I'm just -- I'm going to start by  
9 reviewing the credentials, the CVs of each of  
10 the witnesses, and I'll start with you,  
11 Mr. Warrack.

12 MS. PATEL: Madam Registrar, if you could pull up  
13 Mr. Warrack's CV. Thank you.

14 Q Mr. Warrack, just can you confirm that you  
15 recognize this document as being your CV? And  
16 I'm sorry, Mr. Warrack, I'm not sure if you  
17 responded. I didn't hear an affirmative.

18 A (PW) That's correct. I recognize this document  
19 as being my résumé.

20 MS. PATEL: Thank you very much. We can take that  
21 down now, Madam Registrar, and if we could have  
22 that mark as the next exhibit.

23 THE COMMISSIONER: 261.

24 THE REGISTRAR: It's 260, Mr. Commissioner.

25 THE COMMISSIONER: I'm sorry. Thank you.

1                   **EXHIBIT 261: Curriculum Vitae of Peter Warrack**

2                   MS. PATEL: Thank you. And, Mr. Commissioner, I'll  
3                   just note.

4                   THE COMMISSIONER: Just to interrupt, Ms. Patel. A  
5                   small point, but was not the Chainalysis Reactor  
6                   webpage 260, Madam Registrar?

7                   THE REGISTRAR: Yes. My apology, I forgot about  
8                   that. It's 261.

9                   THE COMMISSIONER: All right. Thank you.

10                  THE REGISTRAR: Thank you.

11                  THE COMMISSIONER: I'm sorry for the interruption.

12                  MS. PATEL: Just a note, Mr. Commissioner. You'll  
13                  that note Mr. Warrack is wearing a face mask  
14                  today for medical reasons, and we just ask the  
15                  indulgence of the Commissioner to allow him to  
16                  continue to do so.

17                  THE COMMISSIONER: Yes, that's just fine.

18                  MS. PATEL: Thank you.

19                  Q     So, Mr. Warrack, you are a certified anti-money  
20                  laundering specialist; is that right?

21                  A     (PW) That's correct, Commissioner.

22                  Q     And you are also a certified bitcoin specialist?

23                  A     (PW) That's correct.

24                  Q     A certified fraud examiner?

25                  A     (PW) That's correct.

1 Q And I'll note that you've twice received  
2 recognition, both in 2011 and 2017, from the  
3 Association of Certified AML Specialists as  
4 the -- or ACAMS, as the ACAMS professional of  
5 the year and you were also the recipient of an  
6 ACAMS public/private partnership award in 2018;  
7 is that right?

8 A (PW) That's correct, Mr. Commissioner.

9 Q Okay. And we'll return to that, but I'll  
10 continue with your background for now. And as  
11 your -- in your roles -- your current and former  
12 roles and in with that expertise you have  
13 knowledge of the requirements of the *Proceeds of*  
14 *Crime (Money Laundering) and Terrorist Financing*  
15 *Act*, FINTRAC guidance and various Financial  
16 Action Task Force, FATF, guidance documents; is  
17 that right?

18 A (PW) That's correct.

19 Q Okay. I also note that your résumé indicates  
20 you've taken the Canadian Securities Course and  
21 Canadian Securities Institute chief compliance  
22 officer exam. And so you also have familiarity  
23 with Canadian securities laws; is that right?

24 A (PW) That's correct.

25 Q Your résumé indicates you have over 30 years of

1                   experience in the investigation, prevention and  
2                   management of serious crime. You started your  
3                   career in the British army where you moved into  
4                   military intelligence and then went into the  
5                   police service where you held the rank of  
6                   detective sergeant, detective inspector and  
7                   detective chief inspector; is that right?

8           A       (PW) Acting detective chief inspector.

9           Q       Thank you. And in those roles you investigated  
10           terrorist and non-terrorist crime and later  
11           economic crime?

12          A       (PW) That's correct.

13          Q       Okay. And you led the investigation of serious  
14           and complex fraud, organized crime, money  
15           laundering and terrorist financing?

16          A       (PW) That's correct.

17          Q       Following your military and policing career, I  
18           understand that you moved into the private  
19           sector in roles in intelligence and  
20           investigations with banks. Is that right?

21          A       (PW) Intelligence, investigations, anti-money  
22           laundering and risk management with two Canadian  
23           banks.

24          Q       Okay. The first one was RBC. Can you just tell  
25           us what your role was there?



1           A       (PW) Initially I was recruited from the police  
2                    in the UK to form and head up RBC's intelligence  
3                    unit as it related to financial crime.  
4                    Subsequently I was tasked with reforming RBC's  
5                    financial intelligence unit, their anti-money  
6                    laundering unit, through -- transitioning it  
7                    from a checklist approach to a risk-based  
8                    approach consistent with regulatory guidance at  
9                    the time.

10          Q       And you were with RBC for approximately  
11                    11 years. Does that sound right?

12          A       (PW) I believe I left RBC in 2010.

13          Q       And from RBC you went to the Bank of Montreal.  
14                    Can you just briefly describe your role there.

15          A       (PW) I was recruited by the Bank of Montreal to  
16                    essentially do the same thing that I did at RBC  
17                    in relation to upgrading their money laundering  
18                    function, their financial intelligence unit.  
19                    Once I had done that, I then was in a senior  
20                    risk management role and the senior Fintech role  
21                    specializing in virtual assets, cryptocurrency.

22          Q       Okay. And so it was in that role at the Bank of  
23                    Montreal that you first started work with  
24                    virtual currencies; is that right?

25          A       (PW) In a paid capacity. But prior to that, I

1 think probably 2014, now, is when I -- or even  
2 before that, 2012 maybe, is when I first started  
3 to take a real interest in cryptocurrency and  
4 educate myself on the subject.

5 Q In 2018 you made a move into consulting for --  
6 consulting in respect of AML compliance for the  
7 virtual currency industry. Can you just  
8 describe the work that you've done since 2018 in  
9 broad strokes.

10 A (PW) I resigned -- or sorry, I retired from Bank  
11 of Montreal in May 2018, formed my own company,  
12 Blockchain AML Consulting Services, which is a  
13 consulting training company specialized in  
14 blockchain technology, cryptocurrency. I also  
15 have a contractual consultant arrangement with  
16 one of the world's largest cryptocurrency  
17 trading platforms, a company called Bitfinex, as  
18 their Chief Compliance Officer.

19 Q And I'll just note you're not here today as a  
20 representative of Bitfinex or any other of your  
21 clients, but rather in your personal capacity as  
22 an individual with extensive experience in both  
23 traditional financial institutions and virtual  
24 currency service providers and their AML  
25 efforts?

1 A (PW) That's correct.

2 Q Thank you. Ms. Cieslik, if --

3 MS. PATEL: Madam Registrar, if we could pull up  
4 Ms. Cieslik's résumé.

5 Q Ms. Cieslik, do you recognize this document as  
6 being your CV?

7 A (CC) Yes, I do.

8 MS. PATEL: I'll ask that this be marked as the next  
9 exhibit, please.

10 THE COMMISSIONER: 262.

11 THE REGISTRAR: Exhibit 262.

12 **EXHIBIT 262: Curriculum Vitae of Charlene**  
13 **Cieslik**

14 MS. PATEL: And, Madam Registrar, you can take that  
15 down. Thank you.

16 Q Ms. Cieslik, you've got a master's degree in  
17 criminology and you are also a certified AML  
18 specialist; is that right?

19 A (CC) Yes, that's correct.

20 Q And just -- maybe I should have done this  
21 earlier with Mr. Warrack, but I'll ask you. Can  
22 you just -- can you tell us what is a certified  
23 AML specialist? What does it mean? What does  
24 that designation mean in your field?

25 A (CC) It is an accreditation issued by the

1 Association of Certified Anti-Money Laundering  
2 Specialists. It requires a period of study and  
3 the writing of an exam and maintenance of a  
4 certain skill level and experience in the  
5 anti-money laundering compliance field, and  
6 they're an international organization based out  
7 of the United States. And I was a founding  
8 member of the Canadian chapter, the Toronto  
9 ACAMS chapter many moons ago. They do have  
10 chapters around the world that allows people in  
11 the industry to meet, attend webinars, training  
12 sessions, et cetera, in order to maintain a  
13 skill level and interest level and experience.

14 Q Your background. You have, like Mr. Warrack, a  
15 background of experience in your I guess about  
16 20 years in both traditional financial  
17 institutions and with virtual currency  
18 businesses. And I understand that you started  
19 your career with our Canadian regulator, with  
20 FINTRAC. Can you tell us a little bit about  
21 what your role was there. And am I correct that  
22 you were there in fairly early days for FINTRAC,  
23 starting in 2002?

24 A (CC) Yes, I was there in the sort of very early  
25 inception. I had previously worked for the

1 Auditor General of Canada. We had done an audit  
2 of drug enforcement in Canada which led me to  
3 you know, find out about FINTRAC's creation. It  
4 was a newly created agency in respect of United  
5 Nations requirements, so I had started there as  
6 a junior investigator in the anti-money  
7 laundering investigation unit. After one year I  
8 had applied for and was promoted to an analyst  
9 level. My role there was to investigate  
10 anti-money laundering cases and make  
11 recommendations for escalation to the committee  
12 for disclosure to law enforcement both  
13 domestically and/or internationally at the time.

14 Q And you continued to have some interaction with  
15 FINTRAC. You're on the FINTRAC virtual currency  
16 working group and have been since 2018. Can you  
17 tell us a little bit about that working  
18 group.

19 A (CC) Sure. Yeah. I mean, that was part of the  
20 outreach to virtual asset service providers in  
21 aiding their understanding and development of  
22 the new cryptocurrency-based regulations and  
23 amendments to the existing regulations in order  
24 to bring virtual asset service providers under  
25 the auspice of the *Proceeds of Crime (Anti-Money*

1                    *Laundering) and Terrorist Financing Act* and  
2                    regulations.

3                    Q     I note you've also participated in Financial  
4                    Action Task Force forums with respect to virtual  
5                    currency?

6                    A     (CC) Yes, I attended the public sector  
7                    consultation in Vienna in 2019 where the FATF  
8                    had come up with the recommendations, amendments  
9                    to existing recommendations to bring virtual  
10                    currency asset service providers into their  
11                    40+9.

12                    Q     Your background -- you have some background as a  
13                    senior advisor at Ernst & Young and financial  
14                    advisory services, other -- a boutique  
15                    consultancy firm as well. Can you tell us a bit  
16                    about your work with traditional brick and  
17                    mortar financial institutions.

18                    A     (CC) Sure. After my time at FINTRAC I did move  
19                    into big 4 consulting firms at the time when the  
20                    regulations were newer and burgeoning. My role  
21                    there was an advisory capacity as part of their  
22                    advisory services generally to advise  
23                    traditional financial institutions on the  
24                    implementation and interpretation of the roles  
25                    which, again, at the time were relatively new in

1 terms of operationalizing. So I spent some time  
2 working with -- I mean, at this point I think  
3 I've worked with most, if not all, of the big  
4 banks in Canada, smaller banks, credit unions,  
5 financial services companies as well. Through  
6 that I also spent some time in the United States  
7 working with large correspondent banking  
8 institutions there where they had gotten in some  
9 hot water with regulators and were required to  
10 complete look-back remediations of activity and  
11 make certain reports to regulators that they  
12 might have missed over the prior time period.  
13 Came back to Canada and continued to do the same  
14 thing for a little while with, again, the big 4,  
15 consulting at a domestic level.

16 Q And just to clarify. When you just mentioned  
17 that you were consulting and helping --  
18 consulting with banks on the new regulations,  
19 you weren't speaking about the new new  
20 regulations from under the *Proceeds of Crime*  
21 *(Money Laundering) and Terrorist Financing Act*;  
22 you were talking about the new regulations in --  
23 as they applied to banks back in the early  
24 2000s?

25 A (CC) Yes, yes. I mean, there were regulations

1 in place, but there were amendments made and  
2 improvements made and banks were really ramping  
3 up and becoming -- you know, working on their  
4 anti-money laundering programs as this was  
5 approximately 15 years ago. You know, there was  
6 some work to be done in that area in terms of  
7 regulatory compliance, control mapping, program  
8 design, execution and reporting.

9 Q Okay. And like Mr. Warrack, in early 2018 you  
10 moved into compliance officer roles at virtual  
11 currency businesses. And you were the chief  
12 compliance officer at an Ontario-based virtual  
13 exchange called Coinsquare; is that correct?

14 A (CC) I'll correct you on that. I was the chief  
15 anti-money laundering officer at Coinsquare, but  
16 I was also the Chief Compliance Officer of one  
17 of their US-based crypto-ATM businesses called  
18 Coinsquare Networks.

19 Q Thanks for the correction. You are now a  
20 consultant on AML and anti-money laundering and  
21 anti-terrorist financing matters for financial  
22 services businesses and virtual currency  
23 businesses in Canada and other jurisdictions?

24 A (CC) Yes, I am.

25 Q And you very recently have started to act as the



1 Chief Compliance Officer for another company  
2 that operates bitcoin or crypto-ATMs?

3 A (CC) Yes, that's true.

4 Q Okay. Can I just ask you. We've had some  
5 debate here about what the appropriate  
6 terminology is. I've heard "bitcoin ATM,"  
7 "crypto-ATMs" and also we had a witness  
8 yesterday who preferred the term "kiosks." Is  
9 there a standard that's accepted in the  
10 industry?

11 A (CC) I mean, I think it varies. I'm comfortable  
12 with the term "bit ATM." I feel like it just  
13 rolls off the tongue easier. But it does vary.  
14 It depends on their usage, and I think their  
15 usage is slightly different in the US than  
16 Canada.

17 Q Well, as long as we all know what we're talking  
18 about.

19 A (CC) The traditional white label ATM machines  
20 that are not tied to any financial institution,  
21 that these ones specifically cryptocurrency  
22 purchase based.

23 Q I just outlined your experience in broad strokes  
24 and I'll just say that -- would you agree that,  
25 like Mr. Warrack, as a result of the experience

1 I've just outlined, you have knowledge of and  
2 familiarity with the requirements of the  
3 *Proceeds of Crime (Money Laundering) and*  
4 *Terrorist Act*, its regulations, FINTRAC guidance  
5 and various Financial Action Task Force  
6 guidances and publications that relate both to  
7 financial institutions and to virtual  
8 currencies?

9 A (CC) Yes, I would agree with that.

10 Q And I'll also just note that, like Mr. Warrack,  
11 you are not here today as a representative of  
12 any of your clients, but rather in your own  
13 capacity as an individual with extensive  
14 experience in both traditional financial  
15 institutions and virtual currency service  
16 providers?

17 A (CC) Yes.

18 Q Thank you. Mr. Mueller. I'm going to ask Madam  
19 Registrar to pull up your résumé. And I think  
20 it will be easy for you to confirm that this is  
21 yours because it has your picture on it.

22 A (RM) Yeah. I'd recognize that head anywhere.  
23 Yeah.

24 MS. PATEL: Okay. Madam Registrar, if we could have  
25 this marked as the next exhibit, please.

1 THE COMMISSIONER: We're at 163, I think.

2 THE REGISTRAR: 263, Mr. Commissioner.

3 THE COMMISSIONER: Sorry, 263.

4 **EXHIBIT 263: Curriculum Vitae of Ryan Mueller**

5 MS. PATEL:

6 Q Mr. Mueller, you have 18 years of experience in  
7 various financial enterprises, including payment  
8 processors, and currently you are with a  
9 cryptocurrency platform called Netcoins?

10 A (RM) Correct.

11 Q And your role there is as the Chief Compliance  
12 Officer?

13 A (RM) Correct.

14 Q Okay. And you are -- as we see in your résumé  
15 here, you are a certified fraud examiner?

16 A (RM) Yes.

17 Q Can you just tell us what a certified fraud  
18 examiner is.

19 A (RM) Yeah, it's very similar to the CAMS  
20 credential. It's just offered by the  
21 Association of Certified Fraud Examiners. So  
22 similarly to what Charlene mentioned with ACAMS  
23 is there's a period of study, there's an  
24 accreditation exam and there are ongoing CPE  
25 requirements. I think some of the key

1 differences would be that the CFE credential has  
2 a focus on forensic accounting and kind of draws  
3 a difference between money laundering and fraud.

4 Q You are also a certified anti-money laundering  
5 specialist?

6 A (RM) Yes.

7 Q And a certified cybercrime investigator?

8 A (RM) Correct, yeah. That one is offered by the  
9 International Association of Financial Crime  
10 Investigators, which is a similar network,  
11 similar organization with lots of banking  
12 investigators, lots of law enforcement,  
13 et cetera, but it's similar.

14 Q And in your current role --

15 MS. PATEL: Madam Registrar, we can take that down  
16 now. Thank you.

17 Q In your current role as Chief Compliance Officer  
18 at Netcoins you create and maintain policy  
19 documents, you conduct anti-money laundering,  
20 counterterrorist financing training and you  
21 manage -- your résumé indicates that you manage  
22 "enterprise, AML and fraud efforts," and I  
23 assume that means anti-fraud efforts?

24 A (RM) Yes, absolutely.

25 Q All right. And as such you are familiar with

1 Financial Action Task Force guidance with  
2 FINTRAC, guidance with the *Proceeds of Crime*  
3 *(Money Laundering) and Terrorist Financing Act*  
4 and its regulations; is that right?

5 A (RM) Correct.

6 Q And also you indicate that you -- on your résumé  
7 that you have a critical role in undergoing  
8 securities registration and regulation, and I  
9 understand that flows from the fact that  
10 Netcoins is currently going through the  
11 registration process with the BC Securities  
12 Commission?

13 A (RM) Correct. We're doing a volunteer  
14 registration as an exempt broker-dealer.

15 Q Okay. So you have knowledge of the -- both the  
16 registration process and of the obligations  
17 which will apply to Netcoins upon registration?

18 A (RM) Correct.

19 Q Thank you.

20 MS. PATEL: Madam Registrar, if we could please pull  
21 up Mr. Dixon's résumé.

22 Q Mr. Dixon, you are a senior manager with Grant  
23 Thornton Canada?

24 A (GD) That's correct.

25 Q And you are the leader of the virtual asset risk

1 advisory group; is that right?

2 A (GD) Yes, that's correct.

3 Q Do you recognize this document as your résumé --  
4 as your CV?

5 A (GD) Yes, I do.

6 MS. PATEL: All right. Mr. Commissioner, if we could  
7 please have this marked as the next exhibit, and  
8 we can take it down.

9 THE COMMISSIONER: Thank you. 264.

10 THE REGISTRAR: Exhibit 264.

11 **EXHIBIT 264: Curriculum Vitae of Giles Dixon**

12 MS. PATEL:

13 Q And you provide advisory services to a range of  
14 virtual currency businesses in your role at  
15 Grant Thornton?

16 A (GD) Yes, that is true. And I would add that  
17 it's not solely dealers in virtual currency that  
18 I advise for; it's financial services broadly.  
19 But yes, the virtual currency industry is one of  
20 the segments that I advise to, yeah.

21 Q And can you give us an overview of the types of  
22 advisory services that you personally have  
23 experience in giving?

24 A (GD) Sure. Yeah. So my -- I sit within a team  
25 within Grant Thornton Canada called the

1 anti-money laundering and forensic advisory  
2 team. So really what we do is we provide  
3 consulting services to primarily financial  
4 institutions. So, for example, helping  
5 financial institutions to understand how to  
6 comply with AML regulations, sometimes  
7 conducting independent anti-money laundering  
8 effectiveness reviews for those groups,  
9 assisting with investigations into potential  
10 wrongdoing, even assisting with remediation for  
11 regulatory findings. There's a longer list of  
12 services, but that's primarily what we do.

13 Q Okay. And as a result of that experience, like  
14 the other panel members here, you have  
15 familiarity with the *Proceeds of Crime (Money*  
16 *Laundering) and Terrorist Finance Act*, its  
17 regulations, FINTRAC guidance and Financial  
18 Action Task Force guidance?

19 A (GD) Yes, that's fair to say.

20 Q Thank you. I'm going to -- I'm going to start  
21 by asking a question to the panel, and I'll  
22 direct it to -- I'll direct who should  
23 answer first just to keep some order. There's  
24 been extensive media coverage in recent years of  
25 virtual currency businesses that has been

1 unfavourable, and a couple of notorious examples  
2 are -- well, one notorious example is  
3 QuadrigaCX, an exchange that collapsed when its  
4 founder died, leaving 76,000 users or so without  
5 access to their funds and leading to a  
6 loss of approximately \$170 million of customer  
7 funds.

8 So my first -- first, would you agree -- and  
9 I'll direct this question first to Ms. Cieslik  
10 -- that this media coverage has created a  
11 negative public impression of the vulnerability  
12 of virtual currency businesses generally in  
13 Canada to fraud and money laundering?

14 A (CC) Yes, of course I would agree with that. It  
15 certainly is not a proud moment in Canadian  
16 history of cryptocurrency.

17 Q All right. And then the deeper question is  
18 whether this is a fair perception, and I'll ask,  
19 Ms. Cieslik, if you can start with that.

20 A (CC) Sure. I mean, I don't believe it's a fair  
21 perception. I do believe that it was quite, you  
22 know, a headline-grabbing case and of course was  
23 a terrible, you know, incident, but I do think  
24 that that's sort of one large case, you know,  
25 and of course there are -- a few others have





1                   In relation to money laundering and virtual  
2                   asset service providers, exchanges,  
3                   crypto-exchanges for want of a better  
4                   description, they have certain similarities with  
5                   the traditional banking system and then they  
6                   have obvious differences, one difference being  
7                   the fact that cryptocurrency transactions are  
8                   borderless, for instance. That would be a  
9                   vulnerability unless properly mitigated through  
10                  appropriate controls.

11                  There are others challenges -- I wouldn't  
12                  describe them as vulnerabilities necessarily --  
13                  but the process by which one opens an account on  
14                  an exchange depending on the jurisdiction,  
15                  online, an online process. There are  
16                  arguably -- or some people would argue that  
17                  depending on the nature of the token, for want  
18                  of a better description, the coin, that's being  
19                  traded, bitcoin being an example -- on one hand  
20                  people may argue that certain aspects of it are  
21                  anonymous, i.e., who owns these coins, on the  
22                  other hand there is a high degree of comfort  
23                  from the fact that transactions are visible,  
24                  they are public and can be tracked and that has  
25                  been manifested in a positive way in many

1 investigations internationally where criminals  
2 have been caught basically because they engaged  
3 in using cryptocurrencies.

4 Q And we heard yesterday evidence from a  
5 representative of Chainalysis, which is one of  
6 those firms that provides that blockchain  
7 analysis software that you were just describing.

8 Now, has -- whether or not the perception of  
9 money laundering or fraud vulnerability is  
10 merited, has exposure -- public exposure in the  
11 media through instances such as Quadriga, which  
12 I mentioned, and, Mr. Warrack, where you -- in  
13 your reference to an exchange that collapsed due  
14 to liquidity problems, were you referring to the  
15 Vancouver-based Einstein Exchange?

16 A (PW) That's correct.

17 Q Has this media exposure caused any industry  
18 response, and what has that response been? And  
19 Maybe I'll look to Mr. Dixon to give the first  
20 answer on that one.

21 A (GD) Sure. Thank you. Yeah. I think it's  
22 probably -- I mean, in my experience it's worth  
23 noting maybe upfront that, you know, my personal  
24 experience has been -- at least on the side of  
25 the industry I'm seeing is that rather than

1                   those particular incidences causing some kind of  
2                   response -- and, you know, I think there was  
3                   actually very much a response happening before  
4                   those incidents happened and, you know, I will  
5                   say that there are a number of groups in Canada  
6                   but also, you know, around the world and  
7                   international groups who are demonstrating a  
8                   level of, let's say, proactivity in regards to  
9                   compliance with either regulations that are  
10                  currently in force within Canada or elsewhere  
11                  or, in absence of any formal regulation, you  
12                  know, trying to understand proactively what they  
13                  can do to better manage risk and so on on their  
14                  platforms.

15                         So I think, you know, my experience  
16                         hasn't -- I haven't noticed a response solely  
17                         from those incidents. However, what I would say  
18                         is that -- and I can't speak to whether these  
19                         are directly as a result of these, but certainly  
20                         recently I've observed in the cryptocurrency  
21                         ecosystem there are, let's say, increased levels  
22                         of collaboration between different parties,  
23                         different types of stakeholders to -- that are  
24                         independently run and proactively set up. And  
25                         there's an example -- I forget the name of it

1                   now, but there is a group of, for example, Asian  
2                   exchanges who have been able to set up  
3                   communication channels proactively by themselves  
4                   to work together, for example, to alert one  
5                   another of hacks, hacks and potential thefts on  
6                   their platform and, you know, for purposes of  
7                   their own protection but their customers'  
8                   protection also.

9                   I would also say -- and, again, not -- this  
10                  isn't a direct response to those incidents, but  
11                  it's somewhat timely as I'm sure we'll talk  
12                  about it today, are other initiatives such as  
13                  Project Participate and other public/private  
14                  partnerships where, you know, there's a real  
15                  effort within the industry to try to get ahead  
16                  of some of this risk and understand how they can  
17                  work together to better identify and manage risk  
18                  across their platforms. So, you know,  
19                  certainly -- I don't know if any one of those  
20                  instances has sort of been a direct result of  
21                  those responses, but it's certainly, I would  
22                  say, warranted the need for them going forward,  
23                  and I've certainly seen more of that happening  
24                  in the last 12 months or so, or 18 months.

25                  Q       There was a very long lead-up period between the

1                   FATF starting to provide guidance for virtual  
2                   currency businesses and -- about virtual assets,  
3                   as the FATF calls them, and virtual asset  
4                   service providers, as it calls businesses that  
5                   deal with virtual currencies.

6                   The first Financial Action Task Force  
7                   publication on it was in June of 2014 and the  
8                   response of -- the regulatory response, at least  
9                   in Canada, has been developing since then. Is  
10                  that a fair description of the beginning of that  
11                  timeline? And maybe I'll ask Ms. Cieslik.

12                A     (CC) Yes, that sounds about right.

13                Q     And my question following up on that. So the --  
14                   and we'll get to the new regulations, the  
15                   amended regulations under the *Proceeds of Crime*  
16                   *(Money Laundering) and Terrorist Financing Act*  
17                   that apply to virtual currency businesses, but  
18                   my question for now is that the period of  
19                   development between the Financial Action Task  
20                   Force first starting to publish guidance on  
21                   these matters and the coming into force of  
22                   regulations -- the Canadian regulations just  
23                   came into force in June of this year -- has that  
24                   caused any -- has that caused problems for the  
25                   industry in terms of knowing what its eventual

1                    AML obligations are going to be, and has it --  
2                    has that delay, in your view, allowed for bad  
3                    actors to take a position in the market?

4                    And maybe I'll ask Mr. Mueller. I haven't  
5                    turned to you yet, so I'll ask you to give a  
6                    first crack at answering that rather long-winded  
7                    question.

8                    A        (RM) Certainly. I think that a different factor  
9                    might be the jurisdictional laws as they apply.  
10                    So, for example, when we were doing payments for  
11                    crypto-exchanges seven years ago in Canada, we  
12                    had requirements that they have compliance  
13                    regimes, that they have customer identification  
14                    programs and so on. So there was not yet an MSB  
15                    requirement in Canada, but for them to access  
16                    financial institutions, we wanted that. Where  
17                    some clients would apply with us from fiscal  
18                    paradises or more lax jurisdictions that there  
19                    was no requirement. So I think it would be less  
20                    the time lag between an FATF guidance and local  
21                    enforcement and more just what the state of  
22                    compliance is in those countries.

23                    So, for example, places that allow bit  
24                    mixers to operate would be well in operation  
25                    regardless of FATF guidelines and regardless of

1                   any delay in enforcement. And in my opinion,  
2                   like in Canada, you mentioned Quadriga, I  
3                   believe they were an MSB, so, you know, there  
4                   was no impact of that registration on their  
5                   behaviour.

6           Q       And I would just invite any other panel member  
7                   who had thoughts on that question to jump in.

8           A       (CC) Sure, if I could jump in there. I do  
9                   believe, you know, that it has been a longer  
10                  time lag than I think some industry participants  
11                  would have liked. My former employer had  
12                  petitioned to become a registered money service  
13                  business prior to this year's, you know,  
14                  addition of cryptocurrency. So I think, you  
15                  know, if you were working in the industry and  
16                  you were following where things were going from  
17                  that 2014 FATF, you know, guidance issued and  
18                  other things happening in the US as well which  
19                  was -- predates that, I think, slightly, that  
20                  you kind of could see where it was going and you  
21                  can get an idea that most people were -- most  
22                  countries were considering this to fall under a  
23                  similar regime to a money service business.

24                               So in order to achieve the FINTRAC licence  
25                               as a money service business without crypto being



1 included, the requirements for KYC, transaction  
2 monitoring, risk assessment training, et cetera,  
3 you know, would have been fairly consistent.  
4 You know, they were consistent with the existing  
5 legislation, just without some crypto-specific  
6 requirements. So there were efforts being made,  
7 I think. As a Ryan had mentioned, people  
8 requiring participants to start implementing  
9 these things that were already documented and in  
10 law for traditional money services businesses.

11 (PW) If I could add something to that,  
12 Commissioner.

13 Q Please go ahead.

14 A (PW) yeah, I think it is correct to say there  
15 was a gap, a time lag, between FATF's initial  
16 publication circa 2014 and the regulations more  
17 recently in Canada. But I think it's also fair  
18 to say that, not just in Canada but also  
19 internationally, increasingly that gap was  
20 filled by people in the private sector taking  
21 steps themselves to put into place policies,  
22 procedures, shared best practice, et cetera.  
23 For instance, going back a couple of years,  
24 maybe three or four years, we started to see the  
25 appointment of people like myself from the

1                   traditional financial industry into the  
2                   crypto-world and that transferred knowledge into  
3                   that world to strengthen the regime within the  
4                   crypto-sector.

5           Q       The delay in your view, Mr. Warrack, was the  
6                   delay between FATF starting to look at this in  
7                   2014 or starting to publish on it in 2014 and  
8                   implementation of regulations, is any of that  
9                   attributable to a lack of expertise at the level  
10                  of oversight bodies and regulators?

11          A       (PW) Absolutely. Without doubt. At the FATF  
12                  level -- at every level regulators within Canada  
13                  until not that many years ago didn't have that  
14                  much knowledge, I would say. Similarly with law  
15                  enforcement.

16          Q       And do you see the state of knowledge improving  
17                  recently?

18          A       (PW) Not just recently but for a period of time  
19                  now, yes. Certainly.

20          Q       Okay. What efforts have you seen regulators  
21                  taking to get the kind of expertise that's  
22                  required to adequately oversee this industry?

23          A       (PW) Well, within Canada dialogue with the  
24                  private sector with people like myself,  
25                  Charlene, Ryan, et cetera. Internationally. I

1 belong to a Europol working group up until  
2 COVID, you know, where the annual meetings which  
3 lasted a number of days where regulators from  
4 around the world, including in Canada, would  
5 come and converse and share ideas and best  
6 practice and knowledge with each other, and  
7 there were many other examples of that.

8 Q So what you're describing -- is what you're  
9 describing interactions of regulators with  
10 industry members to acquire the knowledge that's  
11 required?

12 A (PW) Yeah. I would say it's a two way process  
13 as well and the regulators imparting their  
14 knowledge to the industry about what to expect,  
15 for instance, from a regulatory perspective in  
16 the future.

17 MS. PATEL: Before I move on, I'm going to ask --  
18 just to give some context to some of the matters  
19 that we've been talking about already  
20 specifically Quadriga, I'm going to ask, Madam  
21 Registrar, if you could pull up the Ontario  
22 Securities Commission report from April of this  
23 year. Thank you.

24 Q This is an Ontario Securities Commission report  
25 "QuadrigaCX: Review By Staff of the Ontario

1 Securities Commission" dated April 14, 2020.

2 Can I ask the panelists if they've -- each

3 panelist if they've reviewed this, if they're

4 familiar with this document. Mr. Dixon?

5 A (GB) Yes, I'm familiar.

6 Q Mr. Mueller?

7 A (RM) Yes.

8 Q Ms. Cieslik?

9 A (CC) Yes, I'm familiar.

10 Q And, Mr. Warrack? Mr. Warrack?

11 A (PW) Yeah, sorry. Somewhat familiar. I did  
12 read it at the time. I haven't certainly read  
13 it recently.

14 Q That's fine. Just establishing that we're all  
15 familiar with it.

16 MS. PATEL: Madam Registrar, if I could ask you --  
17 I'm just going to go to the executive summary,  
18 and I believe it's at page 3. So if you could  
19 just scroll down. And this is, just for the  
20 benefit of Commissioner and our participants, to  
21 understand -- to give some context to what we've  
22 been talking about. The -- at the executive  
23 summary I'm going to look at the second  
24 paragraph where it says:

25 "The collapse of Quadriga caused massive

1                    losses for investors from Canada and  
2                    around the world. On January 14, 2019,  
3                    Quadriga announced that Cotten --"  
4                    Gerald Cotten, its founder.

5                    "-- had died in India the previous month.  
6                    By February 5, the Quadriga platform had  
7                    ceased operations and filed for creditor  
8                    protection. Over 76,000 clients were owed  
9                    a combined \$215 million in assets.  
10                    Approximately 40 per cent of these clients  
11                    were Ontarians. Ernst & Young, the  
12                    bankruptcy trustee, was able to recover or  
13                    identify just \$46 million in assets to pay  
14                    out to clients. The people who trusted  
15                    Quadriga with their money and  
16                    crypto-assets collectively lost at least  
17                    \$169 million."

18                    And then I'm just going to go down to the  
19                    paragraph that starts with "it has."

20                    "It has been widely speculated that the  
21                    bulk of investor losses resulted from  
22                    crypto-assets becoming lost or  
23                    inaccessible as a result of Cotten's  
24                    death. In our assessment, this was not  
25                    the case. The evidence demonstrates that

1                   most of the \$169 million asset shortfall  
2                   resulted from Cotten's fraudulent conduct,  
3                   which took several forms."

4                   The next paragraph, it goes on to describe  
5                   Mr. Cotten's fraudulent trading on the Quadriga  
6                   platform.

7                   And the last paragraph there -- if you could  
8                   just scroll down a little bit, Madam  
9                   Registrar -- describes that he lost an  
10                  additional -- so he lost \$115 million from  
11                  fraudulent trading. The next paragraph says  
12                  that:

13                  "[He] lost an additional \$28 million while  
14                  trading client assets on three external  
15                  crypto asset trading platforms without  
16                  authorization from, or disclosure to,  
17                  clients."

18                  And what the Ontario Securities Commission  
19                  concludes here at the first full paragraph of  
20                  the next page is what happened that:

21                  "What happened at Quadriga was an  
22                  old-fashioned fraud wrapped in modern  
23                  technology. There is nothing new about  
24                  Ponzi schemes, unauthorized trading with  
25                  client funds and misappropriation of

1                   assets. Crypto asset trading platforms,  
2                   however, are novel and the regulatory  
3                   framework for these platforms is  
4                   evolving."

5                   And I just -- sorry, it's not the role of  
6                   commission council to give evidence here, but  
7                   just to provide that report for some context for  
8                   the discussion we're going to be having, and  
9                   I'll probably return to this for a couple of  
10                  points as we develop the discussion about that  
11                  regulatory framework that is evolving for, as  
12                  the Ontario Securities Commissions says here,  
13                  crypto-asset trading platforms but also virtual  
14                  currency businesses generally.

15                 MS. PATEL: Madam Registrar, you can take that down  
16                  for now. Thank you. And actually, I'd ask,  
17                  Mr. Commissioner that the Ontario Securities  
18                  Commission report be marked as the next exhibit,  
19                  please.

20                 THE COMMISSIONER: 265.

21                 THE REGISTRAR: Exhibit 265.

22                                 **EXHIBIT 265: Ontario Securities Commission**  
23                                 **Report - April 14, 2020**

24                 MS. PATEL:

25                 Q     I'd like to move into a discussion now of that

1 new regulatory framework that is being  
2 established for virtual currency businesses,  
3 businesses dealing with virtual currencies in  
4 various ways. As I mentioned earlier, the  
5 amendments to the *Proceeds of Crime (Money*  
6 *Laundering) and Terrorist Financing Act* came  
7 into force -- came into effect on June 1st of  
8 this year and further requirements will come  
9 into force in June of next year.

10 And just to give us an understanding of what  
11 is involved in this new regulation of the  
12 industry, I'm going to -- I'm going to turn  
13 again -- Ms. Cieslik, I'm sorry I've been  
14 relying on you for some background here, and I'm  
15 going to rely on you again because I know you've  
16 been participating in this FINTRAC virtual  
17 currency reporting working group since 2018.  
18 Can you please briefly describe what are the new  
19 obligations and requirements on virtual currency  
20 businesses as of June 2020.

21 A (CC) Yes. Sure. I don't mind going through  
22 those at a high level. FINTRAC has defined a  
23 virtual asset service provider or the act of  
24 dealing in virtual assets as what qualifies any  
25 kind of person or entity that would be subject



1                   to this regime. So that was a start is defining  
2                   a virtual asset service provider and defining  
3                   what dealing in virtual assets means to them.

4                   That in effect brought into place the  
5                   registration requirement. So they captured this  
6                   under the definition of a "money service  
7                   business." So there's -- you know, there's  
8                   three qualifying transactional activities that  
9                   would make you a traditional money service  
10                  business, whether it's trading FX, dealing in  
11                  negotiable instruments or effecting some kind of  
12                  transfer of funds on behalf of someone. They've  
13                  added dealing in virtual currency to that  
14                  definition, which, as I said, brings about the  
15                  registration requirement. So you're then  
16                  required to register your business with FINTRAC.

17                  They have added an element of distinguishing  
18                  between a local money service business and a  
19                  foreign money service business and clarified  
20                  some definitions around what would make you a  
21                  foreign money service business in terms of  
22                  engaging -- being engaged in any of the  
23                  activities, having place of business in Canada,  
24                  directing services at people who live in Canada  
25                  and you provide services to clients who live in

1 Canada.

2 Q And sorry, can I just ask you as a followup to  
3 that. Are foreign money services businesses  
4 also required to register with FINTRAC?

5 A (CC) Yes, they are. They have some additional  
6 responsibilities to achieve that registration  
7 versus local or domestic money services  
8 businesses, but the program requirements are  
9 similar -- you know, are the same for both local  
10 and foreign in terms of you're required to have  
11 a compliance program, appointing a compliance  
12 officer who's responsible for the development  
13 and execution of the program, having policies  
14 and procedures, a risk assessment, a training  
15 program so that people at your company know the  
16 roles and responsibilities, and this includes  
17 also a review of effectiveness through some kind  
18 of external audit.

19 There has been a slight bit of confusion as  
20 to what is required to be implemented from the  
21 program perspective now and in the future, but  
22 through some clarity and some digging. Right  
23 now there are requirements to file suspicious  
24 transaction reports of any amount as per the  
25 traditional, you know, in-place suspicious

1 activity reporting requirements. There also is  
2 the requirement to keep records obviously of  
3 those filed reports. And you are required to,  
4 you know, take reasonable measures to complete a  
5 KYC on people that you are filing suspicious  
6 transaction reports on.

7 However, the broader KYC, know your client,  
8 requirements that are tied to money service  
9 businesses for virtual asset service providers  
10 don't come into effect until the following year  
11 along with an additional large virtual currency  
12 transaction report requirement and the travel  
13 rule. I don't know how in depth you want me to  
14 get on either of those things right now. I'm  
15 happy to talk about those, if you want a little  
16 bit of description of what those are.

17 Q If you could give a little bit of description of  
18 both of those, that would be -- that would be  
19 helpful.

20 A (CC) Sure. So as a money service business -- I  
21 think I mentioned previously, a traditional  
22 money service business has obligations as it  
23 pertains to a transaction level versus an  
24 account level. There are allowances under the  
25 existing money service business law

1 threshold-based transactions under which you do  
2 not have to conduct KYC and over which you do.  
3 That threshold is a thousand dollars. So you  
4 can do up to a thousand dollars per transaction  
5 with no KYC. That requirement to verify the  
6 identities of persons over a thousand comes into  
7 effect next year.

8 The travel rule, which again is part of  
9 the -- sort of the, you know, international FATF  
10 recommendations and all the working groups -- I  
11 think that, you know, Peter had mentioned  
12 earlier -- is that, again, similar to the  
13 traditional financial entities and reporting  
14 entities under FINTRAC, information must travel  
15 with a transaction over -- of a thousand dollars  
16 or more, including the name, full address, you  
17 know, civic address as well as an account number  
18 or traditional -- sorry, in virtual currency, a  
19 virtual currency address must travel with  
20 transactions and include the name, address and  
21 account number or virtual currency address of  
22 the recipient as well.

23 So those things -- and, again, a little bit  
24 more complex than the initial things that have  
25 come into effect this calendar year -- they are

1                   slated to come into effect more robustly of  
2                   course in June of next year. You're muted.

3           MS. PATEL: It's bound to happen. I'm going to ask  
4           the panel members a little bit more about the  
5           travel rule because I know it has been the  
6           subject of some scrutiny and review by the  
7           Financial Action Task Force.

8                   And just to ground this discussion I'd ask  
9           Madam Registrar, if you could please pull up the  
10          document, the Financial Action Task Force  
11          12-month review, which we have as appendix F to  
12          exhibit 248. And I'll give you a moment just to  
13          find that. So if you could -- perfect. Thank  
14          you, Madam Registrar.

15                  So this is a publication of the Financial  
16          Action Task Force, the 12-month review of the  
17          revised FATF standards on virtual assets and  
18          virtual asset service providers that was  
19          published, I believe -- if you could scroll down  
20          just a bit, Madam Registrar. I believe June of  
21          this year. Thank you. And the part that I'd  
22          like to go to is at page 143 of the PDF. And  
23          actually, I was mistaken. If you could scroll  
24          up slightly. That's perfect. Thank you very  
25          much.

1           Q     The implementation of the travel rule. The  
2                   Financial Action Task Force, I understand, sets  
3                   out here some industry concerns with the  
4                   implementation of this rule. And maybe I could  
5                   go to -- rather than me saying what the  
6                   Financial Action Task Force says that the  
7                   industry is concerned about, maybe I'll ask  
8                   industry members, you yourselves, what are those  
9                   concerns; what are the problems with this  
10                  obligation that Ms. Cieslik has just described?

11                         And, Mr. Mueller, do you have any insight  
12                         into that?

13           A     (RM) Yeah, I think one of the key challenges is  
14                   that there's so many ways -- there's so many  
15                   wallet providers, there's so many ways to move  
16                   bitcoin and not all of them require KYC and not  
17                   all of them are going to be friendly to sharing  
18                   the same kind of information that you would  
19                   expect on a wire transfer. Additionally, you  
20                   could be sending cryptocurrencies into pooling  
21                   wallets that are then settled to an end customer  
22                   in the same way that, like, a correspondent bank  
23                   relationship might obscure end recipients. So I  
24                   think that's one challenge in implementing the  
25                   travel rule is getting all the players on board

1                   and similarly having a common language to share  
2                   all that information.

3                   We tried to do this when we were processing  
4                   payments for multiple cryptocurrency  
5                   exchanges years ago, and we found that everyone  
6                   had their own method to identify the device that  
7                   was initiating a transaction and not all of  
8                   those methods could talk to each other. And  
9                   everyone had their own language for encrypting  
10                  customer information and so on.

11                 Q     And as a background question -- maybe I'll  
12                   direct this to Mr. Warrack -- Mr. Warrack, can  
13                   you explain what is the anti-money laundering,  
14                   counterterrorist financing value of a rule like  
15                   the travel rule? What does it get at?

16                 A     (PW) It's designed to track and to have a record  
17                   of the movement of funds, so who is sending  
18                   funds to who, from what jurisdiction to what  
19                   jurisdiction, from what account to what account,  
20                   as Ryan has said, similar to a wire transaction.  
21                   And that information has obvious use to law  
22                   enforcement. If there is a crime associated  
23                   with those funds, law enforcement can then go to  
24                   the relevant exchange and get information about,  
25                   you know, who owns that account or who initiated

1                   that transaction.

2           Q       So it's critical information about what the  
3                   source of a transfer was?

4           A       (PW) Not just the source but also the recipient  
5                   of the -- the source and destination of funds.

6           Q       Am I correct, though, in understanding that the  
7                   problem from the industry perspective in  
8                   implementing the travel rule isn't so much with  
9                   documenting the recipient if you're virtual  
10                  asset provider. If you're on the receiving end  
11                  of a transfer, presumably you have that  
12                  information at hand. The problem is identifying  
13                  the sender. Am I right in that understanding?

14          A       (PW) The problem -- it is a problem. The  
15                  challenge with the travel rule is that no single  
16                  technological solution certainly existed in a  
17                  workable format when this requirement, the  
18                  recommendation 16, was formulated by the FATF.  
19                  As one of the speakers had said, the requirement  
20                  is that the information about the parties to the  
21                  transaction accompany the transaction.

22                         What does that mean? So using a bitcoin  
23                         transaction, for instance, clearly the bitcoin  
24                         transaction itself is visible on the public  
25                         blockchain, but then how do you add or how do



1                   you attach the information about -- from whom  
2                   the funds are going and to whom the account is  
3                   owned to where it's going in a way that's close  
4                   to -- proximate to the actual transaction  
5                   itself. You could send a batch file, for  
6                   instance, with all the transactions during the  
7                   day with the different solutions.

8                   The good news is that certainly over this  
9                   last year the industry really has come together,  
10                  and I'm a big part of that discussion, to  
11                  establish a number of technology solutions. A  
12                  lot of work has gone into what Ryan was saying  
13                  about common standards, common language,  
14                  et cetera, similar to SWIFT terminology. And it  
15                  may well be that instead of one solution, there  
16                  will be a number of solutions which an exchange  
17                  will have to employ depending on who the other  
18                  party is that they're dealing with.

19                  Just to be clear, in case there's any doubt,  
20                  the travel rule requirements under  
21                  recommendation 16 from FATF relate to  
22                  transactions between VASPs, so between  
23                  exchanges. It doesn't relate to a transaction  
24                  between an exchange and a private wallet, for  
25                  instance. Just between exchanges.

1           Q     And I'll just note -- Madam Registrar, if you  
2                    can scroll down to paragraph 45 on the next  
3                    page -- indeed the review concludes that it  
4                    "does not consider that these are fundamental  
5                    barriers to the continued development of  
6                    technological solutions to implement the travel  
7                    rule." And the -- just a little bit further  
8                    down it says:

9                           "... the FATF calls upon the VASP sector  
10                           to redouble its efforts towards the swift  
11                           development of holistic technological  
12                           solutions encompassing all aspects of the  
13                           travel rule."

14                   So this is the Financial Action Task Force  
15                   calling out for assistance from the industry  
16                   essentially and asking for that type of  
17                   technological assistance that you've just  
18                   described is in development. Is that right,  
19                   Mr. Warrack?

20            A     (PW) That's correct. And there have been recent  
21                    discussions with FATF. I've been part of those  
22                    discussions, part of working groups in dialogue  
23                    with each other within the industry but also  
24                    with the FATF and other regulators. Just by way  
25                    of disclosure, I'm advisor to one of these

1 solutions. So there is a lot of work being  
2 conducted.

3 Q Ms. Cieslik, have I given you the opportunity to  
4 go through the obligations that will apply to  
5 virtual currency dealers under the new Proceeds  
6 of Crime (Money Laundering) and Terrorist  
7 Financing Regs?

8 A (CC) Yes, I believe I've covered them at a high  
9 level.

10 Q Okay. And so my followup question, and we kind  
11 of got into it with the discussion of the travel  
12 rule, is -- actually before I ask this. Do the  
13 amendments place any obligations -- any new  
14 obligations on traditional financial  
15 institutions with respect to virtual currencies?  
16 And maybe, Mr. Dixon, you're in a position to  
17 answer this.

18 A (GD) Yes. Yeah, they do. So there are  
19 similar -- there are some overlap with more  
20 traditional financial institution requirements,  
21 for example -- exposure for a more traditional  
22 financial institution's customer to virtual  
23 currency over certain thresholds will at some  
24 point in a future require additional  
25 determinations for politically exposed persons,

1                   for example. Again, the reporting of large  
2                   virtual currency -- receipt of large virtual  
3                   currency and so on. So yes, the regulations  
4                   don't just pertain to dealers and virtual  
5                   currency themselves. They have similar effects  
6                   in terms of the requirements across other more  
7                   traditional financial institutions, securities,  
8                   banks, even money service business -- more  
9                   traditional money service businesses.

10                   (CC) I think if I could add to that, the law  
11                   has been amended to say that any reporting  
12                   entity that deals in virtual currencies, those  
13                   that are under the law currently -- as Giles  
14                   mentioned, if you are financial entity, casino,  
15                   securities dealer, et cetera, if you deal in  
16                   virtual currency that there would be these  
17                   additional requirement. I believe it largely  
18                   focuses on ensuring that you are doing  
19                   transaction reporting, the large virtual  
20                   currency transfer report, ensuring the travel  
21                   rule follows and of course including that as  
22                   part of your suspicious transaction reporting  
23                   model. But essentially how I interpreted it was  
24                   that you can be a traditional financial services  
25                   entity and deal in cryptocurrency without

1                   necessarily becoming registered but that you  
2                   would have these additional obligations with  
3                   respect to virtual currency.

4           Q        The -- with respect specifically to the issue of  
5                   customer source of funds, do the new regulations  
6                   address that?

7           A        (CC) Is this -- I should answer this?

8           Q        I think probably, yes.

9           A        (CC) The legislation itself does not reference  
10                  source of funds. Where source of funds has come  
11                  into requirements -- I shouldn't use that word  
12                  "requirements," but there is a requirement to  
13                  have a risk-based approach so to do a risk  
14                  assessment on your entity as a whole and its  
15                  exposure to money laundering and terrorist  
16                  financing as well as on your individual customer  
17                  base, whether they be human customers or entity  
18                  corporate customers. And that upon -- you know,  
19                  upon designing that risk assessment and  
20                  completing risk ratings, that one part of  
21                  enhanced due diligence would be -- recommended  
22                  under their guidance is to complete a source of  
23                  funds validation or declaration. I don't think  
24                  they use those words specifically but that one  
25                  way to mitigate your risk where you think

1                   somebody has been rated high risk is to validate  
2                   or verify, come up with some kind of  
3                   documentation as to where they got their money  
4                   from.

5           Q       And I understand that registration as an MSB  
6                   involves some kind of criminal record check. Is  
7                   that right?

8           A       (CC) I would -- it's not for domestic money  
9                   service businesses but only for foreign money  
10                  service businesses under this law change here.

11          Q       Okay. Currently do registrants for MSB status,  
12                  whether as a virtual currency dealer or  
13                  otherwise, have an obligation to undergo  
14                  criminal record checks before -- prior to  
15                  registering or as a condition of registering  
16                  with FINTRAC?

17          A       (CC) Not that is specified in the legislation.

18          Q       I'm going to put a question to the panel at  
19                  large, which is what is the -- how is the fit of  
20                  the amendments -- and I appreciate that this  
21                  might be an answer that's developing given the  
22                  brand -- you know, the new status of the rules  
23                  and industry's efforts to comply with them, but  
24                  how is -- the fit of the obligations that are  
25                  required of money service businesses under the

1 act and the new requirements pertaining  
2 specifically to virtual currencies, is it a good  
3 fit with how the industry actually operates and  
4 with how virtual currency transactions take  
5 place? And I will start here with Mr. Warrack.

6 A (PW) Yeah. Thank you for that. Because I don't  
7 think it is a perfect fit at all. And this is  
8 not just a comment regarding Canada, but also  
9 internationally whereby cryptocurrency  
10 exchanges, VASPs, basically have been fitted  
11 into the label of an MSB, a money service  
12 business. A traditional money service business,  
13 you know, where somebody wants to remit some  
14 funds to the Philippines, et cetera, is a very  
15 different model to the way a lot of VASPs  
16 operate where in fact they are actually trading  
17 platforms with very, very different rules, a  
18 very, very different activity to what would be  
19 expected in a traditional MSB.

20 For instance, rapid trading, rapid movement  
21 in and out of funds might be very normal for a  
22 cryptocurrency trading platform, a VASP, whereas  
23 in the traditional world -- and I believe the  
24 sergeant from the RCMP the other day mentioned  
25 rapid in and out movement as a red flag. It

1                   certainly is a red flag in the traditional world  
2                   but in the cryptocurrency world, not  
3                   necessarily. And there are other significant  
4                   differences in relation to that.

5           Q       Are there any other aspects to the regulations  
6                   that are ill fits?

7           A       (PW) I believe so. And I believe -- well, my  
8                   answer is aligned to what I have just said. So  
9                   the requirement, for instance, to report the  
10                  receipt of virtual currency of \$10,000 or  
11                  more -- and there would have to be an automated  
12                  way to FINTRAC -- to me is somewhat ridiculous,  
13                  and I don't see any real value to the regulators  
14                  by trying to gain that information for a number  
15                  of reasons, not least for a trading platform --  
16                  a cryptocurrency trading platform. It would be  
17                  very normal for a customer who's a trader to  
18                  have maybe thousands of transactions in an hour  
19                  above that amount in and out of their account.  
20                  Particularly if they're using automated trading  
21                  bots, et cetera.

22                         I don't believe the regulations take into  
23                         account the concept of change transactions,  
24                         which could be in excess of \$10,000 or more and  
25                         would be captured, as I understand it, in the



1 reporting process.

2 And also although the -- I'm not sure if the  
3 regulations but certainly the guidance from  
4 FINTRAC talks to this: how do you value that  
5 transaction? Every exchange has their own value  
6 for the price of a bitcoin, for instance, at any  
7 given moment of time. One exchange might value  
8 it at \$10,100. Another exchange might value it  
9 at \$9,600. There's no common standard. I think  
10 they have -- FINTRAC or the regulations have  
11 tried to capture that by specifying where you  
12 got your information on when you submit this  
13 \$10,000 report. But that would be my biggest  
14 concern about the regulations.

15 And at the time, along with Charlene, I was  
16 part of that working group that met with  
17 Department of Finance and FINTRAC in Ottawa  
18 quite regularly and I provided this feedback at  
19 the time.

20 Q You mentioned change transactions. And just for  
21 the benefit of the Commissioner, can you explain  
22 what a change transaction is and why it poses a  
23 problem with respect to the records that have to  
24 be kept or reports made to FINTRAC?

25 A (PW) Yeah. The way -- using bitcoin as an

1                   example, the way transactions are structured is  
2                   similar to the typical fiat currency  
3                   transaction. So if you have a 20 pound note in  
4                   your pocket and you want to purchase something  
5                   worth \$10, you hand over the \$20 note and you  
6                   get \$10 back in change. Similarly, if you have  
7                   transactions in your wallet -- a transaction in  
8                   your wallet that -- let's say you have a single  
9                   transaction that somebody has sent you  
10                  20 bitcoin, for instance, maybe worth \$400,000  
11                  and you want to send 10 bitcoin somewhere else  
12                  by car or whatever, you have to send the full  
13                  amount. You have to send that 20 bitcoin  
14                  transaction through the blockchain and receive  
15                  back the 10 bitcoin transaction as change. That  
16                  receipt back, as I understand it, to the wallet  
17                  on an exchange would trigger the \$10,000  
18                  reporting rule and to me would be of absolutely  
19                  no value to whoever is looking at it.

20                MS. PATEL: Madam Registrar, I am sorry, I should  
21                  have mentioned, you can take down this document.  
22                  Thank you very much.

23                Q     And the issue with the change transactions is --  
24                  I understand from what you've said is that it's  
25                  going to result in a large amount of perhaps

1                   irrelevant information being submitted to  
2                   FINTRAC. Is that the issue?

3           A       (PW) Yeah. I would describe it as noise.

4           Q       Okay. Which in turn can obscure information  
5                   which might actually lead to valuable  
6                   intelligence?

7           A       (PW) Yeah.

8           Q       Okay. Do any of the other panelists want to  
9                   weigh in on the fit of the new regulations  
10                  before I move on?

11          A       (CC) I mean, I think if I could can add to what  
12                  Peter mentioned. You know, I think it would be  
13                  helpful for FINTRAC to be clear about this  
14                  inclusion or exclusion of change transactions  
15                  because I think there is a wide discrepancy in  
16                  the industry over whether those are or not part  
17                  of the large virtual currency transaction  
18                  report. I do think it is important to note --  
19                  you know, again, I think, as Peter mentioned,  
20                  the magic number of \$10,000 that was set in  
21                  place some 30 years ago as a high amount, not  
22                  necessarily a good fit for cryptocurrency given  
23                  the price fluctuations as well as the fact  
24                  that -- you know, again, I'm just -- I'm not  
25                  sure that 10,000 is the magic number anymore.

1                   And there has already been an amount of  
2                   criticism levied against the reporting  
3                   requirements for large cash and large wire being  
4                   of that amount. And it does, I believe, add to  
5                   the noise, as Peter mentioned, in providing, you  
6                   know, sort of a lot of information in and not  
7                   sure of the value out of receiving that.

8                   Q     Mr. Dixon.

9                   A     (GD) I would just add -- yeah, and so we've  
10                  talked about the foreign money service business  
11                  requirement previously, but this was something  
12                  which, you know, had come up in some of the  
13                  round table and consultation that I was part of,  
14                  which was to say that, you know, arguably  
15                  there's the requirement of what determines you  
16                  to be a foreign money service business. One of  
17                  the criteria related to this is whether you're,  
18                  for example, actively directing or directing --  
19                  I forget if it's -- if actively is in there and  
20                  in the wording, but somebody directing services  
21                  to persons within Canada. And, you know, that  
22                  might be considered -- for example, if you're  
23                  marketing or advertising to Canadian citizens  
24                  but your place of business is located outside of  
25                  Canada, you know, then you would be considered

1                   potentially as a foreign money service business.

2                   There are other criteria in there, but that  
3                   is one example and -- which had come up in  
4                   discussions primarily -- I mean, we're talking  
5                   about the fit with the context of the industry  
6                   here. And, you know, it's my experience, at  
7                   least historically, that certainly even, you  
8                   know, a lot of virtual currency exchanges don't  
9                   typically, you know, advertise in newspapers or  
10                  sort of, you know, websites advertising their  
11                  services. So there's a certain challenge here  
12                  which was raised around, you know, is there a  
13                  loophole here in terms of what would constitute  
14                  a foreign money service business? Could I  
15                  operate outside of Canada, not be seen to be,  
16                  quote, sort of actively directing services, but  
17                  Canadians could be using my platform because I  
18                  don't have a physical place around the world,  
19                  it's a website, and I could somehow potentially  
20                  circumvent the regulations in Canada through  
21                  sort of avoiding that criteria.

22                  So there's nuance to that, what I've just  
23                  described. There's further nuance to that, but  
24                  it was certainly one of the areas in the  
25                  consultation over the last couple of years that

1 had come up from -- in the discussions.

2 (CC) I would just add to that too. I think  
3 there's several factors that qualify a foreign  
4 money service business that can be questioned  
5 similarly, as Giles raised, about the one factor  
6 of advertising.

7 Q I just want to clarify one point about the  
8 regulations. And I believe one of the panelists  
9 mentioned this -- I think it might have been  
10 you, Ms. Cieslik -- that they apply to virtual  
11 currency dealers in virtual currency; they don't  
12 apply to transactions between unhosted wallets,  
13 wallets of private individuals that are not  
14 hosted on an exchange other another platform.  
15 Is that right?

16 A (CC) I think that was Peter that mentioned that.  
17 I mean, if I can add to that, Peter. The FATF  
18 recommendations were specifically dealing with  
19 what they call VASP, virtual asset service  
20 providers. I do think there's some challenge  
21 country by country as to how each country's laws  
22 define who a VASP is and then therefore who this  
23 travel rule would apply to. I think there has  
24 been an industry-wide and FATF rolled-up  
25 understanding that really this is going to

1 capture sort of the bigger -- the exchanges, the  
2 platforms.

3 But there have been a lot of questions about  
4 how this would impact exchange to private  
5 wallet, exchange to, you know, hot wallet  
6 service providers that, you know, don't -- I  
7 mean, they may fall under the definition of  
8 VASP, they may not fall under the definition of  
9 VASP depending on the country that they're in.  
10 And that how -- you know, whether an exchange  
11 would allow a communication of a transaction  
12 between a non-qualified VASP that would be  
13 subject to this versus not.

14 So I think there's a bit of an -- sort of  
15 misunderstanding in the crypto -- or about the  
16 crypto-industry that it is one thing and it is a  
17 VASP and that money only moves between VASPs.  
18 But, you know, you can create your own wallet  
19 online every minute of the day if you'd like.  
20 You know, you can have it on a USB key. So  
21 those things would not be qualified as a VASP  
22 and therefore would not be subject to the rule.  
23 But if you go to a VASP and they ask you for  
24 your beneficiary, like, who's on the other side  
25 of this? You say, well, it's my hot wallet or

1                   my cold wallet, so it just belongs to me, put in  
2                   that information. I mean, I think there is a  
3                   deeper issue and discussion, I don't know if  
4                   this is the right time for it, but, you know,  
5                   about validation of the other side of that  
6                   activity if somebody says that.

7                   Q     And, I mean -- and the rationale -- I mean, of  
8                   course there's a regulatory problem. You can't  
9                   tell everybody who has their own private wallet  
10                  out there that they have to make reports to  
11                  FINTRAC when they engage in a transaction. The  
12                  rationale in targeting VASPs is that at some  
13                  point somebody who is trying to transfer their  
14                  virtual asset into fiat currency has to -- you  
15                  know, or vice versa has to use an on-ramp or an  
16                  off-ramp and that's going to be one of these  
17                  regulated industries. Is that -- regulated  
18                  entities. Is that right? Is that the  
19                  rationale?

20                 A     (PW) That might be the rationale. I'm not sure  
21                  how true in practice it is. You know, you have  
22                  non-VASPs, local bitcoin -- one way, you know,  
23                  can go to somebody in the street and they'll  
24                  take your crypto and give you cash.

25                 Q     So my next question was flowing from that.



1                   We've identified -- which is what are the gaps  
2                   in the proceeds of crime, money laundering,  
3                   terrorist financing regulations that exist even  
4                   after the further requirements come into effect  
5                   in June of 2021. One gap is -- which may or may  
6                   not be significant is are these unhosted  
7                   wallets. Are there any others that strike the  
8                   panelists as being significant?

9                   A     (PW) I think -- if I may comment, I think the  
10                   capacity of FINTRAC in its current format to,  
11                   for want of a better word, police VASPs within  
12                   Canada given the challenges that FINTRAC already  
13                   faces with its other reporting entities in terms  
14                   of numbers, et cetera, do they have the capacity  
15                   to even look at it?

16                   Q     So not a gap in the regulation but just a  
17                   capacity to enforce.

18                   A     (PW) Yeah. Yeah.

19                   (CC) I do feel there is sort of a gap in  
20                   maybe interpretation in the regulation. And I  
21                   would say that, you know, it's not specific to  
22                   VASP, but it existed in money traditionally  
23                   service businesses previously. The requirement  
24                   for completing know your identity verification  
25                   transactions of a thousand dollars or more --

1                   and again I'll just caveat this with -- that  
2                   this is for any money service business and now  
3                   in virtual asset service providers is how many  
4                   under-\$1,000 transactions should you allow in a  
5                   day before you believe that somebody is doing  
6                   them specifically this way to evade the  
7                   know-your-client requirement.

8                   As far as I'm aware -- and I could be wrong,  
9                   but I feel like I've tried to keep up on it as  
10                  best I can over the 20 years of my career, is  
11                  that one platform may say, I don't want you  
12                  doing more than two a day, where some platforms  
13                  may decide in their risk-based assessment to  
14                  say, we don't care how many you do a day as long  
15                  as they're under a thousand; therefore we don't  
16                  have to ID anybody.

17                  I think there's some -- you know, some work  
18                  that may need to be done there, some guidance  
19                  that may need to be provided there. It does  
20                  lead to -- I think, you know, we're past the  
21                  point of debating whether [indiscernible] or  
22                  not. They are in place, and they -- you know,  
23                  we are obligated to them. How it's interpreted  
24                  and operationalized and applied between local,  
25                  you know, virtual currency dealers, how it's

1 applied or not applied by those who are foreign  
2 and operating in Canada, I believe creates a  
3 little bit of an uneven playing field with  
4 regards to who's got the identity requirements.

5 Now, I like the idea that you don't want to  
6 be the lowest point in the floor because it will  
7 impact your ability, I think, to get bank  
8 accounts and do -- you know, do other types of  
9 things. But I do think there is some elasticity  
10 in the application of that.

11 Q And I would just like to -- unless I'm  
12 interrupting any panel member who was about to  
13 jump in on that last question. Okay.

14 I'd just like to confirm that the proceeds  
15 of crime regulations that we've just discussed  
16 are targeted at AML counterterrorist financing  
17 goals, and they don't address issues of customer  
18 or investor protection such as an exchange's  
19 custody of funds. And is that right?

20 A (RM) I would say that's correct. And one of the  
21 things that I think we -- maybe I should have  
22 jumped in on is the regulations don't  
23 necessarily address instances of consumer fraud,  
24 be that first-party fraud, where a customer buys  
25 a bunch of bitcoin, states they didn't do it and

1                   their bank is unfriendly to VASPs and allows  
2                   that chargeback, that malicious chargeback  
3                   resulting in a loss, or where third-party  
4                   investment platforms are, you know, duping  
5                   newbies to crypto, telling them that hey, you  
6                   can buy bitcoin or buy a share in my bitcoin  
7                   mining pool. You know, there's all sorts of  
8                   tried and true fraud typologies that I think are  
9                   evolving kind of around these regulated VASPs.

10                   And an additional thing that I think is not  
11                   addressed is regulation of third-party payment  
12                   processors which virtually every VASP has to use  
13                   unless you're lucky enough to have a sponsoring  
14                   bank, which is getting scarcer and scarcer  
15                   especially in Canada. So, you know, if you're  
16                   dealing in cash you have to find an armoured car  
17                   company that will clear out your ATMs and then  
18                   wire the cash to you. If you have bank account,  
19                   great. If you are using another exchange to  
20                   accept those wires, that's where you're landing  
21                   and so on, so ...

22                   And I think this is just kind of a broader  
23                   aspects of what everyone else touched on that  
24                   the regulations are a great starting point but  
25                   they don't always bullseye how people are

1                   actually using the vehicles and exchanges and so  
2                   on, so ...

3                   MS. PATEL: Well, that's a great segue into our next  
4                   topic, which is going to be regulations that are  
5                   more aimed at consumer investor protection, the  
6                   role of the securities regulators. But I think  
7                   that this is probably a good time,  
8                   Mr. Commissioner, for us to take the break.

9                   THE COMMISSIONER: Very well. We will take  
10                   15 minutes. Thank you.

11                   THE REGISTRAR: This hearing is adjourned for a  
12                   15-minute recess until 11:13 a.m. Please mute  
13                   your mic and turn off your video. Thank you.

14                   **(WITNESSES STOOD DOWN)**

15                   **(PROCEEDINGS ADJOURNED AT 10:59 A.M.)**

16                   **(PROCEEDINGS RECONVENED AT 11:13 A.M.)**

17                   THE REGISTRAR: Thank you for waiting. The hearing  
18                   is now resumed. Mr. Commissioner.

19                   **CHARLENE CIESLIK, for**  
20                   **the commission,**  
21                   **recalled.**

22                   **GILES DIXON, for the**  
23                   **commission, recalled.**

24                   **RYAN MUELLER, for the**  
25                   **commission, recalled.**

1 **PETER WARRACK, for the**  
2 **commission, recalled.**

3 THE COMMISSIONER: Thank you, Madam Registrar. Yes,  
4 Ms. Patel.

5 MS. PATEL: Madam Registrar, I'm going to ask you to  
6 pull up a document. It's the Ernst & Young 5th  
7 report of the monitor respecting Quadriga dated  
8 June 19th, 2019. Thank you. And if you could  
9 scroll down to page 10. And this is simply to  
10 give some context to the discussion that I  
11 indicated we'd be going into before the break.  
12 Sorry, not page 10. Paragraph 10, page 6.  
13 That's it. Thank you.

14 **EXAMINATION BY MS. PATEL:**

15 Q And I -- here the Ontario Securities Commission  
16 report also goes -- relates these findings, but  
17 this is a convenient place where they are  
18 summarized. And just want to get them out here  
19 so that -- to give some context to the  
20 discussion we're about to have about what  
21 investor or customer protections exist for  
22 clients of exchanges. And this just illustrates  
23 the problems that can occur in what we hope of  
24 course is a worst-case scenario.

25 So paragraph 10.

1                    "The Monitor's preliminary  
2                    investigation --"

3                    And, I'm sorry, this is a report of Ernst &  
4                    Young, the monitor for Quadriga, to the Nova  
5                    Scotia Supreme Court. And the date of this is  
6                    June 2019.

7                    The Monitor says:

8                    "Quadriga's operating infrastructure  
9                    appears to have been significantly flawed  
10                    from a financial reporting and operational  
11                    control perspective. Activities were  
12                    largely directed by a single  
13                    individual ... and as a result, typical  
14                    segregation of duties and basic internal  
15                    controls did not appear to exist."

16                    (B):

17                    "No accounting records have been  
18                    identified by the Monitor and there  
19                    appears to have been no segregation of  
20                    assets between Quadriga Funds and User  
21                    Funds."

22                    I'll go down to the next paragraph.

23                    "The Company appears to have engaged in  
24                    significant 'cash' transactions. The  
25                    Monitor has been unable to verify if cash

1                   deposits were deposited into accounts  
2                   containing User Funds or properly  
3                   recorded."

4                   And down to (d):

5                   "The Monitor has been unable to locate  
6                   basic corporate records including the  
7                   location and security passwords associated  
8                   with Quadriga's Fiat and Cryptocurrency  
9                   inventories between TPP --"

10                  Third-party payment processors, I understand.

11                  "-- bank accounts, wallet addresses and  
12                  third-party exchanges. In addition, the  
13                  Monitor understands passwords were held by  
14                  a single individual, Mr. Cotten, and it  
15                  appears that Quadriga failed to ensure  
16                  adequate safeguard procedures were in  
17                  place to transfer passwords and other  
18                  critical operating data to other Quadriga  
19                  representatives... "

20                  Going down to (e):

21                  "The Company relied extensively upon the  
22                  services of TPPs --"

23                  Third-party payment processors.

24                  "-- to administer its fiat treasury  
25                  functions."



1                   Mr. Mueller, this is an issue that you just  
2                   raised before the break, and we will get back to  
3                   this. I'm just noting it here. (F):

4                   "User Cryptocurrency was not maintained  
5                   exclusively in Quadriga'S hot and cold  
6                   wallets. Significant volumes of  
7                   Cryptocurrency were transferred off  
8                   Platform outside Quadriga to competitor  
9                   exchanges into personal accounts  
10                  controlled by Mr. Cotten."

11                  Down to (g):

12                  "Mr. Cotten created Identified Accounts  
13                  under aliases where it appears that  
14                  Unsupported Deposits were deposited and  
15                  used to trade within the Platform  
16                  resulting in inflated revenue figures,  
17                  artificial trades with Users and  
18                  ultimately the withdrawal of  
19                  Cryptocurrency deposited by Users."

20                  And finally (h):

21                  "Substantial Funds were transferred to  
22                  Mr. Cotten personally and other related  
23                  parties. The Monitor has not located any  
24                  support justifying these transfers."

25                  So the Ontario Securities Commission overview

1                   that we looked at previously described the fact  
2                   that there were 76,000 users who lost their  
3                   funds in amounts -- from after the trustee was  
4                   able to recover some in an amount of  
5                   \$169 million. And this overview gives us a  
6                   little insight into why that was, and I put that  
7                   out there. None of you, I know, were involved  
8                   as far -- well, as far as I know, in this  
9                   particular work, but just to give some context  
10                  to our discussion.

11                 MS. PATEL: And, Madam Registrar, if we could mark --  
12                   Mr. Commissioner, if we could have this marked  
13                   as the next exhibit, and then it can be taken  
14                   down.

15                 THE COMMISSIONER: 266, I think, Madam Registrar.

16                 THE REGISTRAR: Yes, exhibit 266.

17                 MR. COMMISSIONER: Thank you.

18                   **EXHIBIT 266: Fifth Report of the Monitor -**  
19                   **June 19, 2019**

20                 MS. PATEL:

21                 Q All right. So that is a nightmarish report of  
22                   the internal operations of an exchange that a  
23                   customer might read, you know, having deposited  
24                   their funds or their virtual currencies there,  
25                   would be very distressed to read about those --

1                   that lack of internal operational control and  
2                   the things that happened there. And my -- this  
3                   is a segue into a discussion about what  
4                   regulations and oversight exist currently that  
5                   could have prevented this -- what regulatory  
6                   framework exists that can address these kinds of  
7                   failings. And I'm going to I think address this  
8                   first to Mr. Dixon.

9                   A       (GD) Sure. Thank you. Yeah, I think the  
10                   framework and the sort of set of standards that  
11                   most immediately comes to mind which is very  
12                   common in, let's say, quote/unquote, more  
13                   traditional financial institutions or  
14                   non-cryptocurrency world relates to, -for  
15                   example, it's quite common in the fiat world,  
16                   the non-crypto-world for firms who are, let's  
17                   say, custodying users assets to engage in  
18                   independent audit of how they manage the custody  
19                   of their customer's funds.

20                               And typically the frameworks that are used  
21                   to undertake that assessment and provide an  
22                   opinion on those things are what we call system  
23                   and organization control audits or reports.  
24                   These are standards which are set in the US by  
25                   the American Institute of Certified Public

1 Accountants in Canada, the Canadian standard on  
2 insurance engagements, and they are audits.  
3 They are reports which have presented primarily  
4 to, let's say, the management of a firm to give  
5 an independent opinion on risk associated with  
6 this type of thing. And it could be the --  
7 providing an opinion depending on the type of  
8 audit, and there are various different types  
9 which I'm happy to talk to.

10 One of them will focus in on, for example,  
11 financial controls within an organization. That  
12 would be titled a SOC 1 report there is a SOC 2  
13 report, which focuses in more on the efficacy of  
14 the system-based controls in an organization.  
15 And then underneath those SOC 1, SOC 2 there are  
16 other kind of subtypes depending on the  
17 anticipated audience of the report that's  
18 required. But effectively at a high level what  
19 they get at is it's having an independent third  
20 party come in and attest to the effectiveness of  
21 controls, whether they be financial or systems  
22 based.

23 This is a very common standard in which, you  
24 know, non-crypto-based financial institutions  
25 who are custodying assets will commonly hold

1                   themselves to. And in some cases there is a  
2                   third type of report, a SOC 3. And let me know  
3                   if I'm going into too much detail, here, but --  
4                   which is presented as a public-facing report  
5                   which are sometimes used to not just assure the  
6                   management, the internal individuals in an  
7                   organization who control the company, of the  
8                   efficacy of those controls, but also the public  
9                   at large.

10                   So that to me is the most common sort of set  
11                   -- or the most immediately relevant, I would  
12                   say, set of standards and frameworks which could  
13                   apply here. And it is fair to say in some  
14                   scenario -- in certain circumstances now,  
15                   particularly in the United States, we are seeing  
16                   VASPs and dealings in virtual currency going  
17                   down this route of independent SOC reports for  
18                   just this reason. Because from a consumer  
19                   protection point of view what those audits  
20                   attempt to get at, as we've described, is how  
21                   these organizations are -- what controls, what  
22                   governance do they have in place around the  
23                   custody of their users' funds. And it gets --  
24                   there's a whole bunch of detail that it can  
25                   go -- that we can go into on it, but effectively

1                   it sets out what the controls should look like,  
2                   what good practice looks like and whether the  
3                   company is operating against those best  
4                   practices.

5                   So that's where my mind immediately goes in  
6                   term of a potential set of standards that could  
7                   help with this type of thing.

8           Q       And you say "potential". There is no legal  
9                   requirement currently on exchanges to engage in  
10                  this kind of audit and control process?

11          A       (GD) I'd need to double-check that. I do  
12                  know -- I mean, for example, if we -- I was  
13                  reading the joint CSA/IIROC consultant paper  
14                  that was drafted in March 14, 2019, and they  
15                  actually suggested this as a potential, you  
16                  know, solution to some of these issues that  
17                  we've been seeing and they make reference to the  
18                  fact that, you know, traditional custodians that  
19                  hold assets for clients, they will -- the  
20                  wording is typically engage an internal -- an  
21                  independent auditor.

22                  I'd have to double-check whether it's a  
23                  legal requirement, but certainly I think from --  
24                  for example, from the CSA point of view that it  
25                  is often a requirement at their level for an

1 organization coming in to be a registered dealer  
2 and so on. There will be certain requirements  
3 related to that which may come from that side of  
4 things. Yeah.

5 Q There could be a requirement under securities  
6 laws.

7 MS. PATEL: And actually I'm going to ask Madam  
8 Registrar to bring up that document you just  
9 mentioned, the joint CSA/IIROC consultation  
10 paper at 21402. And that is an appendix to an  
11 overview report, Madam Registrar, overview  
12 report that is exhibit 247. And I'm just going  
13 to pull the -- and I think what I'm looking  
14 for ...

15 THE REGISTRAR: Yes. Which appendix are you looking  
16 for?

17 MS. PATEL: It is appendix D. At page 32 of the PDF  
18 is where I'd like you to go. Okay. Actually,  
19 if we could just scroll up slightly. Oh, sorry.

20 THE REGISTRAR: Is it this page?

21 MS. PATEL: It's at appendix D. Yeah. So if you go  
22 to page 30 of the PDF. And actually if you  
23 could just scroll up to the title page. Down a  
24 bit further. Yeah.

25 Q So I'm just identifying this document as the

1 "Joint CSA/IIROC Industry Paper on a Proposed  
2 Framework For Crypto-Asset Trading Platforms."  
3 And that's what you've been discussing,  
4 Mr. Dixon? Okay.

5 A (GD) Correct.

6 MS. PATEL: And I'll just -- and, Madam Registrar, if  
7 you could scroll forward to -- this is, I  
8 understand, a paper that contemplates a  
9 framework, a regulatory securities framework for  
10 virtual currency platforms; is that right?  
11 Mr. Dixon, is that your understanding?

12 A (GD) My understanding is this is a proposed  
13 framework, yeah.

14 Q And so at page 32 of the PDF. Yeah. There's --  
15 part 3 down there, if you could scroll, they set  
16 out risks related to platforms. I don't need to  
17 go through those. They largely -- they echo the  
18 findings of the Ontario Securities Commission  
19 with respect to Quadriga, the monitor's report  
20 that we just went to.

21 And just what I do want to go to is on  
22 page 39 of the PDF. And here where -- the  
23 paragraph that says:

24 "We understand, however, that there have  
25 been challenges with crypto asset





1                   mentioned -- I think -- I mean, I think I'd like  
2                   to also just point out that as FINTRAC and the  
3                   Department of Finance are defining those who  
4                   deal in virtual currencies as money service  
5                   businesses, this proposed framework adds an  
6                   additional challenge of defining them  
7                   alternatively based on some certain factors that  
8                   are not addressed under the *Proceeds of Crime*  
9                   Act. So not every person who deals in virtual  
10                  currency would necessarily be subject to having  
11                  to register as a securities broker/dealer and  
12                  therefore be subject to these requirements.

13                  But in my past experience there were times,  
14                  A, we couldn't find qualified auditors who had  
15                  the skills and capabilities to complete these  
16                  kinds of audits. Secondly, there was, if I  
17                  recall correctly, a stance taken by some central  
18                  audit standards bodies for the firms to not  
19                  complete these audits due to that fact -- due to  
20                  that and as well as other factors as is the  
21                  liability of asserting on an audit of something,  
22                  though not understanding necessarily yet all  
23                  that was needed to understand in order to make  
24                  such an audit-level opinion, prevented them from  
25                  continuing an audit.

1                   So while an audit may have begun, the  
2                   auditors were pulled and not permitted to  
3                   complete the audit until some further clarity  
4                   was provided by that central body. And forgive  
5                   me, I don't -- I'm not familiar with where that  
6                   landed, if that was resolved appropriately.  
7                   Possibly Giles knows something about that that I  
8                   don't. But, you know, that people were either  
9                   unwilling or unable or prevented from completing  
10                  these audits for an exchange.

11                 Q     Mr. Dixon, is there any response you'd like to  
12                   make to that?

13                 A     (GD) It's -- so that is certainly one of the --  
14                   I would say there's a smaller list of  
15                   challenges, and that's a big one. I'm not an  
16                   auditor myself. I work with colleagues who are  
17                   auditors, and so I have some exposure to some of  
18                   these challenges that my panelist has been  
19                   referring to.

20                   But yes, the audit landscape is -- much like  
21                   the AML regulatory landscape is growing in  
22                   regards to cryptocurrency. It's much like the  
23                   PCMLTFA and some of the challenges we've spoken  
24                   about. There are interpretation issues and  
25                   challenges for us -- I use the term broadly --

1 as auditors in how some of those standards apply  
2 to, you know, the still relatively new world of  
3 virtual currency. So it makes it a challenge  
4 from a risk perspective for a professional  
5 services organization to deliver public opinions  
6 when there is still, you know, for example a  
7 lack of guidance or ambiguity in interpretation  
8 of how the current audit standards apply to the  
9 virtual currency world. So for sure that's a  
10 challenge.

11 I believe Charlene -- it was the CPAB, the  
12 Canadian Public Accountability Board who had  
13 issued some -- to my understanding it wasn't  
14 statements that said that auditors could not  
15 undertake audits, but the requirements that were  
16 set from the -- that body made it, let's say,  
17 very difficult to -- you know, to -- but we're  
18 certainly seeing, as time goes on, professional  
19 services firm becoming slowly more comfortable  
20 in issuing opinions to the virtual currency  
21 industry.

22 If I may, I could mention a couple of other  
23 of the challenges because that is, I think, one  
24 of them, but there are other, you know, broader  
25 challenges, so I'm happy to speak to those if

1                   you would like.

2           Q     I think probably it's a good opportunity to,  
3                   yeah, jump into that.

4           A     (GD) Sure. So, you know, some of these  
5                   challenges are actually quite linked to some of  
6                   the things we have spoken about and what we  
7                   probably will talk about. So we've talked  
8                   about, you know, the regulatory guidance and  
9                   whether there is still some ambiguity on how,  
10                  say, current standards apply to the audit world  
11                  in order to allow for those types of services to  
12                  be provided. As the CSA report notes, however,  
13                  the sort of relatively nascent stage of the  
14                  industry has resulted, in terms of what I've  
15                  seen, in certain of these funds and perhaps not  
16                  being ready themselves to receive an audit of  
17                  this kind.

18                         And so, for example -- to give you just a  
19                         very high level example. My understanding is if  
20                         a company is requesting, say, a SOC 2 report --  
21                         and just to remind us that is related to  
22                         attesting to the efficacy of system-based  
23                         controls. And that would very much relate, for  
24                         example, to how crypto-assets are governed and  
25                         handled within a virtual currency exchange. You

1 know, one basic requirement as an auditor coming  
2 in to assess those controls is that those  
3 controls are documented and are able to be  
4 audited. And, you know, that is often a  
5 challenge in, let's say, less mature, newer  
6 dealers in virtual currency who, you know,  
7 rightly so in some respect have had to focus on  
8 the commercial side of the business and get that  
9 up and running. But it presents challenges to  
10 external parties to actually come in and  
11 undertake the work, if they could, in the first  
12 place.

13 There are even some other overlapping  
14 challenges related to some of the banking  
15 challenges, which I'm sure we'll get onto at  
16 some point, and, you know, independence issues  
17 that stem from that. And we've seen certain  
18 groups who, you know, for example, have a large  
19 holding in a particular bank and puts into  
20 challenge some of the independence and how much  
21 we can rely on the data that we need to be  
22 auditing in the first place. And then of course  
23 the cost of doing this type of work can be  
24 prohibitive for some as well, so there's a  
25 challenge there too.

1                   So I would say they're multifaceted  
2                   challenges and often overlapping.

3           Q       I'd just like to note, and this a bit of -- a  
4                   way of an evidentiary shorthand here. At the  
5                   back of the report we were just -- we've just  
6                   been looking at -- oh, it's still there. At  
7                   appendix B -- and, Madam Registrar, you don't  
8                   need to go there. I'm just noting this for the  
9                   record. At appendix B and appendix C of that  
10                  report the authors have very helpfully set out a  
11                  summary of regulatory requirement that are  
12                  applicable under appendix B to marketplaces and,  
13                  under appendix C, applicable to dealers. So  
14                  that's -- just put a note there of a good  
15                  shorthand reference to what regulatory  
16                  requirements would apply to entities registering  
17                  under securities legislation as -- in various  
18                  capacities.

19                         And with that I'd like to turn to --  
20                         Mr. Mueller, you know, Netcoins is currently  
21                         undergoing the process of applying for  
22                         registration with the BC Securities Commission;  
23                         is that right?

24           A       (RM) That's correct.

25           Q       Are you aware of any other virtual currency

1 platforms that are engaged in the same process?

2 A (RM) I've heard that Bitvo is looking at Alberta  
3 securities registration, but I haven't seen any  
4 documents, so that's hearsay.

5 Q Are there any platforms that are currently  
6 registered?

7 A (RM) I don't believe so. Maybe Wealthsimple,  
8 but Wealthsimple, you can't move crypto on and  
9 off their platform, so I'm not sure that it is a  
10 direct analogue.

11 Q Okay.

12 A (CC) Wealthsimple, I believe, is operating under  
13 their exempt market dealer licence. An  
14 announcement has recently come out on *Business*  
15 *Wire* that Coinsquare, under new leadership, has  
16 submitted their application for their  
17 broker-dealer licence with the OSC.

18 Q Thank you. Mr. Mueller, is it your  
19 understanding that Netcoins is required to  
20 register with the BC Securities Commission?

21 A (RM) There is no requirement. We're undergoing  
22 a voluntary registration.

23 Q Okay. And in the context of the discussion  
24 we've just had, Mr. Dixon raised the -- you  
25 know, one of the barriers to getting additional



1 oversight is the cost of such endeavours. Why  
2 voluntarily take this up from Netcoins'  
3 perspective?

4 A (RM) I believe that we would like to -- I mean,  
5 the cryptomarket is growing. There's certainly  
6 more and more newbie users. There's more volume  
7 there and more established guys are not looking  
8 for a new platform. Newbies are looking for a  
9 safe platform. So I think what we want to do is  
10 establish that, you know, we're undergoing this  
11 registration and we're abiding by these  
12 regulations to attract those new users.

13 Q So in effect your view is that the additional  
14 regulatory expense is going to be justified by  
15 the value to the customer -- the perceived value  
16 to the customer base in terms of stability and  
17 assurance provided by regulation?

18 A (RM) That's certainly one factor, yes.

19 MS. PATEL: Okay. I'd like to turn now, and I'm --  
20 Mr. Commissioner, just so you know, I'm hoping  
21 to the turn the floor over to my colleagues who  
22 do have questions of that panel at noon, and so  
23 I'm going to move rapid fire through my  
24 remaining topics.

25 Q And one thing we've touched on several times,

1                   and I want to get at it directly now, is the  
2                   issue -- and this is has been raised by other  
3                   witnesses this week, the issue of virtual  
4                   currency businesses accessing banking services.  
5                   And I -- we've heard evidence that these  
6                   services have difficulty in accessing banking  
7                   services. We could see that again in the  
8                   Ontario Securities Commission report regarding  
9                   Quadriga. They had and then lost banking  
10                  services.

11                         So my question is -- I'll ask maybe --  
12                   Ms. Cieslik, you've had some experience in this  
13                   area, I know. First of all, if you can confirm  
14                   that this is true, and then say why it is the  
15                   case from your understanding. Obviously you  
16                   can't tell us what the banks are thinking  
17                   exactly.

18                  A     (CC) Absolutely. I mean, my original foray in  
19                   leaving traditional finance and getting into  
20                   cryptocurrency I believe was very largely  
21                   predicated on the fact of difficulty in  
22                   achieving -- getting a big 4 or big 5 Canadian  
23                   bank account to accept a cryptocurrency  
24                   exchange. So at the time in 2018 there were no  
25                   rules for cryptocurrencies to be registered with

1                   FINTRAC or comply with regulations, but that was  
2                   about the time, again, like, people were  
3                   starting to and expecting, you know, movement  
4                   happen in that area. And as I mentioned, my  
5                   prior employer had been successful in  
6                   registering prior to any inclusion of virtual  
7                   assets being part of the MSB definition.

8                   You know, in the early days of course  
9                   getting bank accounts was achieved through  
10                  probably less than transparent methods. So  
11                  banks were not at all happy with people using  
12                  their accounts for crypto-services when they  
13                  found out and started closing all of their  
14                  accounts.

15                  Now, I will say I experienced a similar  
16                  response approximately 10 or 12 years ago  
17                  working with traditional money services  
18                  businesses being -- the common phrase is  
19                  demarketed. So banks had decided the risk of  
20                  dealing with those type of entities was too high  
21                  and they would no longer provide them access to  
22                  the banking system. A big part of my role then  
23                  was helping them build up and solidify their  
24                  anti-money laundering programs and going back to  
25                  the bank, you know, hat in hand saying, hey,

1                   we've had this 20-year relationship with you  
2                   where you were okay with us and suddenly you  
3                   decided to kick us out; here's all the work and  
4                   effort we've done to shore up what we have --  
5                   you know, what our compliance regime looks like  
6                   from the anti-money laundering perspective and  
7                   please give us a bank account back. So I feel  
8                   like this is a bit of a repeat of that with a  
9                   new industry.

10                   Certainly the headlines, such as the one we  
11                   referenced with Quadriga among other -- and I  
12                   don't know if we'll address that further on, but  
13                   initial coin offering-type scams and schemes has  
14                   given this negative -- you know, negative pallor  
15                   on cryptocurrency.

16                   So generally what I have found is that  
17                   banks', you know, risk-based decisions have  
18                   included decisions to no longer provide services  
19                   or a refusal to provide services to anyone who  
20                   deals in virtual assets and how that has sort of  
21                   evolved or changed over the last few years. I  
22                   mean, certainly I'll say one of the feathers in  
23                   my caps was getting what we were told at the  
24                   time was the first transparent bank account for  
25                   cryptocurrency exchange in Canada with a big 4

1                   bank with their full awareness and cooperation  
2                   after jumping through several hoops. Happy to  
3                   jump through those hoops. However, taking on  
4                   sort of the risk expectations of the financial  
5                   institution in instilling them in the  
6                   cryptocurrency service themselves in order to  
7                   achieve that access.

8                   So it was quite -- you know, sort of a  
9                   tenuous time of will we or won't we be able to  
10                  service our customers as we don't have access to  
11                  that fiat on-ramp and off-ramp, as variously had  
12                  been referred to throughout this morning, or  
13                  afternoon in the eastern side. That they  
14                  really -- you know, financial institutions hold  
15                  the key to being able to do this and without  
16                  them your business is at a very significant  
17                  disadvantage in order to serve clients as well  
18                  as support your own business with your own  
19                  operating accounts. So things like being able  
20                  to make payroll, buy, you know, computers,  
21                  everything that you need to run your business.

22                  Q     I mean, the need for banking services, it seems  
23                  clear enough. You were working at an entity  
24                  that was fortunate enough to be able to have  
25                  your persuasive powers to get banking services

1                   from a traditional bank. What are the options  
2                   for businesses that cannot get banking services  
3                   at all?

4           A       (CC) Sure. I mean, I think there was a period  
5                   of time where there were people looking into --  
6                   like the financial institution that we were able  
7                   to work with in my past role that were open to  
8                   hearing about, you know, what we're making in  
9                   terms of efforts towards compliance so that it  
10                  started to open up a little bit. But that's  
11                  variously sort of waxed and waned over time.  
12                  Some people have met their threshold to say, we  
13                  will no longer; like, we've taken a few, but  
14                  it's -- our risk appetite is this and we don't  
15                  want to expand this offering to a greater group  
16                  of cryptos.

17                        So -- and prior to this and also subsequent  
18                        to this any dealers in virtual currency -- and  
19                        certainly has been my experience not only  
20                        working with them but providing services to them  
21                        is that without access to big 4, big 5, you  
22                        know, banking services locally, they have two  
23                        options really. They use payment service  
24                        providers. You know, as I think one of the  
25                        other panelists had mentioned, you know, it sort

1                   of puts a wall between the crypto-asset company  
2                   and the bank itself because they're going  
3                   through a third-party payment processor.

4                   Obviously some less -- you know, sort of  
5                   less proper methods of not revealing who you are  
6                   to your financial institutions. And that  
7                   certainly happened previously and I'm sure  
8                   continues today. You know, and in terms of  
9                   payment service providers, whether it uses sort  
10                  of a domestic payment service provider that is  
11                  Canadian or you may be using offshore payment  
12                  providers who have less stringent or less strict  
13                  concerns about regulatory status, and then also  
14                  even using offshore financial institutions  
15                  willing to provide sort of banking services  
16                  under those same criteria.

17                Q     And I'm going to -- Mr. Mueller, you've got a  
18                    background in payment processors; is that --  
19                    that's right?

20                A     (RM) That's correct.

21                Q     And so I'm going to direct these questions --  
22                    this question at you, which is what is the  
23                    problem with using a payment processor from the  
24                    perspective of anti-money laundering concerns?

25                A     (RM) Sure. So I think the simplest way to

1 explain it is if I'm a Canadian VASP and I  
2 receive over \$10,000 in a wire from an offshore  
3 customer, I'm required to report that and so is  
4 my domestic bank. Where if I'm using, let's  
5 say, a pseudobanking product like an IBAN which  
6 functions just like a bank account but like a  
7 sub kind of account from, say, a European  
8 provider, my financial institution is it never  
9 going to file a report with FINTRAC about that  
10 transaction. And since it didn't enter or leave  
11 Canada, I'm technically not required to report  
12 it either.

13 So if I'm trying to do my best, I might  
14 submit a VIR, a volunteer information report,  
15 but you know, if I'm on the ropes and only three  
16 people work here and I have an offshore account  
17 that VIR may never be reported. So a  
18 problematic transaction that for all intents and  
19 purposes may have been fulfilled in Canada and  
20 taken place on Canadian servers would not be  
21 reported to the financial institution -- or  
22 financial intelligence unit.

23 Q Are Canadian payment processors required to  
24 report to FINTRAC?

25 A (RM) So that is actually a pretty grey area. So



1                   technically you have to register as an MSB if  
2                   you are remitting funds, but, you know, if you  
3                   are a payment processors, there's no clear  
4                   designation that payment processing activities  
5                   fall under MSB. And there's been a lot of talk  
6                   about introducing analogues to what the UK does  
7                   with the Financial Conduct Authority to regulate  
8                   payment service providers in Canada, but that  
9                   hasn't really come to fruition yet. So, for  
10                  example, like, if you look at Paysafe, one of  
11                  the largest Canadian payment processors kind of  
12                  ever, I'm not sure that they have a current MSB  
13                  registration.

14                Q        So if I can summarize in short, one of the AML  
15                  risks of VASPs not having access to banking  
16                  services is that it creates a bit of a black box  
17                  from FINTRAC's perspective when it comes to  
18                  reporting transactions?

19                A        (RM) Certainly. It makes the flow of funds  
20                  opaque.

21                Q        Okay. I'm going to move very briefly --  
22                  Ms. Cieslik, I just -- I want to give you an  
23                  opportunity to respond to some evidence that  
24                  we've heard earlier this week with respect to  
25                  the money laundering risks of kiosks or bit

1                   ATMs. We've heard evidence from an RCMP panel  
2                   that they are -- they can be used as a  
3                   facilitator for money laundering. What -- and  
4                   as somebody who's got current experience and  
5                   past experience in the industry dealing with bit  
6                   ATM companies, do you have a response to this  
7                   perception of these kiosks, bit ATMs, being  
8                   particularly vulnerable to money laundering?

9                   MS. PATEL: And, Madam Registrar, you can take down  
10                  the document. Thank you very much.

11                 THE WITNESS: (CC) Yes, absolutely I can respond to  
12                  that. I mean, I think you had asked earlier in  
13                  today's testimony about, you know, perception  
14                  and vulnerabilities in this field. And, you  
15                  know, cryptocurrency we are talking about  
16                  broadly, a lot of talk about exchanges and  
17                  trading platforms and now we're moving sort of  
18                  to the bit ATM, as I call them. Kiosks, as they  
19                  were referred to.

20                 You know, I certainly can't deny there is a  
21                  vulnerability. Where there's an opportunity for  
22                  an exploitation, a criminal element will exploit  
23                  it. And we -- you know, we've seen that happen  
24                  in the traditional financial services space.  
25                  And, you know, I don't think that sort of is

1 anything new. You know, with the emergence of  
2 crypto, it was an unregulated industry. Fraud  
3 and money laundering and illegal activity was --  
4 part of it, I think, certainly was displaced  
5 from that into crypto because of certain  
6 factors. Ease of use, maybe lower fees in some  
7 instances.

8 So when it comes to, you know, bit ATMs  
9 specifically, obviously the way that they work,  
10 they will take cash from a person and provide a  
11 cryptocurrency purchase to them. I think the  
12 fact that they have been used or exploited by  
13 criminal elements does not necessarily mean that  
14 the bit ATM companies want this or encourage it.  
15 They are looking and always actively seeking  
16 ways to mitigate it, and in fact they would be  
17 considered victims too in this instance.

18 And certainly, again, I can't deny in the  
19 earlier days of bit ATM companies where there  
20 was no regulation or there were no limits and  
21 there were no sort of monitoring and oversight  
22 of them that some maybe have acted without  
23 limits without monitoring. I think that much  
24 like the rest of the crypto-industry, that that  
25 sort of funnel has gotten smaller as these rules

1                   come into effects and they do definitely apply  
2                   to the bit ATM machine companies. They are cash  
3                   based, which remains -- is and remains a  
4                   high-risk product for money laundering, both,  
5                   again, in traditional and crypto-environments.

6                   But, again, I do think the introduction of  
7                   the recent, you know, amendments to rules will  
8                   disrupt this ability for criminals to exploit  
9                   this area in the same fashion that they have,  
10                  you know, with any other entity that has  
11                  previously not been under FINTRAC law and has  
12                  come under FINTRAC law.

13                Q     And I'll ask you directly, I mean, given the  
14                    ability to go online and connect a bank account  
15                    or a credit card to a platform where you could  
16                    purchase, you know, bitcoin or any other virtual  
17                    currency, what is the -- what's the valid use  
18                    case for a bit ATM in a world where you can  
19                    engage in those transaction, you know, directly  
20                    through your bank as opposed to through cash?

21                A     (CC) Sure. I mean, I think we always have to  
22                    remember that there is an economy of -- there is  
23                    a group of people that are cash based and  
24                    continue to operate cash based. I mean, I  
25                    definitely think the rules around cash movements

1                   and controls have limited that, but, you know, I  
2                   wouldn't want to discount that there's still an  
3                   amount of people that operate in cash. Not all  
4                   of them are criminals.

5                   You know, a bit ATM machine provides an  
6                   instant sort of on-ramp of fiat to crypto for  
7                   smaller scale transactions and provides an  
8                   instant delivery of virtual currency. So there  
9                   is no reliance on a third party to hold your  
10                  assets for you, that you are instantly delivered  
11                  what you are purchasing, like buying a chocolate  
12                  bar, so to speak.

13                  I think another use case for virtual ATM  
14                  machines which are also -- you know, it's a good  
15                  and bad, I suppose, is that with some of the  
16                  frauds and explosions of things like Quadriga,  
17                  people have become increasingly concerned about  
18                  sharing their personal information. So when you  
19                  sign onto a platform and you're subject to  
20                  identity verification requirements based on the  
21                  opening of an account, you're required to  
22                  provide your identity documents, potentially a  
23                  proof of address document. Potentially, you  
24                  know, in some countries you're required to  
25                  provide social insurance -- social security

1                   number. And where you might have concerns over  
2                   safety and security of both your personal  
3                   information and your assets, you might just want  
4                   to be taking that chocolate bar with you when  
5                   you buy it as opposed to leaving it at the store  
6                   and going to visit it later when you want a bite  
7                   of it.

8                   And so I think it's a low barrier of entry  
9                   for those who wish to get into the market. And  
10                  I do think that there is a misconception that  
11                  someone can stand at a machine and enter  
12                  hundreds of thousands of dollars of bills to do  
13                  this -- these purchases at bit ATMs.

14                 Q     And just -- I just want to make sure it's clear.  
15                         You did mention that bit ATMs are MSBs under the  
16                         new regs?

17                 A     (CC) Yes, they are.

18                 Q     Right. And they're subject to the same -- at a  
19                         certain threshold deposits there are subject to  
20                         the same identification know-your-client  
21                         requirements as other MSBs; is that right?

22                 A     (CC) Yes. Yeah. I mean, that is the  
23                         requirement that's sort of staggered to come  
24                         into effect early sort of next year, mid next  
25                         year. But there are -- you know, the FATF has

1 released guidance, and this has been common in  
2 the traditional money service, that certain  
3 transactions under certain dollar values are  
4 considered low risk and therefore not subject to  
5 KYC but that that dollar amount here in Canada  
6 is a thousand dollars. So if you do a single  
7 transaction of a thousand dollars or more that  
8 you would be subject to that same identity  
9 verification.

10 MS. PATEL: The City of Vancouver recently -- staff  
11 sent a memo to mayor and council addressing  
12 certain money laundering concerns. And I'll  
13 just -- I'll ask Madam Registrar to put it up,  
14 the City of Vancouver staff memo dated  
15 October 30th, 2020. And if you can just, Madam  
16 Registrar, scroll down to page 5. Staff -- let  
17 me check my reference. Sorry.

18 At page 4 of the document, page 4 of 12.  
19 Staff is directed to consider the powers  
20 available under the Vancouver charter including  
21 but not limited to and here (iii):

22 "The creation of by-laws to regulate the  
23 use and operation of cryptocurrency ATMs,  
24 including the requirement for a business  
25 license --"

1                   And I'll just stop there and get to the  
2                   punchline on page 5. Madam Registrar, if you  
3                   scroll down.

4                   At the bottom of page 5 it's the title  
5                   "Preferred Licensing Approach." And staff  
6                   concludes here that:

7                   "The preferred licensing approach is to  
8                   continue to permit the operation of  
9                   cryptocurrency ATMs in the City and to  
10                  address potential concerns with fraudulent  
11                  activities by regulating them using  
12                  existing by-laws, including adding a  
13                  self-declaration about compliance with  
14                  FinTRAC, and to gather data through the  
15                  business licensing data base ... to report  
16                  out as needed. Implementation could begin  
17                  immediately."

18                 Q       Now, do you have any response, Ms. Cieslik, to  
19                   the suggestion that bit ATMs should be regulated  
20                   in this manner by municipal governments, the  
21                   City of Vancouver in this instance? In  
22                   particular will it do anything to address money  
23                   laundering concerns?

24                 A       (CC) Well, I mean, it seems, in reading this  
25                   prior to the testimony today, is that this is



1                   largely driven by, you know, a concern over  
2                   fraud maybe necessarily above or primarily  
3                   instead of money laundering. I'm not really  
4                   sure what drove this determination or how they  
5                   came to this assessment that bit ATMs were a  
6                   risk necessary to -- you know, necessary for  
7                   specific additional requirements.

8                   Now, with the new laws that have come into  
9                   effect in June at the federal level, I do see  
10                  that some suggestions in here do go above and  
11                  beyond the requirements for domestic, you know,  
12                  money service business registration, including,  
13                  you know, gathering information about the  
14                  ownership, et cetera, that, you know, is not  
15                  necessarily completed by FINTRAC for a local  
16                  money service business.

17                  You know, I can't deny that having some  
18                  additional information would certainly aid law  
19                  enforcement when there was a case or if there  
20                  was a concern pertaining to a bit ATM company  
21                  that there would be some thing that is FINTRAC  
22                  is not covering that would be covered by a local  
23                  licence.

24                  The self-declaration aspect, you know, I  
25                  don't think -- you know, FINTRAC itself doesn't

1                   generally take self-declarations of anything.  
2                   So saying, you know, I swear, officer, I'm not,  
3                   you know, laundering any money here is similar  
4                   to, you know, I swear I'm complying with all  
5                   FINTRAC requirements. You know, I would be sort  
6                   of more interested in seeing a real oversight  
7                   and supervisory capacity of FINTRAC being  
8                   increased to be able to provide that kind of  
9                   assurance as opposed to relying on a  
10                  self-declaration which is not verifiable,  
11                  generally.

12                  But, you know, again, I do go back to, you  
13                  know, the impetus of such a memo and why  
14                  specifically bit ATMs were singled out in the  
15                  group of what cryptocurrency offerings are  
16                  available to residents of Vancouver or Canada at  
17                  large that would say that this in particular  
18                  would require this additional step that isn't  
19                  covered necessarily by the new federal-level  
20                  rules.

21                  MS. PATEL: And unfortunately we don't have time to  
22                  get into further exploration of that, but thanks  
23                  for your response on that.

24                  And if we could this have I'd ask that be  
25                  marked as the next exhibit, please. And, Madam

1 Registrar, you can take down this document.

2 THE COMMISSIONER: Very well. Thank you.

3 **EXHIBIT 267: City of Vancouver Memo to mayor**  
4 **re: Bitcoin ATMS - October 30, 2020**

5 MS. PATEL:

6 Q And then finally -- my final group of questions  
7 is directed in particular to Mr. Warrack. I'd  
8 like to ask you about a couple of industry  
9 and -- well, partnerships with respect to -- one  
10 is specific to virtual currencies and virtual  
11 currency service virtual asset service  
12 providers. That's Project Participate. And  
13 then if time allows, I'll ask you about the  
14 other one, Project Protect. But if I could ask  
15 you, Mr. Warrack, if could you describe what  
16 Project Participate is. And you're on mute.

17 A (PW) Yeah, Project Participate started in 2018  
18 by myself with my appointment as Chief  
19 Compliance Officer to the cryptocurrency trading  
20 platform. And I wasn't aware that FATF were  
21 going to be publishing guidance around  
22 cryptocurrency and exchanges, et cetera, and  
23 that guidance would include red flags and  
24 suspicion and encouragement to report suspicious  
25 activity by exchanges, et cetera. When I looked

1                   at the guidance that actually came out from the  
2                   FATF in 2019, it struck me that whilst the  
3                   recommendation was that exchanges should report  
4                   suspicious activity, there's no information as  
5                   to what constituted suspicious activity. It was  
6                   kind of up to the exchange to guess, if you  
7                   will, about what that meant.

8                   So I basically reached out to peers in the  
9                   industry, both in Canada but more  
10                  internationally, including other exchanges,  
11                  software providers such as Chainalysis,  
12                  et cetera. And we came together with our own  
13                  list of red flags, suspicions as we called them,  
14                  based on our own experiences. We also consulted  
15                  with law enforcement internationally, including  
16                  Europol, and basically published a report called  
17                  Project Participate which was sent to the FATF  
18                  and I know had a large part in the -- what  
19                  became the FATF report September of this year.  
20                  It had a large input into that.

21                  And the indicators of suspicion were  
22                  designed to inform the design of transaction  
23                  monitoring programs in an exchange, for  
24                  instance, what to look for that's suspicious but  
25                  also investigative behaviour by exchanges and by

1 law enforcement, et cetera.

2 So it was that collaboration. More recently  
3 -- and it was very informal. It was very, very  
4 informal. Just -- people just getting together  
5 to do the right thing and share their indicators  
6 with each other.

7 More recently, the project is still going on  
8 a more limited scale, certainly in Canada, with  
9 collaboration with the RCMP and other law  
10 enforcement agencies and some of the banks in  
11 terms of shared best practice as it relates to  
12 cryptocurrency investigation.

13 Q As a result of this collaboration that you've  
14 just described, you published a document called  
15 "Indicators of Suspicion For Virtual Asset  
16 Service Providers." Is that right?

17 A (PW) That's correct.

18 Q And the FATF document that you were just  
19 referring to is the September 2020 "Red Flag  
20 Indicators Money Laundering and Terrorist  
21 Financing For Virtual Asset Service Providers"?

22 A (PW) That's correct, yeah.

23 Q Which is a similar but a shorter document but  
24 highlights many of the same red flag indicators.  
25 Would you say that's fair?

1           A       (PW) Yeah, I'd like to think that the FATF took  
2                    the best of the Project Participate and  
3                    incorporated it in their document. And I do  
4                    know for a fact that Canada was represented  
5                    on -- with FATF on this project by FINTRAC and  
6                    Participate did form a large part of that,  
7                    formation of the document.

8           Q       Are you aware of any similar industry endeavours  
9                    in other areas, for example, in traditional  
10                   banking, in other groups of reporting entities,  
11                   say, [indiscernible] this kind of work.

12          A       (PW) Certainly within -- yeah, certainly --  
13                    there are many, but within Canada certainly, you  
14                    know, things like Project Protect, which you  
15                    mentioned and subprojects that came out of that  
16                    where the private sector and industry have got  
17                    together and do get together to share best  
18                    practice to discuss the interpretive guidance  
19                    and in some cases result in changes to that.

20                            And this is a fairly recent phenomenon.  
21                    Prior to 2015 it was kind of unheard of. The  
22                    regulated entities and the regulator, whether it  
23                    be FINTRAC or OSFI, kind of didn't talk to each  
24                    other informally. It a very, very formal  
25                    relationship and not discuss it.

1           Q     Throughout the evidence we've heard today  
2                   there's been several references to or  
3                   discussions of industry stepping in and --  
4                   stepping in and taking up kind of the burden in  
5                   the regulatory space, whether it's -- whether  
6                   we're talking about education of regulators, the  
7                   implementation of standards before regulation is  
8                   in force, the development of technologies to  
9                   allow regulations to be effected. We referred  
10                  to that when we spoke of the travel rule. And  
11                  we've had another example of the industry  
12                  stepping forward and creating this document  
13                  through Project Participate, the indicators of  
14                  suspicion, to allow industry to know how to meet  
15                  its AML compliance.

16                         And maybe this -- do any -- you might have a  
17                         different answer here, this panel, than maybe a  
18                         regulator or government would have. Do any  
19                         concerns arise that the AML regulation of this  
20                         industry has been very much -- and you can take  
21                         issue with that characterization -- very much  
22                         driven by industry itself?

23           A     (PW) I don't believe so. I believe, you know,  
24                   in more recent years since 2016 and Project  
25                   Protect in particular, which was the first, the

1 regulators are still in charge, but there's a  
2 realization that we all have a role to play.  
3 And I think this also coincided with FINTRAC's  
4 change of strategy at the time where beforehand  
5 it was a very checklist approach to compliance.  
6 You know, you check all these boxes, a bank is  
7 or isn't doing what the rules say, now to --  
8 their strategy is one of compliance for  
9 intelligence, intelligence for law enforcement.  
10 And how a bank, for instance, is performing in  
11 terms of its AML function, it's measured in  
12 terms of effectiveness, not checklist points.

13 Q Do any of the other panel members want to  
14 respond to that?

15 A (CC) I mean, I'd like to just add, I think,  
16 that, you know, FINTRAC and Department of  
17 Finance were working quite closely with the  
18 Financial Action Task Force at an early stage.  
19 And, you know, when we were at the Vienna public  
20 sector consultation with the FATF, FINTRAC's  
21 draft laws had already been in place in  
22 anticipation of what the FATF was going to  
23 recommend.

24 So I do think -- you know, as Peter  
25 mentioned I still think it is -- you know, they



1                   are still in charge. There is still a top down  
2                   or there has been consultation. I think what  
3                   we've come up with has been largely driven by  
4                   working closely with the FATF and implementing,  
5                   you know, at an earlier stage maybe than some  
6                   what the recommendations were anticipated to be  
7                   there along with a couple of things that aren't  
8                   necessarily FATF recommendations but their own  
9                   interpretation of risk, risk-based requirements  
10                  that don't -- you know, that have been subject  
11                  of debate sort of within the VASP industry.

12                                 (PW) To answer your question, Ms. Patel, in  
13                   terms of is the tail wagging the dog, is the  
14                   private sector wagging the public sector's tail  
15                   in terms of regulation. I think it's true to a  
16                   certain extent but in a good way in terms of  
17                   efficacy of the whole purpose and *raison d'être*  
18                   of the whole program and purpose of AML  
19                   legislation. I think it's made it a lot more  
20                   effective.

21            Q        I guess -- sorry, the term actually I was  
22                   searching for is regulatory capture, or tail  
23                   wagging the dog. And I did ask -- I would ask  
24                   for the indulgence of my colleagues who I know  
25                   have questions.

1                   I would like to ask you, Mr. Warrack, if  
2                   you could describe the other endeavour  
3                   that you referred to, Project Protect.

4           A       (PW) Very quickly, Project Protect relates to  
5                   human trafficking or anti-human trafficking  
6                   efforts in Canada and beyond. It started in  
7                   early 2016, again by myself, inspired by a  
8                   survivor -- a well-known survivor of human  
9                   trafficking in Canada. And basically I reached  
10                  out publicly in a public forum, the regulators  
11                  were there and committed the banks at that time  
12                  to working to combat human trafficking.

13                         And FINTRAC were in the audience and this  
14                         aligned with their strategy, the change of heart  
15                         in terms of compliance for intelligence,  
16                         intelligence for law enforcement. And very,  
17                         very quickly it became an extremely successful  
18                         partnership which has resulted in massive  
19                         STR filings and more importantly disclosures to  
20                         law enforcement.

21                                 I was looking at the recent FINTRAC report  
22                                 this morning actually, which came out about a  
23                                 month ago I think, and year over year the number  
24                                 of disclosures to law enforcement regarding  
25                                 human trafficking have increased substantially.

1                   And it's basically industry and public sector  
2                   work and in partnership sharing best practices,  
3                   indicators of suspicion to enable the banks, for  
4                   instance, to detect human trafficking, report it  
5                   to FINTRAC and FINTRAC to share that with law  
6                   enforcement.

7                   And as a result of that there have been a  
8                   number of subprojects since, all of which  
9                   delivering similar results on an ongoing basis  
10                  in relation to fentanyl trafficking, elderly  
11                  fraud, et cetera.

12                 MS. PATEL: All right. Thank you. Mr. Commissioner,  
13                   those are my questions for these witnesses.

14                 THE COMMISSIONER: Thank you, Ms. Patel. And I think  
15                   Ms. Chewka for the province has been allocated  
16                   30 minutes.

17                 MS. CHEWKA: Yes. Thank you, Mr. Commissioner.

18                 **EXAMINATION BY MS. CHEWKA:**

19                 Q     Mr. Giles, I have a question beginning with you.  
20                   So you gave evidence that there is some desire  
21                   or what you're seeing as some trends in the  
22                   private industry to proactively develop strong  
23                   anti-money laundering policies separate from  
24                   what's required by government. Is it fair to  
25                   say that not every private entity in this

1 context is in fact doing this?

2 A (GD) It might be. It might be fair to say that.  
3 I think there a broad -- there's a spectrum of  
4 entities in this industry who are -- some are  
5 taking a very proactive approach, some are  
6 taking a very reactive approach. I probably am  
7 on one end of that scale, you know, experiencing  
8 the proactive side of that. You know, people  
9 are coming forward to understand how to comply.  
10 But yeah, I would say it's probably a fair  
11 statement.

12 Q In your experience is there a way to incentivize  
13 private entities to develop these strong AML  
14 policies separate and apart from the use of what  
15 I'll call a regulatory stick?

16 A (GD) That's a good question. I think that --  
17 from what I've seen where the appetite to, let's  
18 say, comply or to proactively get ahead of  
19 regulations has -- the motivation is perhaps --  
20 there's a couple of reasons for it and, you  
21 know, there is a very real -- I see a very real  
22 even commercial impact of doing the right thing  
23 from a regulatory point of view, certainly as a  
24 customer of several exchanges. You know, I put  
25 stock in those groups who are -- who seem to be

1                   doing the right thing from a regulatory point of  
2                   view.

3                   I think the other sort of factor there would  
4                   be, you know, when there's a recognition of  
5                   collaboration and trying to develop a framework  
6                   that can most appropriately fit this industry.  
7                   And I think that's been some of the really  
8                   positive outcomes of the consultations and round  
9                   tables of regulators and so on is there's, I  
10                  believe, a genuine effort there to make efforts,  
11                  to make sure that these regulations and/or any  
12                  standards for that matter are -- you know, apply  
13                  appropriately to this industry and make sense  
14                  and are, you know, not just compliance for  
15                  compliance sake.

16                  So yeah, so I think that those are -- that's  
17                  probably a couple of reasons that I would give.

18                  Q     And I'll ask the same question of Mr. Mueller as  
19                  well. Based on your experience within the  
20                  private sector, can you explain to the  
21                  Commissioner how you might say how we could  
22                  incentivize this private sector to develop AML  
23                  policies separate and apart from that regulatory  
24                  stick?

25                  A     (RM) Certainly. And I think one thing that

1                   we've discussed fairly extensively throughout is  
2                   access to banking. So I think incentivizing  
3                   operators by giving them access to, say,  
4                   commercial banking at the same costs that a  
5                   normal business might have or even a luxury car  
6                   dealership, which is just as vulnerable to money  
7                   laundering as cryptocurrency, that would be a  
8                   great incentive. So I think -- and, you know,  
9                   Giles alluded to this earlier as well -- that a  
10                  lot of operators have been focused on the  
11                  commercial aspects maybe to get their business  
12                  up and running and less so on the compliance  
13                  aspects or the risk management. I think -- so  
14                  they're seeing the potential of fines, the  
15                  spectre of fines as the reason for compliance  
16                  and they're seeing compliance as a cost centre.

17                         So if there was, for example, something like  
18                         access to banking to drive real value or at  
19                         least for them much more easily identified  
20                         value, that would be one incentive.

21            Q        Ms. Cieslik?

22            A        (CC) Yes. I mean, I agree with my panelists'  
23                         assessment of that so far as well. I mean, I'm  
24                         not sure if this qualifies as a regulatory  
25                         stick, but I think one of the things that is

1                   disincentivizing is that, you know, the global  
2                   aspect of virtual currency and the regional  
3                   aspect of compliance in Canada are at odds with  
4                   each other where you can operate a foreign  
5                   company that doesn't have to comply with the  
6                   Canadian rules rather easily, and those entities  
7                   remain outside of any real reach of the  
8                   regulators for monitoring, supervision and  
9                   enforcement. So you are competing with other  
10                  exchanges that don't have these same  
11                  requirements and don't have the same threat  
12                  because they've found creative ways of  
13                  structuring their business, location-wise and  
14                  jurisdictions of lower regulatory oversight.  
15                  And -- but that does not prevent them from  
16                  reaching Canadians.

17                         So I mean, I'm sorry if that does sort of  
18                         fall into the stick category, but I've often  
19                         said at the FINTRAC consultations and obviously  
20                         more so in my previous employment you could  
21                         literally walk down the street and audit me at  
22                         any time and I would have been well ready for  
23                         them, but you're doing the same to all the other  
24                         entities that serve Canadians and possibly can  
25                         harm Canadians that aren't down the street. And

1 so an unevenness of application is a perception.  
2 Again, sorry, that might not be a stick thing,  
3 but I'll go to Ryan's banking comment and really  
4 push that one too as a non-stick option.

5 Q And, Mr. Warrack, do you have anything to add to  
6 those comments?

7 A (PW) Yeah, I was actually going to say what Ryan  
8 had said about banking. I think that's the  
9 biggest incentive that could be offered.

10 Q Ms. Cieslik, in your evidence today you discuss  
11 some of the limits inherent to the FINTRAC  
12 reporting requirements. Would you say that one  
13 of the limits to the FINTRAC requirements is  
14 that they are largely reactive in nature as  
15 opposed to preventative?

16 A (CC) Yeah, I mean, certainly the reporting  
17 regime is reactive because you're looking for  
18 activities after they occur, you know, when it  
19 comes to the value-based reporting requirements,  
20 so large cash large wire and, soon to come,  
21 large virtual currency. You know -- and  
22 suspicious activity reporting again is reactive,  
23 you know, forgetting -- without talking about  
24 attempted suspicious activity for now. But that  
25 there is, you know, sort of a very subjective



1                   assessment as to what is suspicious in the new  
2                   and burgeoning industry.

3                   So I do think -- sorry, could you maybe just  
4                   repeat the question so I that can make sure I  
5                   fully answer it.

6           Q       Of course. My question was whether or not you  
7                   would agree that the FINTRAC reporting  
8                   requirements or the FINTRAC requirements  
9                   generally, one of the limits may be that they  
10                  are largely reactive rather than preventative in  
11                  nature?

12          A       (CC) Yeah, I think that would go for, you know,  
13                   Canada as well as any other jurisdiction that  
14                   has implemented, you know, post-reporting  
15                   requirements. It's just -- it's a fact that it  
16                   happens after.

17          Q       We've heard from witnesses this week that  
18                   realtime monitoring is critically important when  
19                   attempting to address illicit activity,  
20                   particularly money laundering, in the context of  
21                   virtual assets. Would you agree with that  
22                   regarding the importance of realtime monitoring?

23          A       (CC) Yes, I would agree with that. I would only  
24                   want to distinguish, you know, a couple of  
25                   things here is that I know there's been a focus

1                   on the risk-based tools such as Chainalysis, and  
2                   I do believe -- and correct me if I'm wrong --  
3                   that that the general sentiment about what  
4                   realtime reporting is, so being -- or  
5                   monitoring, so being able to screen those  
6                   wallets at -- you know, at the time of  
7                   inception. And that works well for use of those  
8                   softwares who have risk analytics and they sort  
9                   of all have different methodologies, proprietary  
10                  methodologies, about how they assess that risk.

11                  But I think we also can't forget about the  
12                  fact that there is fiat movements requiring  
13                  monitoring that don't offer that same, you know,  
14                  sort of risk analytic built in. And that when  
15                  you look at suspicious activity, ongoing  
16                  transaction monitoring requirements, there may  
17                  be -- need to be a longer time period in order  
18                  to evidence a pattern of activity that would be  
19                  able to be captured and assessed as a red flag  
20                  as opposed to sort of a -- you know, a one-off  
21                  that might be able to be caught in a  
22                  CipherTrace, Chainalysis-type software as this  
23                  is a bad wallet. That's that sort of immediate  
24                  gratification of risk as opposed to a suspicious  
25                  activity that takes a longer group of

1 transactions to determine.

2 Q As I understand it -- and please correct me if  
3 I'm wrong in my understanding -- is that a lot  
4 of our focus on regulation has really been  
5 reactive in nature and not so much preventative  
6 with the exception of things like KYC policies  
7 and things like that. In your view and based on  
8 your experience, what additional steps can be  
9 taken to prevent or mitigate the risks such as  
10 money laundering associated with virtual assets?  
11 So how do we get ahead of it instead of  
12 responding to this after the fact?

13 A (CC) Well, I mean, I think that's a difficult  
14 thing to do, you know, to sort of -- you know, I  
15 think I'm famous for saying I don't have a  
16 crystal ball when I'm looking at somebody's  
17 financial activity to imagine they might be  
18 doing something wrong. While the red flags and  
19 indicators exist to sort of look at behaviour  
20 and make some determination, the standard of  
21 reasonableness changes depending on who is  
22 looking at that output. And, you know, you  
23 can't really sort of pin that down to a science,  
24 I don't think, quite yet.

25 Is the mandate to prevent money laundering?

1 I believe those words are in the mandate for  
2 FINTRAC. Is that in the mandate of a private  
3 business, is another, you know, sort of good  
4 question. Certainly I don't think any business  
5 wants to welcome with open arms criminal  
6 activity because it's bad for business generally  
7 overall, though it might be profitable to start.

8 I don't necessarily think I have an  
9 answer to the preventative aspect and I've  
10 worked in this industry for almost 20 years at  
11 this point, and it can be somewhat disappointing  
12 to know. But I think we also have to remember  
13 that any time there is a new payment method, a  
14 new type of -- you know, a way to move value,  
15 there is going to be somebody who's ten steps  
16 ahead of you who knows how to exploit that and  
17 you won't even know about them. And that this  
18 all does tend to be reactive because of the way  
19 intelligence is shared.

20 And I think one of the -- if I can make one  
21 final point on that is that, you know, I did  
22 listen in on the RCMP presentation the other day  
23 kind of expecting to hear, like, what are they  
24 going to say about crypto? And I've worked with  
25 most of the people on that panel previously in

1 educational aspects and, you know, very familiar  
2 with kind of what the RCMP is looking at from  
3 their national virtual currency, you know,  
4 group.

5 But that we don't know things that they  
6 know. So, like, they may be investigating cases  
7 and there isn't that sharing of information  
8 that -- you know, so we don't find out until  
9 long after potentially that somebody is a  
10 confirmed criminal. And then maybe looking back  
11 at the pattern of activity it's, like, oh, okay,  
12 well, maybe. But the intelligence sharing --  
13 the lack of intelligence sharing, and I do  
14 understand that there are reasons for not  
15 sharing and not sharing. But that, you know, a  
16 better balance there might allow for some more  
17 preventative measures as opposed to three years  
18 after a case is final and then there's a *Globe*  
19 *and Mail* news article, and you say oh, let's  
20 search that name and then we report everything  
21 that we have.

22 Q When you say "information sharing," can you be  
23 more specific as to between which entities you  
24 would say would be key for information sharing  
25 for this purpose of preventing or mitigating

1                   these risks?

2                   A     (CC) Yeah, I think we've seen some evidence, you  
3                   know, by the other panelists of sort of the  
4                   interVASP community sharing information. And  
5                   certainly there's been a little bit of that  
6                   with -- when it comes to fraudulent activity or  
7                   stolen funds. There is a group of people that  
8                   share wallet addresses to ensure, like, if money  
9                   is coming from this to you guys, like, don't  
10                  accept it or block that wallet. So there's some  
11                  of that sort of grassroots movement there.

12                  I know one of my larger challenges in  
13                  dealing with financial institutions was, you  
14                  know, the lack of sort of reciprocal sharing of  
15                  information under the auspices of *PIPEDA*, which  
16                  I fully respect and understand, you know,  
17                  although there are carveouts for threats to the  
18                  security of Canada. But, you know, that --  
19                  where crypto-companies have a view into the  
20                  activity that they're doing with a customer at a  
21                  single point in time whereas a bank or financial  
22                  institutions of another sort -- let's not just  
23                  pick on banks -- securities company, et cetera.  
24                  They have accounts. They have history of  
25                  relationship. They might have more than one

1 product. You have your RSP, your loan, your  
2 mortgage. And we're only seeing this one aspect  
3 of their behaviour.

4 Again, I don't think I have the full  
5 answer or how to best share information in  
6 respect of privacy, but I'll point to the thing  
7 that everybody points to in the cryptospace is  
8 that in the US they've had the 314 -- I can  
9 never remember it's (a) or (b), but 314(a) and  
10 (b) where law enforcement can send out a  
11 bulletin, you know, to all participating  
12 entities, and saying hey, we know something  
13 about this guy.

14 And I've worked with those in the US in my  
15 time in New York and, you know, being able to  
16 kind of -- that was a very timely way to sort of  
17 get out some police-level information and rally  
18 all the financial entities that are kind of  
19 under that rule, under *BSA*, to respond  
20 accordingly and provide good intelligence to  
21 police officers, and, again, in a quicker  
22 fashion than going through the STR disclosure  
23 process.

24 Q Mr. Warrack, can you add anything to that  
25 answer with respect to what can be done as a

1                   preventative or mitigate these risks?

2           A       (PW) I disagree with the kind of statement that,  
3                   you know, STRs, et cetera, are reactive as  
4                   opposed to preventative. I think that's true on  
5                   a kind of one-off basis, but I think over a  
6                   period of time if an exchange or a bank has  
7                   robust policies and regimes in place that  
8                   includes reporting, et cetera, the criminal  
9                   lawyers are going know, the bad actors are going  
10                  to go somewhere else and there will be less and  
11                  less places for them to go until they make that  
12                  step into the dark side of things where they  
13                  don't go to a bank at all or they don't use an  
14                  exchange at all. I would say that.

15          Q       Mr. Mueller?

16          A       (RM) I mean, I would kind of echo what Charlene  
17                  said, like, you certainly -- like, we can  
18                  prevent third-party transactions. We can do PEP  
19                  determinations. We can tend to discourage  
20                  bribery and corruption. But it -- I mean, you  
21                  can never prevent a person that comes in using  
22                  their own identity documents and bank account  
23                  expressly to launder money.

24                         So, like, one case that I would say, we  
25                         received a subpoena for information on the



1 client some two years after the transactions.  
2 Came in, properly identified himself, identity  
3 document, proof of life video. So we have  
4 people move a bit to prove they're alive while  
5 they're signing up so that you, you know, you  
6 can't game us with a selfie. Proof of address,  
7 corporate bank accounts, corporate documents  
8 proving that he was a signatory with the ability  
9 to move funds out of the account, bought a lot  
10 of bitcoin that seemed relevant to the stated  
11 purpose of business. And then years later it  
12 was hey, this guy actually was laundering  
13 600,000.

14 And I think that one thing that I've gone  
15 back and forth with heads of sales at many  
16 businesses that I've worked at is requesting an  
17 unredacted bank statement showing the previous  
18 30 days' activity when someone is doing a  
19 high-amount wire to show that it isn't a  
20 straight in-out wire. So those funds aren't  
21 coming from a compromised bank account in the  
22 chain or things like this. But, you know, the  
23 ability to implement those and the impact on the  
24 commercial volumes of your business as well as a  
25 customers -- a legitimate customer, especially

1 in crypto where people are, you know, very often  
2 privacy focused, there's a lot of kind of push  
3 and pull in that regard.

4 So I can definitely picture a customer's  
5 intake process in a transaction validation  
6 process that eliminates 99 point, you know, a  
7 lot of 9s percent of fraud and money laundering,  
8 but that's also going to scare off lots of  
9 customers that -- you know. We have people with  
10 bitcoin going up that they're putting their life  
11 savings in hoping for a short-term return and so  
12 on and they may not understand why I would want  
13 their bank statements and they may not want to  
14 give them to me.

15 So I think it's a achievable, but -- you  
16 know, to use a platitude, but at what cost?

17 Q And Mr. Dixon?

18 A (GD) Yeah, I think I would echo a lot of what my  
19 fellow panelists have said. And I would  
20 probably add that, you know, it's important to  
21 perhaps note that even if some of the money  
22 laundering controls that perhaps have either,  
23 you know, been enforced through regulation or  
24 even just proactively on exchanges, it's  
25 important to know that even if they appear

1                   perhaps somehow reactive, the nature of those  
2                   controls, I would argue, allow you to have a  
3                   better chance at being preventative in the  
4                   future.

5                   So what I mean by that is by monitoring for  
6                   customer behaviour or for, you know, collecting  
7                   identification from a customer at on-boarding,  
8                   you know, there's an element of that which is  
9                   very much preventative. So, you know, sanction  
10                  screening or understanding who you're dealing  
11                  with as a customer in an attempt to curb  
12                  potential risk and identify and mitigate  
13                  potential risk going forward.

14                 However, if the risk were to occur, the idea  
15                 of, for example, ongoing monitoring, as we've  
16                 talked about and the panelists have talked  
17                 about, and other forms of control from a money  
18                 laundering perspective while reactive, should  
19                 serve to inform a better preventative, you know,  
20                 money laundering program going forward. So  
21                 it's -- they're both -- they both sort of  
22                 fulfill each other even though they may appear  
23                 to be somehow reactive.

24                 The other thing I would add is at perhaps an  
25                 industry level, you know -- and we've talked

1                   about, I think, your previous question around  
2                   the regulation being reactive or the approach to  
3                   regulation. You know, I think there are --  
4                   whilst it is reactive, I think there are  
5                   certainly things that can be done to, say,  
6                   increase the speed of reaction, let's say, to  
7                   those regulations.

8                   And, again, I'm repeating a lot of what  
9                   we've talked about but are good examples of all  
10                  the good collaboration that we've talked about  
11                  in the industry, the engagement in which -- you  
12                  know, I must give credit to the regulators for  
13                  doing with the crypto-industry and helping to  
14                  shape and form the regulations is all good.  
15                  However -- you know, we've talked a lot about  
16                  exchanges. We also have a number of other  
17                  business models and developing types of business  
18                  in this crypto-industry which, you know, really  
19                  the -- it's extremely grey on how and if the  
20                  regulations can even capture them.

21                  So there is a need for, let's say, increased  
22                  collaboration, but certainly there's a lot that  
23                  we can do to speed up that reaction.

24                  Q       On that point, we've actually heard from  
25                  witnesses this week about some what they say are

1 potential solutions to some of these risks that  
2 we're seeing with respect to third-party public  
3 exchanges. And so on the one hand we have  
4 Sergeant Vickery of the RCMP proposing the  
5 elimination of third-party public exchanges and  
6 the incorporation of virtual assets directly  
7 within financial institutions, on the other hand  
8 we have Mr. Spiro testifying that there would be  
9 some benefit of legitimizing these third-party  
10 public exchanges by bringing them into a  
11 regulatory framework that simultaneously would  
12 respect their expertise.

13 And I'm wondering, Mr. Dixon, if you can  
14 comment on where you fall on either one those  
15 solutions or whether there's a third option  
16 available here as to how to address some of  
17 these money laundering risks that we're seeing  
18 associated with third-party public exchanges.

19 A (GD) Can you help me, what you is your  
20 definition of a third-party public exchange?

21 Q As I understand it -- and you can correct me if  
22 I'm wrong on this, but as I understand it there  
23 is -- financial institutions are not dealing  
24 directly with virtual assets. And so in order  
25 to have an on- or off-ramp into this area you

1                   need to have a third party transferring the  
2                   virtual asset into a fiat currency, essentially.  
3                   And so it's basically the third party that's  
4                   communicating between the two, is how it's been  
5                   defined or used by the witnesses this week.

6           A       (GD) Okay. I'm not sure I follow. I think --  
7                   yeah, I mean -- so maybe I'll pick up on  
8                   something that you've said. So the -- I think  
9                   one of your points was around whether the  
10                  banks -- or the banks currently don't interact  
11                  directly with virtual currency. So -- and let  
12                  me know if this is some kind of response.

13                         So I think -- yeah, I don't know -- what  
14                         I -- I would like to make a distinction perhaps  
15                         between cryptocurrency and the technology that  
16                         underpins cryptocurrency and -- you know,  
17                         because we have seen the large banking  
18                         institutions starting to utilize, I would say,  
19                         the technology that underpins virtual currency  
20                         and cryptocurrency for -- to improve their  
21                         processes or offer additional services to their  
22                         customers. I don't know that sort of wiping out  
23                         that industry is necessarily the best approach.  
24                         I would always like to think that there would  
25                         be, you know, good dialogue and an opportunity



1 Canadian landscape of business particularly with  
2 any of these being able to be done in another  
3 country.

4 But secondly what I took her comment maybe  
5 to say too was that this lack of being able to  
6 have a bank account is sort of the -- is one of  
7 the blockers and that, you know, bringing  
8 cryptos in -- you know, out of the shadows and  
9 into the fold of being able to directly have  
10 these relationships does allow for, you know, a  
11 greater sort of amount of transparency and  
12 oversight and enforcement where, you know,  
13 FINTRAC may not have. And I think we've all  
14 sort of read about that and seen that, you know,  
15 have the resources to manage, you know, the  
16 thousands of entities currently under their  
17 reporting entity requirements. You're now  
18 adding potentially thousands of more. And who  
19 is sort of -- without a secondary regulator. I  
20 mean, we've got -- the securities dealers have  
21 the securities regulators provincially and sort  
22 of the CSA and we've got banks with OSFI. You  
23 know, MSBs don't have that sort of second-level  
24 regulator.

25 I won't say I'm advocating for yet another



1 regulator, but I will say, you know, one the  
2 things I've learned in my dealings with banks is  
3 that they're sharing place to keep you in line  
4 with your anti-money laundering requirements  
5 where FINTRAC might not be.

6 Q And Mr. Mueller?

7 A (RM) Sorry, I was muted. So I actually would  
8 tend to agree with, you know, what everyone else  
9 has kind of said. I don't have much to add on  
10 this one.

11 Q Mr. Warrack? Mr. Warrack, do you have anything  
12 to add on that or no?

13 A (PW) Yeah, if your initial interpretation, as  
14 you described it, of what the sergeant had said  
15 is correct, that you eliminate the third  
16 party -- I'm not sure what you called them, but  
17 I think that is a very myopic approach and  
18 misses the whole point of cryptocurrency. And  
19 why it came about in the first instance with  
20 bitcoin was to do away with banks and  
21 intermediaries and third parties.

22 Q This actually leads quite nicely into last  
23 question I have for the panel today. We've  
24 spoken a lot about how to regulate in this area,  
25 and maybe how to regulate more effectively. My

1 question is are there any disadvantages that you  
2 see to a more heavy-handed regulatory approach?  
3 For example, I'm thinking about stifling of  
4 innovation. And I'm wondering if, Mr. Warrack,  
5 you can comment on that first, and then we'll go  
6 through the other panel members.

7 A (PW) Yeah, I would agree with that, I think it  
8 would stifle innovation, but it would also drive  
9 the transactions away from the regulated  
10 entities such as VASP into the dark world of --  
11 whether there's no visibility.

12 Q Mr. Dixon?

13 A (GD) Yeah. There is -- I think I would agree  
14 with the innovation approach. There's -- I  
15 think what I've seen -- what we've seen in  
16 Canada is there's been some partially, you know,  
17 successful attempts in terms of sandboxes and so  
18 on which allow for a little bit more flexibility  
19 to sort of play out, let's say, some different  
20 types of business models in a confined  
21 environment which, you know, I think is an  
22 attempt to get around some of that stifling of  
23 innovation. But yeah, for sure, stifling of  
24 innovation. I think it could have the effect  
25 of -- and one of our fellow panelists was

1                    talking earlier about the sort of alignment of  
2                    regulation between jurisdictions.

3                    And, you know, I think we've seen and maybe  
4                    touched on a little bit of one of the impacts of  
5                    this, which is that entities operating, for  
6                    example, in Canada who might feel that the  
7                    approach is too heavy handed or unreasonably so  
8                    will potentially move out of the jurisdiction or  
9                    this jurisdiction and across to others. There  
10                   are certainly, you know, intelligence  
11                   disadvantages from that in terms of the  
12                   information that will somehow then not flow to  
13                   the Canadian -- the people in Canada, the  
14                   intelligence units. But it also has a  
15                   competitiveness advantage as well for the  
16                   cryptocurrency industry as a whole, if we're  
17                   using Canada as an example, you know, in Canada.

18                   So not only are there money laundering or  
19                   are there intelligence implications there's also  
20                   broader, you know, competitive implications, I  
21                   think, of that.

22                   Q                   And Ms. Cieslik?

23                   A                   (CC) I mean, that's been a very common theme and  
24                   topic across the last few years of this is  
25                   that -- I don't think -- you know, I hope that

1 Canada and many other countries, like, don't  
2 want to make it so difficult that it drives out  
3 a whole industry that creates jobs, that  
4 enhances the tech capabilities of a country and  
5 that kind of thing.

6 So while the spirit of the legislation in  
7 saying, you know, nobody -- I don't think  
8 anybody actually actively set out and wants this  
9 to be the area of choice for criminal activity  
10 and therefore I don't think it should be  
11 penalized as such particularly, I think more  
12 comparison and more sort of an impact type of  
13 analysis needs to be done of, say, this industry  
14 versus the already larger well-established  
15 multibillion dollar industries that are  
16 currently under regulatory reviews and regimes,  
17 and where crypto fits in with that.

18 I mean, I certainly think a measured  
19 regulatory response in relation to that true  
20 assessment of risk to Canada and Canadians would  
21 be more helpful in defining a more specific  
22 regulatory machine that isn't just saying well,  
23 it's like an MSB or it's like a broker-dealer or  
24 it's cash but it's -- you know, you're trying to  
25 fit -- again I'll use a platitude -- a square

1                   peg into a round hole. I think over time we'll  
2                   see, like, it's not any of those while being a  
3                   little bit of all of those, will hopefully lead  
4                   maybe to a very -- a more targeted, you know,  
5                   regime around what it actually is for the  
6                   industry.

7                   Q       Lastly, Mr. Mueller, I think you've hinted maybe  
8                   at some of this already in one of your responses  
9                   to my earlier questions. But I'm wondering if  
10                  you can speak to this question of disadvantages  
11                  to regulation. And you kind of, I think, hinted  
12                  to one of them being privacy concerns as well.  
13                  And so I'm wondering if you can maybe speak to  
14                  that and any other disadvantages you've seen.

15                 A       (RM) Sure. So, I mean, I've been -- like,  
16                   before I was Chief Compliance Officer of --  
17                   Chief Compliance Officer of Netcoins I was, you  
18                   know, head of risk management and business  
19                   development for a payment processor that did  
20                   lots of bitcoin businesses in Canada. So I'm  
21                   not sure that I've seen a disadvantage to  
22                   applying the MSB regulation to the number of  
23                   businesses operating in the virtual currency  
24                   space in Canada. I think the only ones that  
25                   crossed our desk back then that are no longer

1                   around were Quadriga, a related exchange Taurus.  
2                   You know, everybody else is still kind of  
3                   around.

4                   So I'm not sure that applying MSB  
5                   regulations has necessarily eliminated anyone  
6                   from operating in Canada. It may have, as Peter  
7                   alluded to, driven some of the bad traffic  
8                   offshore into privacy coins and these kind of  
9                   things, but I don't necessarily think that  
10                  characterizing MSB registration and compliance  
11                  as heavy handed is correct because you can  
12                  register as an MSB and get your number fairly  
13                  easily. And based on the resources that FINTRAC  
14                  has to apply desk exams, you may operate  
15                  for years without anyone necessarily knowing if  
16                  your regime is compliant with the requirements  
17                  and so on.

18                 So I think that I'm kind of wandering around  
19                 a short answer that is, you know, in my  
20                 experience I haven't seen the current regulation  
21                 necessarily stifle any technological  
22                 developments or anything of that nature. And I  
23                 think Dash was developed in Canada. So, I mean,  
24                 MSB regulation didn't stop a privacy coin from  
25                 starting here.

1                   So yeah, I think it remains to be seen what  
2                   impact MSB registration and requirements will  
3                   have on VASPs because, I mean, it's only been  
4                   five months since June.

5                   MS. CHEWKA: Thank you. Those are my question for  
6                   this panel, Mr. Commissioner.

7                   THE COMMISSIONER: I'm sorry, I muted myself. Thank  
8                   you, Ms. Chewka.

9                   I'll now ask Ms. Shelley on behalf of Canada  
10                  to commence her questions. And I think you've  
11                  been allocated 10 minutes, Ms. Shelley.

12                  MS. SHELLEY: Thank you, Mr. Commissioner. Based on  
13                  the testimony this morning, Canada does not have  
14                  any question for these witnesses.

15                  THE COMMISSIONER: Thank you, Ms. Shelley.

16                  Ms. Magonet for the British Columbia Civil  
17                  Liberties Association, who has been allocated  
18                  30 minutes.

19                  MS. MAGONET: Thank you, Mr. Commissioner. Can  
20                  everyone hear me okay? Okay. Great. Thank  
21                  you.

22                  **EXAMINATION BY MS. MAGONET:**

23                  Q     So I first have some general questions for the  
24                  panel regarding virtual assets and blockchain  
25                  technology. And I would just say that whoever

1 feels best positioned on the panel to  
2 answer these questions can address them.

3 So my first question is whether you would  
4 agree that blockchain technology, which is the  
5 foundation of cryptocurrency, has applications  
6 outside the realm of cryptocurrency?

7 A (RM) Yes, I would agree with that.

8 (CC) As well, I would agree.

9 (GD) I agree.

10 Q Fantastic. And would you agree that some  
11 examples of these applications include digital  
12 voting, art, music, collective decision-making  
13 platforms?

14 A (CC) Yes, would agree with that.

15 (RM) I agree.

16 (GD) Yeah.

17 Q And would you agree that an overly aggressive  
18 approach to the regulation of cryptocurrency  
19 could stifle innovation in the uses of  
20 blockchain technology, both in the financial  
21 sector and non-financial sector?

22 A (CC) I think as part of the consultation process  
23 that I was part of with FINTRAC and Department  
24 of Finance there was a deep concern for ensuring  
25 a limitation, you know, on regulation, that it



1                   wouldn't address certain things as you  
2                   mentioned, art or, you know, even a close-looped  
3                   type of token, you know, anything sort of  
4                   smart-contract based. You know, I think that  
5                   list is maybe small to medium sized now, but I  
6                   do know that there was, you know, the industry  
7                   outcry, for lack of a better word, and a  
8                   receptiveness from the government agencies to  
9                   provide some interpretation on what is and isn't  
10                  subject to MSB rules, although I do think that  
11                  continues to evolve and will need work over  
12                  time.

13                Q     Thank you. And would you agree if Canada took a  
14                  draconian approach to regulating cryptocurrency  
15                  and didn't bear these concerns in mind, as you  
16                  say they did, that in the future there could be  
17                  a potential to stifle the development of  
18                  blockchain technology?

19                A     (GD) I might jump in on this one, if that's  
20                  okay.

21                Q     Certainly.

22                A     (GD) I think it's important to make the  
23                  distinction between cryptocurrency and  
24                  blockchain and what they are and what they're  
25                  not and how they're linked and how they are not.

1                   And so that's very vague, so I'll be a bit more  
2                   specific.

3                   The regulations -- so blockchain is the  
4                   underpinning technology of cryptocurrency, as  
5                   we've talked about. But as you've alluded to in  
6                   your questioning, the technology itself,  
7                   blockchain, has a lot of potential applications  
8                   outside of cryptocurrency, which traditionally  
9                   has been more of a use case of transferring  
10                  value. So a blockchain is typically a sort  
11                  of -- a fancy way of storing data. It doesn't  
12                  have to be about necessarily moving monetary  
13                  value. So I think the regulation of  
14                  cryptocurrency specifically or, maybe being even  
15                  more specific, the entities that are  
16                  facilitating the movement of money or value  
17                  through blockchain, if the regulation in that  
18                  side of the house, the cryptocurrency side of  
19                  the house is overly burdensome, it may well  
20                  stifle innovation within the cryptocurrency's  
21                  sphere. But I think that's partly somewhat  
22                  removed from the broader blockchain conversation  
23                  where we're not getting into the conversation  
24                  around movement of value and where the financial  
25                  regulators are looking. They're not looking so

1                   much in that aspect. It's more around the  
2                   movement of monetary value, which is  
3                   cryptocurrency, versus blockchain more broadly,  
4                   which is to do with storage of data.

5           Q        Thank you, Mr. Dixon. Perhaps I'll address my  
6                   next question to Ms. Cieslik. Did I pronounce  
7                   your name properly?

8           A        (CC) Yes, you're doing good at that.

9           Q        Okay. Great. Thank you. Because you alluded  
10                   to this a bit earlier. Would you agree that  
11                   some virtual assets are non-fungible?

12          A        (CC) Define "non-fungible."

13          Q        So that they are -- I'm referring to  
14                   non-fungible tokens that are unique rather than  
15                   mutually interchangeable.

16          A        (CC) You are speaking about these close-looped  
17                   type of things, they have no value outside of an  
18                   ecosystem?

19          Q        No, I'm not referring to -- well, perhaps those  
20                   also fall within this category. But I'm  
21                   referring to -- for example, to non-fungible  
22                   tokens like crypto-art, crypto-games and  
23                   crypto-collectibles.

24          A        (CC) Can you repeat the question, then.

25          Q        Certainly. You would agree that the category of

1 virtual assets includes non-fungible tokens?

2 A (CC) It depends on who you ask. You know,  
3 again, I think back to my earlier comment is  
4 that this question had definitely come up during  
5 the FINTRAC, you know, consultation process and  
6 I think Giles alluded to the idea that, you  
7 know, cryptocurrency is one movement of value  
8 but that there are these sorts of alternate, you  
9 know, blockchain uses, some of which may allow a  
10 movement of a different kind of value.

11 So I think it is -- you know, it hasn't been  
12 clarified specifically by Canadian government.  
13 I think it is still sort of under definition in  
14 several jurisdictions. But that -- I think  
15 people might be familiar with CryptoKitties or  
16 other kind of -- you know, even, as you  
17 mentioned, game-based tokens. These things do  
18 have a value. If you tokenize an asset that has  
19 a value, then certainly you can move value with  
20 that, even if it's not the cryptocurrency  
21 itself. And I think art is often one of the  
22 things that is brought up. I know there are  
23 lots of companies working on tokenization of  
24 those kinds of assets. Ad regardless of the  
25 blockchain application of it, I think all of

1                   those have been discussed in the industry at  
2                   large about their culpability in being able to  
3                   use to move funds and launder money.

4                   (RM) Can I just add to that.

5           Q       Of course. Sorry. Go ahead.

6           A       (RM) So I have, like, a lot of experience with  
7                   payment processing and I think when there is a,  
8                   quote/unquote, non-fungible token, for example,  
9                   *World of Warcraft* Blizzard or *Second Life*  
10                  dollars, you'll find that people are actually  
11                  really willing to pay real money for this.

12                  So I worked for a payment processor years  
13                  ago and our number one fraudulent merchant -- we  
14                  serviced gambling merchants and very nascent  
15                  digital currencies, our number one fraudulent  
16                  merchant was sold *Second Life* dollars. So we  
17                  would have people signing up fraudulent  
18                  accounts, going to this exchange based in  
19                  Austria and exchanging real money for a bar in  
20                  *Second Life* or for a *Warcraft* sword. And we  
21                  didn't anticipate this to happen and we didn't  
22                  anticipate these currencies to have value  
23                  outside of these games, but users were willing  
24                  to pay real money for them and steal real money  
25                  to pay for them and then sell them again.

1                   So I guess what I'm just adding is that even  
2                   where a token is not intended to have that kind  
3                   of usage, users might figure out a way to do it.

4                   (CC) I'll just add to that that both  
5                   fraudulent and non-fraudulent transactions could  
6                   occur in that way.

7           Q        Thanks to both of you.  Would you agree that  
8                   there's a -- or sorry.  Let me rephrase this  
9                   question.  Would you agree that non-fungible  
10                  tokens, including CryptoKitties, allow users to  
11                  engage in expressive and associative activities  
12                  like the creation and sharing of art?

13          A        (CC) Certainly.

14          Q        And would you agree that in order to purchase a  
15                   non-fungible asset like a CryptoKitty, users  
16                   generally need to use a virtual currency to do  
17                   so?

18          A        (CC) Yes.

19          Q        And would you therefore agree that the  
20                   regulation of fungible virtual assets like  
21                   bitcoin may have implications for the use and  
22                   development of non-fungible virtual assets?

23          A        (CC) Of course.  Yes.

24          Q        Thank you.  I would now like to ask some  
25                   questions about a document.

1 MS. MAGONET: And I would ask if Madam Registrar  
2 could please pull this up. It's the Central 1  
3 Credit Union anti-money laundering  
4 counter-terrorist financing requirements  
5 document. And I believe it was also listed as  
6 an appendix, though I'm now forgetting which  
7 appendix it was. Oh, you've nonetheless found  
8 it. Thank you.

9 Q Is the panel familiar with this document?

10 A (CC) Very much, yes.

11 Q Sorry, please go ahead.

12 A (PW) I'm somewhat familiar with it. I did read  
13 it.

14 (GD) Somewhat.

15 Q Okay. Thank you. I will -- so I just have a  
16 few questions about this document. I think  
17 Ms. Cieslik or Mr. Warrack might be best  
18 positioned to answer them, but I leave it to you  
19 to determine that.

20 Do you know if these requirements resemble  
21 the AML requirements adopted by other credit  
22 unions? Is this representative of frequent  
23 practice, in your knowledge?

24 A (PW) I don't have that information.

25 (CC) Yeah, I might be able to speak to that.

1                   So, I mean, as a -- full disclosure, as part of  
2                   my work as a consultant in sort of the eight to  
3                   ten years ago area I worked quite closely in the  
4                   Central 1 body and credit unions all across  
5                   Canada and the US, although this is specific to  
6                   credit unions here.

7                   So the Central 1 issues guidance out to the  
8                   credit unions network to say, this is what  
9                   you're allowed to do and not allowed to do. I  
10                  do remember when this came out, and I've seen it  
11                  previously -- and if you can just scroll down a  
12                  touch -- you know, I think the reason also I  
13                  became more familiar with it in my later career  
14                  is that in attempting to get bank accounts for  
15                  crypto-based companies or even traditional money  
16                  services businesses ten years ago there -- that  
17                  sort of stigma carried through and put upon  
18                  cryptocurrency-based companies. So many -- I  
19                  won't say all but many credit unions in my  
20                  experience have declined or denied access to  
21                  banking to crypto-based companies. And I  
22                  believe -- I would strongly believe that it is  
23                  party to this -- release of this document.

24                  Q     Thank you. Sorry, go ahead.

25                  A     (CC) I won't say that all credit unions are like



1                   that.

2                   MS. MAGONET: Okay. Thank you. Madam Registrar, if  
3                   you could scroll down a little bit. That's  
4                   perfect.

5                   Q     So here you would agree that Central 1 lists  
6                   some transactions that are prohibited between  
7                   certain times of entity or countries?

8                   A     (CC) Yes.

9                   Q     And you would agree that on the list of  
10                  prohibited types of entities and industries  
11                  pornography is listed?

12                  A     (CC) Yes, it is there.

13                  Q     And would you agree that the pornography  
14                  industry frequently faces barriers in facing  
15                  access to banking services and credit cards?

16                  A     (CC) From my experience, yes, I would agree with  
17                  that. There is a category of customers commonly  
18                  or sometimes referred as "the sin group" that  
19                  may have previously or currently are rejected  
20                  based on their activities, though not illegal,  
21                  may be determined to be a risk that the  
22                  financial institution does not wish to manage.

23                  Q     Thank you. And are you aware that  
24                  cryptocurrency is therefore increasingly popular  
25                  as a method of payment among sex workers?

1 A (CC) I am familiar with that, yes.

2 Q And that its advantages include not only the  
3 fact that sex workers can face barriers in  
4 accessing banking services but also due to the  
5 pseudo anonymity provided by cryptocurrency?

6 A (CC) Yes, I'm familiar.

7 MS. MAGONET: Thank you. If -- Madam Registrar, if  
8 you could please go to page 2 of this document.  
9 That's a great spot.

10 Q On this page Central 1 explains that  
11 international wire transfers cannot be sent to  
12 or from the countries or clients listed there.  
13 You would agree with that?

14 A (CC) Yes.

15 Q All right. Okay. Great. Thank you. And that  
16 these clients include businesses that are legal  
17 in Canada such as marijuana distributors. You  
18 would agree?

19 A (CC) Yes, I would agree. I would like to point  
20 out sort of the dual column, you know, item is  
21 that there are countries restricted and there  
22 are entities restricted. Now, countries will  
23 come from some level of sanction. All the  
24 regions listed there have sanctions against  
25 them, some of which require a full ban, not all



1                   contrabands and the rest are specific names or  
2                   types of activities. So, again, there's some  
3                   interpretation on the countries there.

4           Q       And would you agree generally that this document  
5                   demonstrates that some entities and individuals  
6                   face barriers in accessing banking services?

7           A       (CC) Absolutely. I would agree with that.

8           Q       And that in some cases cryptocurrency may  
9                   provide a viable alternative for them to engage  
10                  in financial transactions?

11          A       (CC) Yes. And I do believe that's one of the,  
12                  you know, positive features of virtual currency  
13                  and one that is widely discussed in the  
14                  industry.

15          MS. MAGONET: Thank you. Mr. Commissioner, if this  
16                  could be please be marked as the next exhibit.

17          THE COMMISSIONER: Yes. Very well. That will be --  
18                  are we at 266, Madam Registrar?

19          THE REGISTRAR: This one will be 268. The last one  
20                  was the City of Vancouver memo, 267, so this is  
21                  268.

22          THE COMMISSIONER: Thank you.

23                   **EXHIBIT 268: Central 1 Credit Union Anti-Money**  
24                   **Laundering and Counter-Terrorist Financing**  
25                   **Requirements**

1 THE COMMISSIONER: Thank you.

2 MS. MAGONET: Madam Registrar, if you could please  
3 pull up the City of Vancouver memo again. That  
4 would be great.

5 So earlier Ms. Patel discussed -- or took  
6 the panel through this memo and discussed how it  
7 explains that Vancouver is considering the  
8 regulation of bitcoin ATMs.

9 Madam Registrar, if you could please go to  
10 page -- I think -- I believe it's page 4 of the  
11 moment. Yes.

12 Q And I would like to ask the panel if you're  
13 aware that in this memo the working group takes  
14 the position that it would not be appropriate to  
15 ban bitcoin ATMs but that regulation is a better  
16 approach?

17 A (RM) Yes.

18 (CC) Yes.

19 (PW) Yes.

20 MS. MAGONET: Thank you. Madam Registrar, if you  
21 could please go to page 5.

22 Q And would the panel agree that some of the  
23 reasons given -- or rather, one the reasons  
24 given for adopting a regulatory approach was a  
25 fear that banning bitcoin ATMs could stifle

1 innovation?

2 A (RM) I might have misread the memo, but it  
3 seemed to me that their position was that this  
4 might have a negative impact on the businesses  
5 that are hosting these ATMs, for example,  
6 convenience stores and so on, not necessarily --  
7 I mean, Charlene, you can correct me if I'm  
8 wrong, but I don't know that there's any, like,  
9 groundbreaking innovation happening in the  
10 bitcoin ATM space. It's kind of like there's a  
11 wheel and we might, you know, improve on the  
12 wheel, but I don't know if there's, like,  
13 wheel 3.0 in the pipeline kind of thing.

14 (CC) I mean, I would separate the idea that,  
15 you know, the machines themselves may undergo  
16 some form of innovation because they're fairly  
17 straightforward and simple types of -- you know,  
18 it's like white label ATM machines before them.  
19 You know, it is sort of a single- or  
20 dual-function aspect. But what I interpreted  
21 the innovation paragraph as being is that this  
22 is a recognized method of entry into the virtual  
23 asset space and that a ban on it would be  
24 perceived as, you know, a negative slight to  
25 acceptance of cryptocurrency generally by sort

1 of demonizing this one entry point.

2 I think they use the words here "hostile,"  
3 "hostility" and "lack of government support"  
4 which would just move them away and certainly,  
5 you know, remove jobs, and I would agree with  
6 that impact against innovation, meaning that  
7 businesses would -- who do these [indiscernible]  
8 transactions would suffer and potentially leave  
9 and jobs would suffer as a result and the  
10 convenience and access of residents to being  
11 able to use them and therefore benefit from, you  
12 know, use of cryptocurrency.

13 Q Thank you. And would you agree that another  
14 reason listed for adopting a regulation -- or a  
15 regulatory approach rather than a ban is that  
16 white paper ATMs are also susceptible to fraud?

17 A (CC) Yeah, I mean, did find the term "white  
18 paper ATMs" to be a little offside. I mean, I  
19 think commonly they're referred to as "white  
20 label ATMs," but potentially there's a different  
21 vernacular in the west that those of us in the  
22 east don't use. Again, I did go through this  
23 the first time around in my role as a consultant  
24 both with big 4 and smaller boutique consulting  
25 firms when white label ATMs first appeared. And

1                   to clarify, those are not connected to any  
2                   specific bank but can be privately owned and  
3                   popped up in places very similar to where bit  
4                   ATMs are located. Gas stations, convenience  
5                   stores, et cetera. That, you know, there was a  
6                   suspicion that they were susceptible to fraud  
7                   and of course it was true of at the start, but  
8                   that, you know, again, banning them was decided  
9                   against and now they're fairly commonly  
10                  accepted. You see them everywhere you go. The  
11                  frauds have been somewhat mitigated, though not  
12                  completely removed. And so I do think what  
13                  they're pulling for here is a regulatory equity  
14                  in not sort of prohibiting one while allowing  
15                  the other.

16                  Q     Thank you. My last series of --

17                  MS. MAGONET: Madam Registrar, you can take down the  
18                  document. Thank you very much.

19                  Q     My last series of questions or for Mr. Warrack  
20                  and they concern Project Participate.

21                                 Mr. Warrack, you would agree that Project  
22                                 Participate indicators of suspicion for virtual  
23                                 asset providers, that document sets out a list  
24                                 of indicators that a virtual asset service  
25                                 provider should consider in determining whether



1 a transaction is suspicious?

2 A (PW) That's correct. And it's not an exhaustive  
3 list.

4 Q And you would agree that virtual asset service  
5 providers have obligations to report suspicious  
6 transactions to FINTRAC?

7 A (PW) Under the new regulations, yes.

8 Q Thank you. And you would agree that some of the  
9 indicators listed in this Project Participate  
10 document may be present even if a transaction is  
11 made for a legitimate purpose?

12 A (PW) Absolutely. Indicators always have to be  
13 taken into context and weighted with the -- in  
14 combination with other indicators.

15 Q So, for example, the use of a VPN on its own is  
16 not enough to indicate that -- or rather the use  
17 of a VPN could occur in the context of a  
18 legitimate transaction?

19 A (PW) Absolutely. And it's also seen, for  
20 instance, as good security practice.

21 Q Thank you. And you would agree that this  
22 document has some indicators related to  
23 geography?

24 A (PW) Correct.

25 Q And that the FATF in its guidance also has

1 indicators related to geography?

2 A (PW) Correct.

3 Q And you would agree that these indicators could  
4 lead to transactions being reported or flagged  
5 based on the nationality or location of the  
6 people who are sending them?

7 A (PW) Not solely for that purpose. It would have  
8 to be in combination with other indicators.

9 Q Thank you. Would you agree that those  
10 indicators could lead to higher levels of  
11 surveillance for individuals in certain  
12 jurisdictions or sending money to certain  
13 jurisdictions?

14 A (PW) Again, if seen in combination with other  
15 indicators.

16 Q And would you agree that a VASP is likely to err  
17 on the side of reporting in the face of a  
18 suspicious indicator given their legal  
19 obligation to do so?

20 A (PW) No, I would not agree with that.

21 Q Okay. Thank you. I have just one last  
22 question, which is for Ms. Cieslik. Sorry, I  
23 said these were my last questions, but I just  
24 thought of one more.

25 Earlier the province in their

1 cross-examination asked you about preventative  
2 approaches that you might recommend for  
3 addressing money laundering, and you discussed  
4 the benefits of information sharing between the  
5 private and public sector. Would you agree that  
6 an overabundance of information sharing could  
7 raise privacy concerns?

8 A (CC) Absolutely I would agree with that.

9 MS. MAGONET: Thank you. Those are my questions.

10 THE COMMISSIONER: Thank you, Ms. Magonet.

11 And now Mr. Gratl on behalf of Transparency  
12 International Coalition, who has been allocated  
13 30 minutes.

14 MR. GRATL: Thank you, Mr. Commissioner. I expect to  
15 be -- to take less time than that.

16 **EXAMINATION BY MR. GRATL:**

17 Q Ms. Cieslik, you'll agree with me that the  
18 FINTRAC reporting requirements really only  
19 function by requiring a person engaged in a  
20 transaction to generate plausible deniability  
21 about the source of the funds?

22 A (CC) I may have to ask to you rephrase that  
23 question.

24 Q Sure. FINTRAC requires -- both for suspicious  
25 transactions and for transactions that meet the

1                   monetary threshold, they require a report of the  
2                   transaction; is that right?

3           A       (CC) Yeah, that is correct.

4           Q       And then they require some explanation about the  
5                   source of the funds involved?

6           A       (CC) I would say for the suspicious activity  
7                   there would be an expectation of a description  
8                   of what you did to come to your analysis of  
9                   suspicion and that may include a source of  
10                  funds, you know, sort of request or result as  
11                  part of your description.

12          Q       Okay. And so when there is inquiry into the  
13                  source of funds, really from the point of view  
14                  of your client as the regulated entity, what  
15                  you're looking for is the threshold of plausible  
16                  deniability; right?

17          A       (CC) Yeah, I would I agree with that. I mean,  
18                  I'd like to point out, though, that, you know,  
19                  as -- I think earlier in this testimony is that  
20                  source of funds is not an explicit regulatory  
21                  requirement for any specific report or any part  
22                  of the program. Where it does come in is as a  
23                  risk-based measure, so it has been mentioned in  
24                  risk-based guidance, to say that one of the  
25                  things that you can do to mitigate risk, one of

1                   the suggestions, recommendations made by FINTRAC  
2                   is to look for a reason why it may not be  
3                   suspicious in the form of a source of funds or a  
4                   source of wealth.

5                   Now, that's separate from -- I just want to  
6                   clarify. There is a requirement for  
7                   politically-exposed persons, but I don't want to  
8                   muddy the waters by discussing that particular  
9                   requirement as we're looking at reporting here,  
10                  unless of course the report was on a  
11                  politically-exposed person. But it has been  
12                  documented as a guideline for checking to see  
13                  what this is to have that, as you said -- you  
14                  put it, plausible deniability.

15                Q     Now, in assessing suspiciousness, I take it that  
16                   the more money the client has or the institution  
17                   has, the easier it is for them to generate  
18                   plausible explanations for the transaction?

19                A     (CC) I'm not sure I would necessarily say that.  
20                   I would say that a larger amount of money would  
21                   prompt a request for documentation and that  
22                   potentially it would be easier. Not -- maybe  
23                   not easier. I don't want to use that word. But  
24                   potentially what you would be looking for to  
25                   validate that would be easier in a larger

1 transaction.

2 If I can use a quick example, from my  
3 traditional financial space. If someone said  
4 that they had sold a property, because it was a  
5 large amount of money you might -- if you might  
6 be suspicious about where the source of that  
7 came from, and the request that would be made  
8 would be evidence of a sale with some  
9 documentation.

10 Q All right. So is it true that the larger the  
11 transaction, then, the greater the requirement  
12 for due diligence into the source of the funds?

13 A (CC) I would say taking the risk-based approach,  
14 you know, some approaches and some  
15 recommendations and guidelines and in  
16 discussions with regulators, not just in Canada  
17 but around the world, is that larger volumes of  
18 activity would need more suspect or under  
19 suspicion for some explanation, for some  
20 investigation, yes. Or should be.

21 Q Would it be of assistance if there were  
22 statutory or regulatory guidelines in respect of  
23 the level of due diligence required for larger  
24 transactions?

25 A (CC) I will agree that over my 20-year career

1                   that may have been helpful. I do think it's  
2                   difficult sort of to set those parameters, but  
3                   where, you know, the guidelines and the  
4                   legislation talk about the risk-based approach,  
5                   it's not so prescriptive and they leave it up to  
6                   you to determine your risk based on your  
7                   industry, your client type, the factors that are  
8                   required to be considered under risk. But there  
9                   hasn't been a lot in terms of feedback, in my  
10                  personal opinion, about industry sort of  
11                  specific expectations.

12                  So, you know, if I can give another quick  
13                  example. I've seen some red flags around bit  
14                  ATMs saying if some ATM company is doing more  
15                  volume than another, well, certainly as a  
16                  competitive amount of knowledge that information  
17                  is not publicly available to all bit ATMs about  
18                  what volume their neighbour is doing, and  
19                  therefore what might be above or beyond that. I  
20                  would say the same goes for any kind of other  
21                  product you could mention. You know, how much  
22                  is casino 1 during versus casino 2 and what  
23                  would be sort of, you know, an uneven balance  
24                  that might raise a suspicion -- a reasonable  
25                  grounds of suspicion.

1                   So I think that the -- maybe the risk-based  
2                   approach guidance has suffered for maybe not  
3                   being prescriptive enough. I would caution on  
4                   some, you know, ranges and level of prescription  
5                   but certainly would be helpful.

6           Q       Mr. Mueller, I have the same series of questions  
7                   for you. Do you -- would you agree that some  
8                   level of prescription in regulation or statute  
9                   would be of assistance in determining what level  
10                  of due diligence is appropriate for high-amount  
11                  transactions?

12          A       (RM) It would certainly be helpful, when acting  
13                  as a compliance professional, we do request this  
14                  information. Absolutely.

15          Q       All right. There was some concern expressed  
16                  about the utility or futility of monitoring and  
17                  reporting low-value transactions in the sense  
18                  that FINTRAC might be given a noisy level of  
19                  data rather than a useful, the signal would be  
20                  lost in the noise, in essence. Would it be of  
21                  assistance to actually have a higher amount as a  
22                  reporting threshold but put it in the -- in,  
23                  say, a temporal aggregate, say, \$10,000 in any  
24                  given week or a \$100,000 in a given six-month  
25                  period? Would that improve the signal-to-noise



1 ratio?

2 A (RM) I think it would depend on the underlying  
3 nature of the client. So, for example, if the  
4 client or the reporting entity is a liquidity  
5 provider, every single transaction is going to  
6 meet the volume threshold because they are  
7 servicing other high-volume entities.  
8 Similarly, there is a useful distinction in the  
9 reporting where, let's say, I'm an OTC desk -- I  
10 happen to be -- and I use my own money to  
11 purchase a large amount of bitcoin and that --  
12 those funds happen to go cross border. Because  
13 those aren't client funds, that's not reporting  
14 eligible. So because I'm using my own money to  
15 purchase -- to essentially pay an invoice, it's  
16 no longer reporting eligible, so that eliminates  
17 some of that noise.

18 But I think it would be difficult to find --  
19 I mean, certainly I think we all kind of agree  
20 that the \$10,000 threshold is not as relative to  
21 crypto, especially with the current price of  
22 bitcoin, but I think, like, a more sensible  
23 guideline for aggregating multiple suspicious  
24 transactions together would be are they linked.  
25 So, you know, if there's tons of \$500

1 transactions that fit the typology of smurfing,  
2 I would be much more likely to report that  
3 regardless of any aggregate dollar amount on  
4 that activity.

5 Q Ms. Cieslik, the same question. Would a higher  
6 aggregate amount within a certain temporal  
7 framework be more appropriate to reduce the  
8 noise-to-signal ratio?

9 A (CC) I do feel like the \$10,000 number needs to  
10 be re-examined, and potentially not even just  
11 for crypto but for cash and for wires. Now this  
12 application is being put on the large virtual  
13 currency transfer, this 10,000. And I'm not  
14 privy to -- and potentially there is behind the  
15 scenes, and I don't -- and I'm not aware of it,  
16 any real analysis on the value of that dollar,  
17 that particular floor, I guess. And certainly,  
18 you know, in the current industry that I work,  
19 you know, 10,000 isn't even a number we would  
20 get to in a 24-hour time period, you know, so  
21 that it would eliminate that from here. But it  
22 can vary greatly with the price of bitcoin.

23 I think -- all that to say is that I think  
24 that magic number of 10 ,000 is quite old at  
25 this point and that there needs to be some

1                   reconsideration of that for all kinds of  
2                   threshold -- for all activities, cash wire and  
3                   certainly for virtual currency, I'm not sure  
4                   that it is as relevant.

5           Q       Do you consider that there is a potential for  
6                   conflict of interest or moral hazard when  
7                   private business is recruited to conduct what is  
8                   essentially investigative activities on the part  
9                   of the government?

10          A       (CC) Yes. I have been noted to be of that  
11                   opinion. Again, I've worked in this industry  
12                   now almost 20 years. I originally -- before I  
13                   ever worked for the federal government I was a  
14                   parole officer, so I have some -- you know, one  
15                   foot halfway kind of into that. What I have  
16                   found is my knowledge has matured and my work  
17                   experience, you know, has spread out over a  
18                   larger sort of group of financial entities.

19                   I do find that the sort of ever pushing of  
20                   police-type responsibilities onto private  
21                   business -- I mean, of course it comes with an  
22                   inherent challenge of putting private business  
23                   in these roles. And I think -- if I can add to  
24                   that too is that we don't have the same tools  
25                   available to us that a law enforcement, you

1 know, force would have.

2 Now, Peter may disagree with me on this.

3 I'm not sure. But the major tools at a  
4 financial entity investigator's disposal is  
5 Google, potentially, you know, a name listing  
6 service -- World-Check is a commonly known one  
7 -- and, you know, as we've seen from CipherTrace  
8 and Chainalysis some risk-based software.

9 I think Ryan had mentioned -- you know, he  
10 talked about source of funds declarations.  
11 There is sort of an ever-growing list you can  
12 ask for this and you can ask for that. And I  
13 see it sort of breaching into a privacy  
14 threshold, you know, how much information you  
15 are being asked to ask of people to contribute  
16 to this has put private businesses again, I  
17 think, in some awkward positions, conflict of  
18 interest as well as competitively.

19 If someone asks me for my tax return, I  
20 would not be willing to provide that. I don't  
21 like to ask other people for their tax returns  
22 as part of my role. So you know, I prefer to --  
23 you know, the line is a line to tow as to what  
24 is appropriate and what is not. And if your  
25 competitor down the street is doing no such

1 asking -- and, again, in efforts to comply with  
2 money laundering requirements you have to do  
3 some kind of asking, but the -- you know, so  
4 there is a uneven playing field that I think  
5 evolves because of that. And I do have concerns  
6 about the position it puts businesses in and  
7 even compliance officers in in terms of even  
8 safety and security and digging into people's  
9 activity without protections of law enforcement.

10 Q Mr. Mueller, I see you nodding. Would you have  
11 an addition aside from --

12 A (RM) I mean, I think that I tend to agree with  
13 Charlene on a lot of things. The only thing  
14 that was really jumping in my mind as we're  
15 talking about, you know, the line between  
16 privacy and validation of sources of funds and  
17 everything, for example, we'll accept a bank  
18 statement as proof of address with the account  
19 activity redacted and the balance redacted. So  
20 perhaps the customer doesn't want us to know  
21 where they shop and how much money they have.  
22 So I get that as an individual with a bank  
23 statement. But as a compliance officer I love  
24 to receive the unredacted one because it can  
25 illustrate to me if somebody's conducting an

1 unregistered MSB and trying to be an agent of my  
2 services, or if they are a business with a high  
3 incidence of personal purchases on their  
4 corporate account, this may put them in a  
5 high-risk bucket.

6 So I think I was just kind of -- you know, I  
7 was kind of vibing on those kind of -- those  
8 document kind of red flags while I was listening  
9 to what she was saying.

10 Q Mr. Warrack, do you have a view on that subject?

11 A (PW) Can you repeat the question. As I  
12 understand it, I believe it was around the  
13 private sector conducting investigations on  
14 behalf of the government.

15 Q Yes. And in particular whether there is the  
16 potential for conflict of interest or a moral  
17 hazard in the government essentially recruiting  
18 on a non-voluntary basis private business to  
19 conduct investigative activities.

20 A (PW) I think -- sometimes I think the expertise  
21 lies in the private sector as opposed to the  
22 public sector.

23 Q That's --

24 A (PW) If I could give you an -- sorry, go ahead.

25 Q So, Mr. Warrack, you're the Chief Compliance

1                   Officer for Bitfinex; is that right?

2           A       (PW) That's correct. They're a client.

3           Q       You're listed as the Chief Compliance Officer?

4           A       (PW) That's correct.

5           Q       All right. And that's an officer's role?

6           A       (PW) Yes.

7           Q       You're based in Canada; is that right? You are  
8                   personally resident in Canada?

9           A       (PW) I live in Canada. Yeah, that's correct.

10          Q       Now, I looked on the FINTRAC searchable index  
11                   for registered entities and I was able to find  
12                   Coinsquare and Netcoins, but I didn't find  
13                   Bitfinex. Is Bitfinex registered as a reporting  
14                   entity with FINTRAC?

15          A       (PW) No, Bitfinex isn't registered in Canada.  
16                   Bitfinex is incorporated in the British Virgin  
17                   Islands.

18          Q       All right. But you reside in Canada and you're  
19                   working for Bitfinex, are you?

20          A       (PW) I don't work for Bitfinex. I am a -- I  
21                   have a contract with Bitfinex to supply services  
22                   to the company.

23          Q       And you were hired in May of 2019; is that  
24                   right?

25          A       (PW) 2018.

1 Q 2018. And was that one month after Bitfinex ran  
2 into some regulatory trouble?

3 A (PW) I can't comment on that.

4 Q I had understood that Bitfinex ran into some  
5 regulatory trouble in the United States; is that  
6 true?

7 A (PW) And -- I wouldn't categorize it as trouble.  
8 Any regulatory interest is still ongoing. So I  
9 can't -- I really can't comment on that.

10 Q All right. And Bitfinex does business in  
11 Canada; right?

12 A (PW) Not -- no, Bitfinex does not do business in  
13 Canada.

14 Q It doesn't have Canadian customers?

15 A (PW) Bitfinex may have Canadian customers but it  
16 does not do business as a company in Canada.

17 Q Oh, but it has Canadian customers; is that  
18 right?

19 A (PW) Commissioner, I am really not comfortable  
20 answering questions on behalf of Bitfinex. I'm  
21 testifying here in a private capacity.

22 THE COMMISSIONER: All right.

23 MR. GRATL:

24 Q I just wonder because we were discussing earlier  
25 about whether FINTRAC has the resources to



1                   engage in enforcement of activities. And do you  
2                   know whether FINTRAC has the capacity to monitor  
3                   organizations like Bitfinex to ensure that they  
4                   are registering when they're required to?

5           A       (PW) I don't have that information.

6           Q       Your website is facing Canada; is that right?  
7                   The Bitfinex website faces Canada?

8           A       (PW) I'm not sure I understand what you mean by  
9                   "facing Canada."

10          Q       Well, for IP addresses that are based in Canada,  
11                   those IP addresses can access Bitfinex's  
12                   websites and services, can't they?

13          MS. CHEWKA: Mr. Commissioner, I'm loath to object to  
14                   my friend here on his cross-examination, I'm not  
15                   sure if it's my role, but the witness has  
16                   objected to answering questions about his  
17                   business and he's here in a personal capacity.  
18                   I don't think that you were able to give an  
19                   opportunity to rule on that. I am just raising  
20                   that concern as this line of questioning  
21                   persists.

22          THE COMMISSIONER: That's true. I thought that  
23                   Mr. Gratl had moved off that question into  
24                   another question. But it seems to me,  
25                   Mr. Gratl, you're getting into an area that

1 falls outside the scope of what this witness was  
2 called to testify about. I -- and he's  
3 expressed some reservations about talking in his  
4 capacity as a contractor with the firm Bitfinex  
5 as opposed to as an expert witness who has been  
6 describing his knowledge and understanding of  
7 the regulation of the virtual currency process  
8 in Canada. What do you say to that?

9 MR. GRATL: Well, I would say, Mr. Commissioner, that  
10 the area in which the witness has been  
11 testifying is in respect of the regulatory  
12 compliance and specifically with the PCMLTFA and  
13 about the capacity of FINTRAC to monitor and  
14 enforce compliance with that act, and the  
15 witness has personal knowledge of compliance  
16 with that act as a result of his, I would say,  
17 employment with Bitfinex, and so it would appear  
18 to be within the area that he's been called to  
19 testify. To my knowledge, if the witness is  
20 taking the fifth that is a doctrine of US law.

21 THE COMMISSIONER: I don't think it's a question of  
22 him taking the fifth. I think he's expressed  
23 some concern about saying things in an official  
24 capacity for an organization which he's not  
25 really authorized to bind with his testimony.

1                   But I'll ask Ms. Patel what her position is  
2                   on this.

3           MS. PATEL: I agree with what you just said,  
4           Mr. Commissioner. Mr. Warrack came here to give  
5           evidence in his capacity as an individual who  
6           has knowledge -- extensive knowledge of the  
7           regulatory space, really. And he expressly is  
8           not here as a representative of Bitfinex.

9                   Correct, Mr. Gratl, Mr. Warrack's been very  
10           clear that he's not an employee of Bitfinex.  
11           He -- that it's a contract. Just to correct  
12           something you've said there. And he should not  
13           be expected to be here giving evidence on behalf  
14           of any one of his clients.

15           MR. GRATL: Well, I'm not asking for him to give  
16           evidence on behalf of his client; I'm just  
17           asking for him to give evidence in his  
18           knowledge. Not on behalf.

19           MS. PATEL: If I might, Mr. Commissioner, I think  
20           that Mr. Gratl has asked Mr. Warrack what his  
21           knowledge is of FINTRAC's ability in terms of  
22           its capacity and resources to ensure that  
23           entities are registering where they ought to be,  
24           and Mr. Warrack has given his answer. So I'd  
25           say that he's responded to the question that can

1 be asked.

2 THE COMMISSIONER: Okay. Yeah, I think it's time to  
3 move on.

4 MR. GRATL: Thank you, Mr. Commissioner.

5 **EXAMINATION BY MR. GRATL (continuing):**

6 Q Mr. Warrack, you're -- you have an ongoing  
7 working relationship with the RCMP?

8 A (PW) That's correct.

9 Q All right. And is that in your capacity as  
10 somebody who's working as an employee or a  
11 consultant of Bitfinex or is that in your  
12 personal capacity?

13 A (PW) That is in my personal capacity.

14 Q All right. And does that use information  
15 derived from your employment or association with  
16 Bitfinex?

17 A (PW) No, there's no company information or  
18 personal information shared with the RCMP. It's  
19 more around -- not just with the RCMP, but with  
20 the OPP, for instance, in terms of best practice  
21 in the space of understanding cryptocurrencies,  
22 how they work, et cetera.

23 Q All right. And is there similarly a  
24 relationship with FINTRAC?

25 A (PW) No. I do engage occasionally with FINTRAC.

1                   Actually since I left the Bank of Montreal in  
2                   2018 I'm no longer a member of any of the  
3                   working groups or anything like that. I do try  
4                   and support FINTRAC where I can in terms of best  
5                   practice. Shared best practice.

6                   Q     There's a 20 percent holdings threshold that  
7                   operates as a barrier to registering with  
8                   FINTRAC. Are you familiar with that,  
9                   Mr. Warrack?

10                  A     (PW) In relation to what? You mean as a VASP or  
11                  as a cryptocurrency exchange?

12                  Q     As a money service business.

13                  A     (PW) Yes. Correct.

14                  Q     Does that have any effect on  
15                  cryptocurrency-related businesses, to your  
16                  knowledge?

17                  A     (PW) Not to my knowledge. I don't know. I  
18                  don't know the answer to that question.

19                  MR. GRATL: Those are my questions. Thank you,  
20                  Mr. Commissioner.

21                  THE COMMISSIONER: All right. Thank you, Mr. Gratl.  
22                                Anything arising from that, Ms. Magonet?

23                  MS. MAGONET: No, Mr. Commissioner.

24                  THE COMMISSIONER: Thank you. Ms. Shelley?

25                  MS. SHELLEY: No, Mr. Commissioner.

1 THE COMMISSIONER: Ms. Chewka?

2 MS. CHEWKA: No, Mr. Commissioner.

3 THE COMMISSIONER: And, Ms. Patel?

4 MS. PATEL: Thank you. No, Mr. Commissioner.

5 THE COMMISSIONER: All right. Thank you. All right.

6 I would like to thank the members of the panel  
7 for their participation, and they are now all  
8 excused from further testimony.

9 And I take it, Mr. Martland, that we have no  
10 witnesses for tomorrow; is that correct?

11 MR. MARTLAND: Yes, Mr. Commissioner. It hasn't  
12 happened today but we actually have a day where  
13 we're not leading evidence. We're resuming our  
14 hearings on Friday morning, 9:30.

15 THE COMMISSIONER: All right. Thank you. We will  
16 adjourn until Friday at 9:30.

17 **(WITNESSES EXCUSED)**

18 THE REGISTRAR: The hearing is stood down until  
19 November 27, 2020, at 9:30 a.m. Thank you.

20 **(PROCEEDINGS ADJOURNED AT 1:37 P.M. TO NOVEMBER 27, 2020)**

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