PROFIT-AND-LOSS LAUNDERING IN INTERNATIONAL MARKETS: MIRROR TRADING AND THE CROSS-BROKER BLIND SPOT IN FINANCIAL CRIME LAW

A Doctrinal and Institutional Analysis of Engineered Market Outcomes, Proceeds Derivation, and Cross-System Evidence

by

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Word Count: 9,000 words (including footnotes)

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July 28, 2026

ABSTRACT

This paper asks whether Canadian anti-money-laundering and financial crime law can classify, detect, and prove laundering through prearranged market transactions that deliberately allocate a loss to one brokerage account and an apparent gain to another. It defines profit-and-loss laundering as a demonstrable market-value transfer in which criminal property funds an intended loss in one account and a substantially corresponding credit in another. Unlike conventional mirror trading, it depends on deliberate inequality between the two sides.

The thesis is asymmetrical. On sufficiently proved facts, the loss-side case is comparatively strong because identified proceeds are used or otherwise dealt with to acquire a position and discharge a deliberately inflated obligation. The gain-side proceeds nexus is legally plausible but unresolved: economic correspondence alone does not establish legal derivation of the credited property from the criminally funded transaction. Central-counterparty novation replaces the original trade with separate clearing obligations, defeating a bilateral-payment account and complicating proprietary tracing without necessarily preserving or severing indirect derivation.

The methodology combines statutory and doctrinal analysis, an inflated option-premium model, and institutional mapping of market, intelligence, and enforcement actors. It identifies a contingent cross-system synthesis gap and contributes the profit-and-loss laundering concept and a network-sensitive framework based on source, design, continuity, culpability, and synthesis, while preserving the distinctions among economic correspondence, transactional causation, proprietary tracing, and legal derivation.

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~ PART I — INTRODUCTION ~

A. Context: Laundering Through Market Outcomes

Money laundering is commonly understood through visible movements of property: deposits, transfers, layered ownership, cross-border remittances, and eventual integration into the lawful economy. Financial markets create a different possibility. A coordinated transaction may be designed so that one brokerage account absorbs a deliberate loss while another receives a substantially corresponding gain, allowing the recipient to characterize the resulting credit as trading income rather than as payment from a criminal source. Official materials document money passes, compensation trading, mirror transactions, distorted pricing, and repeated one-directional outcomes. The problem is therefore not whether markets can transfer value, but how Canadian law should characterize and prove a transaction whose laundering function lies in the engineered allocation of market outcomes.

This paper uses "profit-and-loss laundering" as an analytical label for that narrower mechanism. It does not equate the concept with conventional mirror trading. Conventional mirror trading generally uses substantially equivalent paired transactions to convert currency or move value across jurisdictions; profit-and-loss laundering depends on deliberate inequality between a loss-side account and a gain-side account.

B. The Missing Legal Question

The relevant bodies of law and practice remain largely separated. Proceeds doctrine asks whether identified property was obtained or derived from a designated offence. Securities law

addresses artificial pricing, matched orders, manipulation, and supervision. AML regulation governs customer due diligence, transaction monitoring, suspicious reporting, and financial intelligence. Clearing rules determine how trades are novated, netted, and settled. The neglected question is how these domains interact when criminal property finances a prearranged trade that creates an apparently legitimate credit elsewhere.

The institutional problem is not complete regulatory invisibility. Dealers, CIRO, CDCC, FINTRAC, police, and foreign authorities may hold information or possess sharing and investigative powers. The difficulty is contingent and transaction-specific: customer, funding, order, execution, settlement, intelligence, and predicate-offence evidence may be distributed across systems using different identifiers, mandates, thresholds, and evidentiary forms. The title's "cross-broker blind spot" is therefore shorthand for a cross-system synthesis gap.

C. Research Questions and Thesis

The central question is whether Canadian AML and financial crime law can classify, detect, and prove laundering conducted through a prearranged market transaction that deliberately allocates a loss to one brokerage account and an apparent gain to another. This inquiry asks when coordinated trading constitutes a demonstrable value transfer rather than mere economic correspondence; whether the gain-side credit can be property, a benefit, or an advantage derived directly or indirectly from a designated offence; how s 462.31 applies separately to loss-side and gain-side conduct; how the mechanism differs from conventional mirror trading and adjacent practices; and what bounded response can connect the required evidence without expanding criminal liability indiscriminately.

The thesis is asymmetrical. On sufficiently proved facts, Canadian law is comparatively well equipped to address the loss side where actual proceeds are used or otherwise dealt with to acquire a position and discharge a deliberately inflated obligation. The gain-side theory is legally plausible but unresolved: the Crown must prove that the identified credit was created by the criminally funded transaction, not merely that one account lost while another gained, that the trading was unusual, or that the participants acted culpably. This doctrinal uncertainty is compounded by a contingent cross-system synthesis gap. The paper proposes a network-sensitive analytical framework for organizing law and distributed evidence.

D. Methodology and Scope

The analysis combines close interpretation of ss 2, 462.3, and 462.31 of the *Criminal Code* with transactional analysis of a single inflated option-premium model. Foreign regulatory, enforcement, and typology materials establish market mechanics but do not determine Canadian liability. Institutional analysis maps the roles of dealers, CIRO, CDCC, FINTRAC, police, and foreign authorities.

The paper does not estimate prevalence, survey every financial product, design surveillance technology, conduct a comparative or privacy study, or treat every coordinated, irrational, or loss-making trade as laundering. Its original contribution is integrative: it defines profit-and-loss laundering as a prearranged and demonstrable market-value transfer; separates economic correspondence, transactional causation, proprietary tracing, and legal derivation; tests the uncertain gain-side nexus under Canadian law; and develops a bounded framework connecting

source, design, continuity, culpability, and synthesis while preserving lawful speculation, hedging, arbitrage, and market-making.

E. Structure of the Paper

Part II defines and bounds the concept, explains the transaction model, and distinguishes conventional mirror trading and adjacent practices. Part III reconstructs the Canadian doctrinal architecture governing proceeds, dealing, purpose, and fault. Part IV applies that doctrine separately to the comparatively strong loss-side case and the uncertain gain-side derivation question. Part V maps the distributed evidentiary record and develops the cross-system synthesis gap. Part VI presents the network-sensitive analytical framework while preserving the distinction between regulatory suspicion, financial intelligence, investigative leads, and admissible criminal proof. Part VII addresses counterarguments, limits, and targeted implications. Part VIII concludes.

~ PART II — CONCEPTUAL AND TRANSACTIONAL FOUNDATION ~

From Opposing Positions to Demonstrable Value Transfer

F. Defining Profit-and-Loss Laundering

"Profit-and-loss laundering" is this paper's proposed analytical label. It is not an established statutory or regulatory category in the authorities examined, and it does not displace the statutory definitions or offence elements in ss 462.3 and 462.31 of the *Criminal Code*.[1] It describes a prearranged market transaction or connected sequence in which pricing, position structure, execution, or settlement causes one account to bear an intended loss while another receives a substantially corresponding gain, creating an apparently legitimate explanation for the recipient's enrichment.

The strong form has six analytical criteria: prearrangement; actual criminal property for a completed offence, or property believed to be criminally derived for attempt liability; demonstrable economic correspondence; deliberate allocation rather than incidental market movement; a facially legitimate trading explanation; and a concealment or conversion purpose. These criteria define the conduct examined, not the legal elements of s 462.31. Regulatory materials document money passes, compensation trades, distorted pricing, and

[1] *Criminal Code*, RSC 1985, c C-46, ss 462.3, 462.31.

one-directional outcomes; scholarship provides context, but neither determines whether a gain is proceeds under Canadian law.[2]

G. The Illustrative Strong-Form Option-Premium Model

The illustrative transaction is not a documented Canadian prosecution. Account L at Broker Alpha holds CA$5 million in proven fraud proceeds; Account P at Broker Beta is controlled by a coordinating recipient. The parties prearrange thinly traded options at a premium substantially above genuine economic value: Account L purchases and Account P writes them. The options later expire worthless or are closed at genuine value, leaving Account L with the designed loss and Account P with an apparent trading gain.

The model draws by analogy on foreign materials involving illiquid instruments, off-market pricing, matched orders, and corresponding gains and losses, and on scholarship examining laundering through derivatives.[3] Evidence of design includes communications fixing the instrument, quantity, price, and timing; matching execution data; concealed

[2] United Kingdom, Financial Conduct Authority, *Assessing and Reducing the Risk of Money Laundering Through the Markets* (London: Financial Conduct Authority, January 2025) at 7–12 [FCA Report]; *US Commodity Futures Trading Commission v Supama International DMCC et al*, No 07-cv-2770 (SDNY), Complaint (5 April 2007) at paras 1–3, 12–26 [Supama Complaint]; Michael Levi & Peter Reuter, "Money Laundering" (2006) 34:1 *Crime & Justice* 289; Peter Reuter & Edwin M Truman, *Chasing Dirty Money: The Fight Against Money Laundering* (Washington, DC: Institute for International Economics, 2004); Brigitte Unger & Daan van der Linde, eds, *Research Handbook on Money Laundering* (Cheltenham, UK: Edward Elgar, 2013).

[3] *FCA Report*, supra note 2 at 8, 10–12; *Supama Complaint*, supra note 2 at paras 12–26; *US Commodity Futures Trading Commission v Matthew J Marcus, Tech Power Inc, John D Briner and MetroWest Law Corp*, No 1:15-cv-03307 (ND Ill), Consent Order (30 June 2016) at paras 28–30 [*Marcus Consent Order*]; *US Commodity Futures Trading Commission v Kuen Cheol Song*, No 10 Civ 2931 (NRB) (SDNY), Consent Order (11 April 2011) at paras 22–24, 30–36 [*Song Consent Order*]; John Biggins, "Dirty Complexity: Money Laundering Through Derivatives" in Brigitte Unger & Daan van der Linde, eds, *Research Handbook on Money Laundering* (Cheltenham, UK: Edward Elgar, 2013) 321.

coordination; repeated one-directional outcomes; and no meaningful market exposure or commercial rationale.

The CFTC materials are market-mechanics analogues, not Canadian laundering adjudications, and the consent orders are settlements rather than contested trials. In *Re Clarus Securities Inc*, an accepted CIRO settlement recorded 22 prearranged transactions, mostly involving related accounts at three other Participants, and noted that some linking information was not then visible to the dealer. *Clarus* concerned supervision and potentially manipulative activity, not laundering or proven criminal-value transfer.[4]

Independent long and short positions differ: although economically symmetrical, their gains may arise from market movement or unrelated counterparties. Economic correspondence may evidence design but does not prove value transfer or legal derivation.

H. Clearing, Novation, and Settlement

The model does not assume identifiable funds pass directly from Account L to Account P. Under CDCC's options rules, acceptance novates the original trade into separate transactions between CDCC and the relevant clearing members. The purchasing clearing member owes the premium to CDCC, which owes the corresponding premium to the writing clearing member; each client looks only to its own clearing member. The rules identify the accepted

[4] *Re Clarus Securities Inc*, 2024 CIRO 90 at paras 19–22, 28 [*Clarus*].

trade, clearing members, option series, agreed premium, and number of contracts, but do not state that customer funds remain segregated or earmarked through the clearing chain.[5]

A futures model is less precise because CDCC records incoming positions, prior-day trades, position changes, closing positions, and each clearing-member account's net dollar gain or loss, while permitting netting.[6] An intentionally distorted option premium is the stronger illustration because the agreed premium is fixed and recorded upon acceptance.

Novation defeats a bilateral-payment description and may complicate proprietary tracing because obligations pass through the central counterparty and may be netted. Yet the purchasing-side obligation and writing-side entitlement arise from the same accepted trade and premium. That continuity may support, but does not establish, indirect derivation. No reported Canadian appellate decision located as of 28 July 2026 directly resolves whether a gain-side brokerage-account credit reflecting the writing-side premium entitlement from a centrally cleared, coordinated options or futures transaction is property, a benefit, or an advantage indirectly derived from loss-side criminal property.[7] Economic correspondence and legal derivation therefore remain distinct.

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[5] Canadian Derivatives Clearing Corporation, *Rules of the Canadian Derivatives Clearing Corporation*, Part B, rr B-104–B-108 (official consolidation accessed 26 July 2026) [CDCC Rules].

[6] *Ibid*, rr C-103–C-107.

[7] No reported Canadian appellate decision addressing gain-side derivation through a centrally cleared, coordinated options or futures transaction was located as of 28 July 2026.

I. Conventional Mirror Trading as an Adjacent Typology

Conventional mirror trading shows how securities transactions may convert currency or move value across jurisdictions without ordinary remittance. In the Deutsche Bank matter, connected customers simultaneously purchased and sold equal quantities of the same Russian securities through Moscow and London, converting roubles into US dollars and transferring value out of Russia.[8]

Conventional mirror trading is adjacent to, not equivalent to, the proposed concept: it uses substantially equivalent paired trades, whereas profit-and-loss laundering requires deliberate inequality—an intended loss and substantially corresponding gain. The mirror-trading materials do not establish indirect derivation under Canadian law.

J. Boundaries and Limiting Distinctions

The concept must also be distinguished from neighbouring practices. Wash trading generally involves fictitious activity or no genuine change in beneficial or economic ownership. Matched or prearranged orders describe an execution method and may be lawful, manipulative, or suspicious depending on purpose and effect.[9] Market manipulation addresses fraud, misleading trading activity, and artificial prices; it does not independently establish criminal provenance or a laundering purpose.[10] Securities markets may also generate illicit

[8] UK, Financial Conduct Authority, *Final Notice: Deutsche Bank AG* (30 January 2017) at paras 2.4–2.10, 4.16–4.25; Financial Action Task Force, *Guidance for a Risk-Based Approach for the Securities Sector* (Paris: FATF, 2018) at 55.
[9] Canadian Investment Regulatory Organization, *Universal Market Integrity Rules*, r 2.2 and Policy 2.2 [UMIR].
[10] *Securities Act*, RSO 1990, c S.5, s 126.1.

proceeds through manipulation or fraud, unlike using market transactions to launder proceeds generated elsewhere.[11]

Trade-based money laundering provides a limited functional analogy by disguising criminal proceeds and moving value through misrepresented price, quantity, quality, or invoicing.[12] Its medium is goods, services, and trade documentation; the proposed concept concerns securities, derivatives, premiums, and settlement outcomes. Ordinary hedging, arbitrage, speculation, and market-making remain outside the concept where they reflect genuine commercial purposes and real market risk.

Prearrangement, matching, unusual pricing, common control, or repeated losses are indicators, not legal conclusions. The concept requires demonstrable value-allocation design; criminal liability separately requires proof of every statutory element. Even strong coordination evidence cannot replace proof that gain-side property was derived directly or indirectly from property objectively proven to be criminally derived. That characterization remains uncertain under Canadian law.

[11] Financial Action Task Force, *Money Laundering and Terrorist Financing in the Securities Sector* (Paris: FATF/OECD, 2009) at 5, 58–59.
[12] Financial Action Task Force, *Trade Based Money Laundering* (Paris: FATF/OECD, 23 June 2006) at 3–5; John S Zdanowicz, "International Trade Mispricing: Trade-Based Money Laundering and Tax Evasion" in Brigitte Unger & Daan van der Linde, eds, *Research Handbook on Money Laundering* (Cheltenham, UK: Edward Elgar, 2013) 253.

~ PART III — CANADIAN DOCTRINAL ARCHITECTURE ~

Proceeds, Dealing, Purpose, and Fault under s 462.31

K. Statutory Structure and Analytical Separation of the Elements

Section 462.31 does not create a general offence of suspicious financial conduct. For a completed offence, the Crown must prove four distinct matters: all or part of the property or its proceeds was objectively obtained or derived, directly or indirectly, from a designated offence; the accused performed one of the statutory dealings; the accused intended to conceal or convert the property or proceeds; and the accused knew or believed that, or was reckless as to whether, the property or proceeds was criminally derived.[13] Each element must be proved with respect to particular property and the conduct and state of mind of the particular accused. Neither the proposed concept of profit-and-loss laundering nor adjacent mirror-trading typologies alters that structure.

Prearrangement may prove design without provenance. A markedly unusual or sector-inconsistent dealing may support the permissive inference in s 462.31(2.3), subject to s 462.31(2.4), but does not establish objective derivation from a designated offence. Property may also retain criminal provenance where a recipient lacks the fault required for conviction. Derivation, conduct, purpose, and fault cannot be collapsed into suspiciousness.

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[13] *Criminal Code*, supra note 1, ss 2, 462.3(1), 462.31(1); *R v Barna*, 2018 ONCA 1034 at paras 12–16, 371 CCC (3d) 217 [*Barna*]; *United States of America v Dynar*, [1997] 2 SCR 462 at paras 41, 69 [*Dynar*]; Peter Alldridge, *Money Laundering Law: Forfeiture, Confiscation, Civil Recovery, Criminal Laundering and Taxation of the Proceeds of Crime* (Oxford: Hart Publishing, 2003); M Michelle Gallant, *Money Laundering and the Proceeds of Crime: Economic Crime and Civil Remedies* (Cheltenham, UK: Edward Elgar, 2005).

L. Property, Benefits, Advantages, and Indirect Derivation

Section 2 defines "property" broadly to include real and personal property, instruments evidencing rights to property or rights to recover or receive money or goods, property into or for which other property has been converted or exchanged, and anything acquired through that conversion or exchange. Section 462.3(1) defines "proceeds of crime" as any property, benefit, or advantage, within or outside Canada, obtained or derived directly or indirectly as a result of a designated offence. In the fine-in-lieu context, *Vallières* held that the relevant measure is the value of the property constituting proceeds that passed through the offender's possession or control, not the offender's personal net commercial profit. *Barna* treated a bank draft obtained through a fraudulent-cheque transaction as property derived from the fraud.[14]

In the forfeiture context, *Trac* requires asset-specific assessment, permits circumstantial proof, and rejects an all-or-nothing approach by allowing pro rata attribution to the part of an account or asset shown to be proceeds. In the fine-in-lieu context, *Lavigne* confirms that transfer, dissipation, diminished value, or commingling does not prevent the statutory remedy once the property has been proven to be proceeds.[15] *Chatterjee*'s civil-forfeiture example illustrates that the same criminally derived money does not necessarily lose its character merely because it is given to an innocent charity. *Rafilovich* is narrower: it treats judicially authorized release of restrained funds for legal expenses as a special remedial setting, not as a general rule that a facially lawful payment either cleanses or taints the recipient's property.

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[14] *Criminal Code*, supra note 1, ss 2, 462.3(1); *R v Vallières*, 2022 SCC 10 at paras 24–31, [2022] 1 SCR 144 [*Vallières*]; *Barna*, supra note 13 at paras 12–14.

[15] *R v Trac*, 2013 ONCA 246 at paras 79–83, 101–103, 305 OAC 108 [*Trac*]; *R v Lavigne*, 2006 SCC 10 at paras 27–35, [2006] 1 SCR 392 [*Lavigne*].

Dieckmann supports a functional inquiry into possession or control notwithstanding corporate or account interposition.[16]

The statutory text, *Vallières*, and *Barna* support the possibility that a newly created financial right may be obtained through conversion or exchange, or indirectly derived; the remaining authorities show only that transfer, commingling, or interposition is not automatically fatal in their respective contexts. "Substituted proceeds" is therefore only analytical shorthand for those statutory routes, not an express statutory category. None of the authorities supplies a settled Canadian causation test for a credit created through brokerage intermediation, central-counterparty novation, and net settlement. The gain-side argument remains plausible only where evidence connects the particular credit to the criminally funded transaction; economic correspondence alone is insufficient.

M. Prohibited Dealing and Conversion

Section 462.31(1) reaches a person who uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposes of, or otherwise deals with, in any manner and by any means, property or its proceeds. In a market transaction, funding an account, directing an order, paying a premium, settling an obligation, closing a position, or withdrawing a credit may fall within one or more of those verbs, depending on the property

[16] *Chatterjee v Ontario (Attorney General)*, 2009 SCC 19 at paras 45–46, [2009] 1 SCR 624 [*Chatterjee*]; *R v Rafilovich*, 2019 SCC 51 at para 53, [2019] 3 SCR 838 [*Rafilovich*]; *R v Dieckmann and Salmon*, 2017 ONCA 575 at para 88, 355 CCC (3d) 216 [*Dieckmann*].

involved and the act performed by the particular accused. The prosecution must identify that act rather than treating all participants as having transferred or converted the same property.

Daoust is controlling on that discipline. The Supreme Court refused to attribute a transfer of possession to purchasers when the sellers performed the transfer, and held that "convert" carries its ordinary transformational meaning and need not itself be concealed. *Tejani* treated an exchange of Canadian currency for United States currency as capable of constituting conversion. *Barna* held that collecting and attempting to cash a fraud-derived draft constituted dealing and attempted conversion.[17] Applied here, the loss-side controller may use or convert the original proceeds. A coordinating intermediary may itself direct or perform a statutory dealing, but facilitation should not be described as direct dealing without identifying the relevant act. The gain-side recipient may deal with a resulting credit only if the credit's derivation is first established. A broker employee does not incur liability merely by processing a trade. Formal recording does not immunize a conversion, but an ordinary trading loss does not prove one.

N. Intent to Conceal or Convert and Provenance-Related Fault

The purpose and fault requirements remain separate from the trading mechanics. The accused must intend to conceal or convert the property, not merely to make money, avoid a loss, or execute a manipulative transaction. The Crown must also prove that the accused knew, believed, or was reckless as to whether the property was criminally derived. Wilful blindness

[17] *R v Daoust*, 2004 SCC 6 at paras 42–58, [2004] 1 SCR 217 [*Daoust*]; *R v Tejani* (1999), 138 CCC (3d) 366 at paras 26–28, 123 OAC 329 (Ont CA) [*Tejani*]; *Barna*, supra note 13 at paras 13–16.

is not a fourth statutory state of mind. Under the general criminal law, it imputes knowledge where the accused recognizes the need for inquiry and deliberately declines to inquire because they do not want to know the truth; it remains distinct from recklessness.[18]

The 2018 Department of Finance discussion paper framed enforcement problem in terms of professional launderers who deliberately distance themselves from criminal organizations and predicate offences, making knowledge or belief difficult to prove. Parliament added recklessness to s 462.31(1) in 2019.[19] The amendment broadened the provenance-related fault alternatives but did not relax the requirement that the property itself be objectively crime-derived. Awareness that orders are prearranged, uneconomic, or manipulative may illuminate the arrangement without proving awareness of criminal provenance. Distributed evidence does not alter the offence's accused-specific requirements.

O. Markedly Unusual Dealings and the Limits of Statutory Inference

For prosecutions under s 462.31(1) or (2.1) in which the accused is not also charged with the designated offence, ss 462.31(2.2)–(2.4) modify proof of provenance-related fault. Section 462.31(2.2) makes it unnecessary to prove the accused's knowledge, belief, or recklessness as to the specific nature of the designated offence. Section 462.31(2.3) permits—but does not require—the court to infer the knowledge, belief, or recklessness referred to in s 462.31(1)

[18] *Criminal Code*, supra note 1, s 462.31(1); *Barna*, supra note 13 at paras 12, 15–16; *R v Briscoe*, 2010 SCC 13 at paras 21–24, [2010] 1 SCR 411 [*Briscoe*].
[19] *Budget Implementation Act, 2019, No 1*, SC 2019, c 29, s 103; Canada, Department of Finance, *Reviewing Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime* (Ottawa: Department of Finance, 2018) at 35; Canada, Senate, Standing Committee on Legal and Constitutional Affairs, *Evidence*, 42-1, No 63 (29 May 2019) at 63:84–63:86 (Hon David Lametti).

where, given the circumstances, the manner of dealing is markedly unusual or the dealings are inconsistent with lawful activities typical of the sector, including business activities. Section 462.31(2.4) provides that both provisions do not apply where the accused is also charged with the designated offence.[20] Synchronized orders in an illiquid instrument, an irrational premium, concealed account relationships, and repeated one-directional outcomes may provide relevant context, but the statute does not deem any such feature sufficient.

The inference is permissive and confined to provenance-related fault. It does not prove that the property was objectively proceeds, that a gain-side credit was derived from loss-side criminal property, that the accused intended concealment or conversion, or that every participant understood the arrangement.[21] Because the statutory comparator is lawful activity "typical of the sector," reliance on that branch would require an evidentiary foundation concerning sector practice and consideration of legitimate strategies; the statute itself supplies no list of presumptively unusual derivatives transactions.

The inference may strengthen proof of provenance-related fault once a transaction-specific proceeds nexus is established; it cannot transform economic correspondence into legal derivation.[22]

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[20] *Criminal Code*, supra note 1, ss 462.31(2.2)–(2.4); *Fall Economic Statement Implementation Act, 2023*, SC 2024, c 15, s 308; *Budget Implementation Act, 2024, No 1*, SC 2024, c 17, s 378; *FCA Report*, supra note 2 at 8, 10–12; *Clarus*, supra note 4 at paras 19–22.
[21] *Criminal Code*, supra note 1, ss 462.31(1), (2.3); *Dynar*, supra note 13 at paras 41, 69; *Barna*, supra note 13 at para 12; *Daoust*, supra note 17 at para 56.
[22] See Part II.H, above, and note 7.

~ PART IV — LOSS-SIDE LIABILITY AND THE GAIN-SIDE DERIVATION GAP ~

P. Loss-Side Application: The Comparatively Strong Case

On the assumed facts, the loss-side application is comparatively direct. Where Account L contains proven fraud proceeds and its controller uses them to acquire the option position and discharge an inflated premium obligation fixed through a prearranged transaction, the proceeds are "used" and otherwise dealt with. Conversion is also available where money is exchanged for a different financial position or right, but does not follow merely from an account loss. *Daoust* confirms that conversion carries its ordinary transformational meaning and need not itself be covert, while requiring precision about which participant performed which statutory act. *Tejani* supports treating an overt currency exchange as conversion, but predates the 2019 recklessness amendment and does not address gain-side derivation. *Barna* involved a short and identifiable transformation from a fraudulent credit into a bank draft, not a centrally cleared transaction.[23]

The Crown must still connect the particular crime-derived property to the account and to the premium actually discharged, identify the dealing performed by the accused, and prove both a concealment-or-conversion purpose and provenance-related fault. An extraordinary loss cannot supply those requirements. The economic loss is evidence of the transaction's

[23] *Criminal Code*, supra note 1, ss 2, 462.3(1), 462.31(1); *Daoust*, supra note 17 at paras 42–58; *Tejani*, supra note 17 at paras 26–28; *Barna*, supra note 13 at paras 13–16.

design and effect; it is not itself the statutory dealing or conversion. A genuine hedge, speculative mistake, manipulative trade funded with lawful capital, or loss produced by market movement would fall outside this analysis.

Clearing changes the route but not necessarily the loss-side characterization. Account L does not pay Account P directly. Through the dealer and clearing-member chain, the proceeds are applied to the purchasing-side obligation created by the accepted trade. CDCC's rules permit account-level netting and application of credits and, upon acceptance, replace the original trade with separate transactions involving CDCC and the clearing members. The strongest characterization is therefore that the controller uses and otherwise deals with the proceeds to acquire the position and discharge the identified premium obligation, not that one customer makes a fictional bilateral payment to another.[24] On sufficiently proved facts, existing statutory concepts can therefore address the loss side.

Q. Characterizing the Gain-Side Asset

The gain-side inquiry begins by identifying the alleged proceeds. The relevant asset is not an abstract "profit," nor is economic enrichment alone sufficient. It is the brokerage-account credit reflecting the writing-side premium entitlement recorded through Account P's broker and clearing-member chain. The end client has no direct contractual claim against CDCC; its account credit reflects rights and entries generated through the layered relationships among client, dealer, clearing member, and central counterparty.

[24] CDCC Rules, supra note 5, rr B-103–B-106; *Daoust*, supra note 17 at paras 42–58.

Three alternative statutory characterizations are arguable. The credit may be property acquired through conversion or exchange; consideration generated by the engineered transaction; or a property, benefit, or advantage indirectly derived from the designated offence. "Substituted proceeds" is used only as analytical shorthand for property covered by the conversion, exchange, and indirect-derivation language in ss 2 and 462.3. *Vallières* establishes, in the fine-in-lieu context, that ordinary commercial profit is not the statutory measure; it does not supply a general causation test. *Barna* is the closer analogy because a legally distinct financial instrument was generated through the predicate transaction, but its chain was materially shorter and involved no clearing house, netting, or genuine market exposure.[25] This unequal gain-and-loss allocation also remains distinct from the substantially equivalent paired trades characteristic of conventional mirror trading.

The countercharacterization is substantial. Novation substitutes separate CDCC–clearing-member transactions; Account P's credit is recorded through its own intermediary chain rather than owed by Account L. Netting may further combine the accepted trade with other account activity. These features defeat a simple customer-to-customer payment description and may weaken direct proprietary tracing. Yet neither the label "trading profit" nor the formal independence of the clearing obligation resolves the statutory question. The issue is whether the identified brokerage-account credit was created by the same coordinated transaction for which proven criminal proceeds discharged the corresponding purchasing-side obligation.[26]

[25] *Criminal Code*, supra note 1, ss 2, 462.3(1); *Vallières*, supra note 14 at paras 24–31; *Barna*, supra note 13 at paras 12–14; CDCC Rules, supra note 5, rr B-104–B-106.
[26] See Part II.H, above; CDCC Rules, supra note 5, rr B-103–B-106.

R. Continuity Through Brokerage and Clearing Intermediation

Four propositions must remain distinct. Economic correspondence means that two accounts exhibit substantially corresponding gains and losses. Transactional causation means that evidence shows the same accepted transaction produced both the loss-side obligation and the gain-side credit. Proprietary tracing seeks to identify the same property, its substitute, or an attributable portion through successive transactions or legal forms. Legal derivation is the statutory conclusion that the alleged property, benefit, or advantage was obtained or derived directly or indirectly as a result of the designated offence.

Canadian proceeds jurisprudence does not treat transfer, expenditure, commingling, third-party receipt, or legal interposition as automatically cleansing provenance. *Trac* permits circumstantial, asset-specific, and pro rata attribution in a forfeiture setting involving admissions and a guilty plea; its separate treatment of offence-related property cannot be imported into the proceeds definition. *Lavigne* concerns fine-in-lieu consequences after provenance had been established, not how it is initially proved. *Chatterjee* offers an illustrative civil-forfeiture example concerning third-party receipt. *Rafilovich* addresses the special remedial treatment of judicially released funds used for legal expenses. *Dieckmann* supports a functional approach to possession or control despite corporate or account interposition. None decides derivation through central-counterparty novation.[27]

[27] *Trac*, supra note 15 at paras 79–83, 101–103; *Lavigne*, supra note 15 at paras 27–35; *Chatterjee*, supra note 16 at paras 45–46; *Rafilovich*, supra note 16 at para 53; *Dieckmann*, supra note 16 at para 88.

Accordingly, the gain-side theory need not assert that the same earmarked money travelled from Account L to Account P. Its narrower claim is that sufficiently strong transactional causation may support indirect legal derivation even where novation and netting make direct proprietary tracing unavailable. Neither economic correspondence nor transactional causation conclusively establishes that result. *Dynar* requires actual crime-derived property for the completed offence: culpable belief, suspicious mechanics, and an intended value transfer cannot replace objective provenance. *Barna* supports continuity through a short identifiable transformation, but not through the market plumbing at issue here.[28] Whether central clearing preserves the required nexus therefore remains an interpretive question rather than settled doctrine.

S. A Transaction-Specific Derivation Inquiry

The following considerations are not additional elements of s 462.31 and are not proposed as a new common-law test. They organize the evidence relevant to applying the existing statutory requirements to a centrally cleared, coordinated transaction. The evidence relevant to the statutory burden can be organized through eight transaction-specific questions.

First, are actual predicate proceeds proven beyond a reasonable doubt? Second, does transaction-specific use connect those proceeds to the exact premium, purchase price, margin contribution, or settlement obligation said to generate the credit? Third, does the evidence establish prearrangement through communications, coordinated instructions, common

[28] *Criminal Code*, supra note 1, ss 2, 462.3(1); *Dynar*, supra note 13 at paras 41, 69; *Barna*, supra note 13 at paras 12–16; CDCC Rules, supra note 5, rr B-103–B-106; see Part II.H, above.

control, account relationships, or equivalent proof? Fourth, does execution correspondence show that the identified orders matched or formed parts of the same designed transaction rather than merely creating opposite exposure in the same instrument?

Fifth, does settlement continuity connect the accepted trade to both the loss-side obligation and gain-side credit through dealer, clearing-member, and CDCC records? Sixth, does a predetermined or near-predetermined allocation distinguish the result from genuine market risk, considering illiquidity, distorted pricing, immediate reversals, negligible exposure, and repeated one-directional outcomes? Seventh, what is the proceeds-derived amount after commissions, account-level netting, legitimate capital, unrelated positions, and partial attribution are considered? Eighth, is there an absence of a reasonable alternative lawful source, or do genuine price movement, unrelated counterparties, lawful capital, or other activity leave a reasonable alternative explanation for the particular credit?[29]

The evidence relevant to these questions is institutionally distributed. Whether it can be assembled around the identified transaction and participants raises the cross-system synthesis problem examined in Part V.[30]

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[29] *Dynar*, supra note 13 at paras 41, 69; *Trac*, supra note 15 at paras 79–83, 101–103; FCA Report, supra note 2 at 8, 10–12; *Marcus Consent Order*, supra note 3 at paras 28–30; *Song Consent Order*, supra note 3 at paras 22–24, 30–36; CDCC Rules, supra note 5, rr B-103–B-108.

[30] *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17, ss 5(g), 7, 55(1), (3), (7) [*PCMLTFA*]; *Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transaction Reporting Regulations*, SOR/2001-317, ss 9, 11, Schedule 1 [*STR Regulations*]; Financial Transactions and Reports Analysis Centre of Canada, *Reporting Suspicious Transactions to FINTRAC: FINTRAC's Compliance Guidance* (22 May 2025) [*FINTRAC STR Guidance*]; *Memorandum of Understanding between the Investment Industry Regulatory Organization of Canada and Bourse de Montréal* (Joint Summary, 12 April 2022) [*Cross-Market MoU Summary*]; *Frequently Asked Questions: Memorandum of Understanding between the Investment Industry Regulatory Organization of Canada and Bourse de Montréal Inc* (13 April 2022) [*Cross-Market MoU FAQ*].

T. Limiting Authorities and Failed Gain-Side Cases

The gain-side theory fails where the Crown proves only corresponding outcomes, irrational trading, association among participants, or an intention to move value. *Dynar* makes objective criminal derivation indispensable. *Daoust* requires proof of the dealing performed by each accused and says nothing about gain-side causation. *Trac* permits circumstantial and partial attribution but still requires asset-specific proof.[31] The transaction may be suspicious, manipulative, or prearranged without establishing that the particular credit was proceeds of crime.

The trial reasons in *Tan Tien Nguyen* likewise require proof of dealing, criminal derivation, concealment-or-conversion purpose, and fault; the Crown appeal from the laundering acquittal was dismissed. The case neither resolves clearing-based derivation nor permits proceeds to be inferred from suspicious structure alone.[32] The gain-side case is therefore weakest where orders did not match, the outcome depended materially on later price movement, unrelated counterparties intervened, genuine capital remained exposed, account-level netting prevents reliable attribution, or communications and control evidence do not establish design. Those circumstances may support an STR, surveillance inquiry, or securities-law or market-integrity proceeding at its own threshold. They do not prove completed money laundering beyond a reasonable doubt.

[31] *Dynar*, supra note 13 at paras 41, 69; *Daoust*, supra note 17 at paras 42–58; *Trac*, supra note 15 at paras 79–83, 101–103.
[32] *R v Tan Tien Nguyen*, 2013 ONSC 605 at paras 315–17; *R v Nguyen*, 2016 ONCA 182, 346 OAC 375 (Crown appeal from the money-laundering acquittal dismissed).

U. Doctrinal Conclusion and Supplementary Liability

The resulting position is asymmetrical. The loss-side controller may be liable where proven proceeds fund a deliberately uneconomic transaction undertaken to conceal or convert them. The gain-side recipient may commit the completed offence only if the Crown proves that the identified brokerage-account credit was indirectly derived from that transaction and separately establishes the recipient's dealing, purpose, and provenance-related fault.

Failure to prove completed gain-side laundering does not establish lawfulness. Attempt remains available where the accused possesses the full mens rea for laundering and proceeds beyond mere preparation; factual impossibility is not a defence, and s 463 supplies the punishment. Conspiracy requires an agreement or meeting of minds. Aiding and abetting ordinarily depends on commission of the principal offence; counselling is governed by s 22 where the counselled offence is committed and by s 464 where it is not. Possession of proceeds, fraud, and securities-law or market-integrity proceedings each have independent elements and cannot be presumed from failure of the gain-side theory.[33] These alternatives preserve accountability without diluting the objective derivation requirement in s 462.31.

Canadian law can address the loss side through existing statutory concepts on sufficiently proved facts. Gain-side liability remains conditional on transaction-specific evidence connecting the identified credit to criminally derived property.[34]

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[33] *Criminal Code*, supra note 1, ss 21, 22, 24, 354, 380, 463, 464, 465(1)(c); *Dynar*, supra note 13 at paras 49–50, 67, 87–90, 105; UMIR, supra note 9, r 2.2 and Policy 2.2; *Securities Act*, supra note 10, ss 122, 126.1.

[34] See Part II.H, above, and note 7; Part III.L, above.

~ PART V — DETECTION, PROOF, AND THE CROSS-SYSTEM SYNTHESIS GAP ~

V. Mapping the Distributed Evidentiary Record

On the gain-side theory developed in Part IV.R–T, above, trade data alone will ordinarily not establish the criminal provenance of the alleged proceeds, the participants' concealment-or-conversion purpose, or their provenance-related fault. Relevant materials may include identity, beneficial ownership, intended use, source-of-funds and, where separately obtained, source-of-wealth information; funding, orders, executions, communications, online-session data, clearing records, STRs, predicate-offence evidence, and foreign records.

A dealer may connect its customer to identity, ownership, funding, and trades. CIRO may detect cross-market or cross-asset patterns. CDCC's rules identify clearing-member parties, option series, premium, quantity, acceptance, and novation, but not ultimate beneficial owners or criminal provenance. FINTRAC may connect reported accounts and relationships; investigators may obtain control, predicate-offence, and foreign evidence.[35] No public source establishes a mandatory identifier spanning dealer, marketplace, clearing, FINTRAC, and police systems.

[35] *PCMLTFA*, supra note 30, ss 5(g), 7, 55(3), (7); *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2002-184, ss 29, 123.1, 138 [*PCMLTFR*]; *STR Regulations*, supra note 30, ss 9, 11, Schedule 1; *FINTRAC STR Guidance*, supra note 30; *Clarus*, supra note 4 at paras 19–22, 28; CDCC Rules, supra note 5, rr B-103–B-108.

W. Dealer-Level Visibility and CIRO Surveillance

Each dealer may hold institution-specific customer information but ordinarily lacks another dealer's file. In *Re Clarus Securities Inc*, the agreed facts in the accepted settlement recorded 22 prearranged transactions, mostly involving related accounts at three other Participants, and stated that some information later available to CIRO had not been visible to Clarus at the time.[36]

CIRO's cross-market and cross-asset surveillance may reveal corresponding orders, artificial pricing, or manipulative patterns beyond one dealer's view. Public materials do not establish that surveillance supplies KYC, ownership, funding, communications, or predicate-offence evidence. CIRO may identify suspicious market mechanics without proving criminal provenance, laundering purpose, or an accused's fault. Dealer separation is not absolute: s 11.01 of the *PCMLTFA* permits voluntary sharing under an approved code of practice. Public sources do not establish universal participation or integration with CIRO and CDCC data.

X. FINTRAC, STRs, and the Missing Market Identifier

Securities dealers must report completed or attempted financial transactions when the s 7 reasonable-grounds-to-suspect threshold is met. The prescribed fields and guidance accommodate extensive customer, account, transaction, ownership, relationship, online-session, and suspicion information. FINTRAC may connect information across reporting entities. A recipient does not receive the underlying STR as such: s 55 protects non-public

[36] *PCMLTFR*, supra note 35, ss 29, 123.1, 138; *Clarus*, supra note 4 at paras 19–22, 28; UMIR, supra note 9, r 7.1 and Policy 7.1; *Cross-Market MoU Summary*, supra note 30; *Cross-Market MoU FAQ*, supra note 30.

information while permitting disclosure of designated information when statutory conditions are met.[37]

Neither Schedule 1 nor the public guidance separately prescribes standardized fields specifically designated for exchange-order, execution, option-series, CDCC-trade, or CIRO-surveillance identifiers. Broad reference-number fields exist, and uncaptured information may appear in references or narrative. The paper infers that linkage to an opposite order, accepted trade, or clearing record may depend on internal references, narrative quality, or later investigative matching. Internal linkage capabilities are not public.

Y. Police, Foreign Authorities, and Formal Information-Sharing Pathways

Where statutory thresholds are met, investigators may use warrants and production orders domestically and mutual legal assistance abroad. FINTRAC disclosures provide leads; they do not eliminate the need to prove underlying records and testimony. FINTRAC may disclose designated information to a provincial securities administrator only where s 55(3)'s general threshold and the additional condition in s 55(3)(g) are satisfied.[38]

The OSC–FINTRAC MoU concerns compliance information, not access to raw STRs or unrestricted intelligence. Public descriptions of the IIROC–Bourse de Montréal arrangements

[37] *PCMLTFA*, supra note 30, ss 7, 55(1)–(3), (7); *STR Regulations*, supra note 30, ss 9, 11, Schedule 1; *FINTRAC STR Guidance*, supra note 30.

[38] *Criminal Code*, supra note 1, s 487(1), ss 487.014–487.018; *Mutual Legal Assistance in Criminal Matters Act*, RSC 1985, c 30 (4th Supp), ss 17–18, 22.03; *PCMLTFA*, supra note 30, ss 11.01, 55(3)(g); *PCMLTFR*, supra note 35, s 159; Ontario Securities Commission & Financial Transactions and Reports Analysis Centre of Canada, *Memorandum of Understanding for Information Sharing between the Ontario Securities Commission and the Financial Transactions and Reports Analysis Centre of Canada* (2020) 43 OSCB 9037 [*OSC–FINTRAC MoU*]; see supra note 36.

establish surveillance, referrals, data sharing, joint examinations, and certain CDCC data, but not every field or ultimate-customer mapping. Restrictions also differ: s 55 governs FINTRAC information, the OSC–FINTRAC MoU governs compliance sharing, the cross-market MoU imposes reciprocal confidentiality obligations, and s 11.01 sharing is voluntary and code-bound. No public source reviewed as of 27 July 2026 establishes universal, automated, and contemporaneous fusion of those datasets. This is a limitation of the public record, not proof that confidential operational sharing does not occur.

Z. The Cross-System Synthesis Gap

The institutional problem spans five evidentiary layers: customer identity, ownership, account purpose, and funding; market orders, execution, price, timing, and direction; clearing acceptance, novation, premiums, and netting; financial intelligence and relationships; and admissible criminal proof of property, conduct, purpose, and fault. A dealer may report suspicious funding, CIRO may detect coordinated orders, clearing-member and CDCC records may, if obtained, help reconstruct specified acceptance, novation, premium, and clearing-side events, FINTRAC may identify relationships, and police may possess fraud evidence. Yet, in a particular case, the laundering theory may become provable only when those records are lawfully joined through reliable identifiers and a transaction-specific theory.[39]

[39] *FCA Report*, supra note 2 at 7–12; *Clarus*, supra note 4 at paras 19–22, 28; Michael Levi, Peter Reuter & Terence Halliday, "Can the AML/CTF System Be Evaluated Without Better Data?" (2018) 69:2 *Crime, Law and Social Change* 307; Brigitte Unger & Frans van Waarden, "How to Dodge Drowning in Data? Rule- and Risk-Based Anti Money Laundering Policies Compared" in Brigitte Unger & Daan van der Linde, eds, *Research Handbook on Money Laundering* (Cheltenham, UK: Edward Elgar, 2013) 399; see supra notes 35–38.

The five-layer cross-system synthesis gap is this paper's analytical synthesis of the public architecture, not a term or finding adopted by FINTRAC, CIRO, CDCC, or a court. The gap is contingent: monitoring, STR narratives, referrals, joint investigations, and foreign cooperation may expose the arrangement. The narrower claim is that existing legal powers and data holdings do not, on the public record, guarantee timely, standardized, and legally usable synthesis in every case.

~ PART VI — A NETWORK-SENSITIVE ANALYTICAL FRAMEWORK ~

AA. Why a Framework Is Necessary

Parts II–V reveal a mismatch between the information that may first generate concern and the propositions required for a completed laundering offence. AML monitoring may identify unusual funding or withdrawals; market surveillance may identify prearranged orders, artificial pricing, or repeated one-directional outcomes; clearing records may reconstruct the accepted trade; and criminal law requires proof that the particular property was objectively crime-derived, that the accused performed a statutory dealing with a concealment-or-conversion purpose, and that the prescribed fault was present. This paper therefore proposes a network-sensitive analytical framework to connect those perspectives without treating regulatory suspicion, financial intelligence, or market-integrity concerns as criminal proof.[40]

The framework is the paper's original analytical and evidentiary device—not a legal test, statutory requirement, regulatory standard, institutional finding, offence, presumption, or new element of s 462.31. It organizes existing requirements and evidence to distinguish an alleged engineered value transfer from market misconduct, unexplained profitability, conventional mirror trading, or lawful complexity.

[40] *Criminal Code*, supra note 1, ss 2, 462.3(1), 462.31(1); *FCA Report*, supra note 2 at 7–12; UMIR, supra note 9, r 2.2 and Policy 2.2; see Parts III.K–O, V.V–Z and note 39, above.

BB. Five Analytical Dimensions

The framework's five dimensions connect the evidentiary layers identified in Part V; they neither redescribe those layers nor constitute statutory elements or a mandatory checklist.

Source asks whether evidence identifies property objectively derived from a designated offence and links it to the loss-side account and the transaction-specific obligation. Design asks whether communications, control, pricing, liquidity, timing, and exposure support an inference of prearranged and deliberately unequal allocation rather than independent opposite positions. Continuity asks whether transaction-specific order, execution, broker, clearing-member, and CDCC records link the criminally funded purchasing-side obligation to the identified gain-side credit. Novation changes that route and may complicate tracing; existing Canadian authority does not establish that it either preserves or severs indirect derivation.

Culpability organizes the application of the statutory dealing, concealment-or-conversion purpose, and provenance-related fault to each accused separately. Synthesis asks whether, in the particular case and through lawful pathways, the records relevant to the preceding dimensions can be assembled across dealers, CIRO, CDCC, FINTRAC, investigators, and foreign institutions. It does not assume that any institution is blind or that lawful sharing is unavailable. Incomplete proof in one dimension may nevertheless contribute to a reasonable-grounds-to-suspect assessment or justify further investigation when the applicable threshold is otherwise met, while leaving a completed gain-side offence unproven.[41]

[41] *Dynar*, supra note 13 at paras 41, 69; *Daoust*, supra note 17 at paras 42–58; *PCMLTFA*, supra note 30, s 7; see Part IV.R–T and notes 29, 35, 39 and 40, above.

CC. Evidentiary Application Matrix

The framework assigns evidence to propositions rather than accumulating red flags. Predicate-offence and funding records may connect proceeds to the trade; messages, coordinated instructions, ownership, and device or session information may support prearrangement, control, purpose, and attribution. Order, execution, broker, clearing-member, and CDCC records may test transactional correspondence and settlement continuity. Illiquidity, distorted pricing, negligible exposure, immediate reversal, and repeated one-directional outcomes may support designed allocation.

STRs and FINTRAC disclosures may generate leads, reveal relationships, or support compulsory process; they do not replace admissible proof of provenance, purpose, control, or fault. Account-level analysis should isolate the alleged gain-side credit after fees, netting, lawful capital, and unrelated positions. A genuine hedge, commercial rationale, independent capital, or market-generated gain tests the theory. No category is conclusive, and the Crown retains the burden of proving each element beyond a reasonable doubt.[42]

DD. Institutional Use and Safeguards

Dealers could use the framework to structure escalation and preserve available customer, account, instrument, order, execution, timestamp, and settlement references. CIRO referrals could distinguish market-integrity concerns from patterns also consistent with designed value

[42] *FCA Report*, supra note 2 at 8, 10–12; *Trac*, supra note 15 at paras 79–83, 101–103; CDCC Rules, supra note 5, rr B-103–B-108; Financial Transactions and Reports Analysis Centre of Canada, *FINTRAC, Law Enforcement and Intelligence Partners: Sharing Intelligence, Making the Links* (21 June 2022); see note 29 and Part V.V–Y, above.

transfer. STR narratives could include available market identifiers and relationships without implying that every field is prescribed or that the reporting entity sees the opposite side.

Investigators could use the dimensions to sequence production orders, clearing-record requests, communications evidence, and foreign assistance. Prosecutors could use them to identify the alleged gain-side asset and explain why economic correspondence does or does not support indirect derivation. Case-specific linkage should proceed only through existing statutory or cooperative pathways and subject to their thresholds and confidentiality rules. The paper does not propose a universal database or unrestricted fusion of raw STRs, customer files, and surveillance data. Statutory confidentiality rules and, where s 11.01 sharing is used, approved-code protections are existing constraints; purpose limitation, necessity, and proportionality are additional safeguards proposed by the framework. The distinction between financial intelligence, regulatory suspicion, and admissible criminal proof must be maintained.[43]

The framework's broader significance is alignment, not expansion. It offers an original method of organizing existing law and distributed evidence without resolving the legally uncertain gain-side nexus or recasting the contingent cross-system synthesis gap as complete regulatory invisibility.

[43] *PCMLTFA*, supra note 30, ss 7, 11.01, 55(1)–(3), (7); *PCMLTFR*, supra note 35, ss 158–167; FINTRAC, *Private-to-Private Information Sharing: FINTRAC's Compliance Guidance* (22 June 2026); see Part V.X–Z and notes 36–38 and 42, above.

~ PART VII — COUNTERARGUMENTS, LIMITS, AND TARGETED IMPLICATIONS ~

EE. Overcriminalization and Legitimate Market Complexity

The strongest objection is that profit-and-loss laundering is too hypothetical and fact-dependent to justify a concept. Markets produce opposing positions, unusual losses, related-account trades, illiquid prices, and strategies. That concern sets a limit. The analysis does not infer laundering from correspondence, irrationality, or adverse performance. Its model requires criminal property, prearrangement, deliberate allocation, transaction-specific continuity, concealment-or-conversion purpose, and individual fault. This dependence is protective: it prevents typology from replacing proof beyond a reasonable doubt. Mirror trading remains distinct, loss-side requirements remain intact, and the gain-side nexus remains uncertain.

FF. Securities Law and Existing Money-Laundering Doctrine

A second objection is that existing law already resolves the problem. Securities regulation may characterize the conduct as wash trading, matched orders, artificial pricing, manipulation, deceptive activity, or deficient supervision. Money-laundering doctrine already reaches using, converting, transferring, or otherwise dealing with directly or indirectly derived property. Both propositions are correct but incomplete. Market-integrity rules can identify and disrupt transaction mechanics without proving actual criminal provenance, a laundering purpose, or

provenance-related fault. Conversely, the breadth of s 462.31 does not answer whether a centrally cleared gain-side credit was legally derived from the criminally funded transaction.

The proposed framework therefore does not create a new offence or relabel every market violation as laundering. It preserves the distinctions among market misconduct, suspicious activity, financial intelligence, investigative leads, and criminal proof. It also separates economic correspondence, transactional causation, proprietary tracing, and legal derivation. Existing doctrine supplies the governing elements; the framework identifies the evidentiary questions that must be answered before those elements can be applied coherently.

GG. Novation, Institutional Capacity, and Privacy

Central-counterparty novation presents the strongest gain-side objection. It replaces the original trade with separate obligations through the clearing system, defeats a simple bilateral-payment account, and may complicate proprietary tracing and net settlement. It does not follow, however, that novation necessarily severs indirect derivation. The opposite conclusion is equally unwarranted. Existing Canadian authority does not determine whether the identified brokerage-account credit remains legally derived from the criminally funded purchasing-side obligation. Novation is therefore relevant to the form and proof of continuity, not automatically decisive.

Institutional pathways create a parallel limit. Dealers, CIRO, CDCC, FINTRAC, police, and foreign authorities possess surveillance, reporting, disclosure, investigative, and cooperative capacities. Their existence disproves complete regulatory invisibility. Nor does

the existence of formal pathways establish common identifiers, equivalent thresholds, timely access, or evidentiary forms suitable for a criminal prosecution in practice. It does not establish that all customer, order, execution, settlement, intelligence, and predicate-offence evidence is automatically assembled around the same transaction. The cross-system synthesis gap is contingent, not universal. Nor should it be answered through unrestricted data fusion. Confidentiality, lawful authority, purpose limitation, necessity, proportionality, and governance must constrain any linkage of customer, market-surveillance, and financial-intelligence records.

HH. Targeted Legal and Institutional Implications

The implications are modest. Investigators and prosecutors should distinguish causal value transfer from corresponding outcomes and identify the loss-side property, gain-side asset, route, purpose, and fault. Reports and referrals should preserve available identifiers without treating patterns as proof. Existing pathways may support case-specific linkage subject to statutory thresholds and confidentiality. Courts should treat novation, netting, and intermediation as facts bearing on derivation, not categorical answers. No statutory amendment, universal database, presumption, or expansion of liability is required.

~ PART VIII — CONCLUSION ~

II. Doctrinal Conclusion

Canadian anti-money-laundering and financial crime law can address profit-and-loss laundering only through asymmetrical, evidence-specific analysis. Where actual proceeds fund a prearranged, deliberately uneconomic transaction, the loss-side conduct is comparatively readily characterized as using, converting, or otherwise dealing with criminal property for a prohibited purpose. The loss is not itself the offence; liability arises from intentionally deploying identified proceeds through the transaction.

The gain-side position is harder. A brokerage-account credit may constitute property, a benefit, or an advantage indirectly derived from the designated offence where strong, transaction-specific evidence proves that the criminally funded transaction created it. Corresponding outcomes, unusual trading, concealed coordination, or culpable intent alone are insufficient. Economic correspondence may evidence design; transactional causation may connect both sides of the accepted trade; proprietary tracing may identify continuity in particular property; and legal derivation determines whether the credit satisfies the statutory proceeds requirement. These inquiries remain distinct. Central-counterparty novation defeats a bilateral-payment account and may complicate tracing, but Canadian law has not resolved whether it preserves or severs the gain-side nexus.

JJ. Structural and Scholarly Significance

Profit-and-loss laundering also remains distinct from conventional mirror trading. Mirror trading ordinarily uses substantially equivalent paired transactions to convert currency or move value; profit-and-loss laundering depends on deliberately unequal allocation through a demonstrable market-value-transfer design.

The paper's contribution is conceptual and analytical: it defines profit-and-loss laundering and proposes a network-sensitive framework based on source, design, continuity, culpability, and synthesis. The institutional problem is not complete regulatory invisibility but a contingent cross-system synthesis gap, because relevant customer, trading, clearing, intelligence, and criminal-proof records may exist without being assembled around the same transaction and participants.

The conclusion is disciplined alignment—not expansion—of criminal doctrine, market mechanics, surveillance, AML reporting, and admissible evidence, enabling engineered criminal value transfer to be proved without converting complexity, suspicion, or lawful trading into money laundering.

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