

# New PCMLTFA Obligations

## Accountants

2008

# Presentation Overview

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## Introduction

- The PCMLTFA was amended in December 2006, authorizing the creation of new requirements through its related regulations:
  - *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*
  - *Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transaction Reporting Regulations*
- Most new requirements become effective on June 23, 2008.

# Objectives of New Requirements

# Objectives of New PCMLTFA Requirements

- Strengthen existing AML/ATF regime and build on FINTRAC's experience
- Address existing gaps in the legislation and regulations
- Enhanced detection and deterrence of money laundering and terrorist financing
- Make illicit transactions more difficult to conduct
- Greater impact against organized crime and terrorists

# Changes to Reporting

# Suspicious Attempted Transactions

- Reporting entities will have to report suspicious **attempted** transactions to FINTRAC.
- An attempted transaction is an incomplete transaction that a client intended to conduct and took some form of action.
- An attempted transaction includes negotiations or discussions to conduct the transaction and involves concrete measures taken by either the reporting entity or the client.

## Suspicious Attempted Transactions (cont'd)

- In determining whether an event or activity constitutes a suspicious attempted transaction, consider this:
  - Activity leading to a suspicious attempted transaction is inherently suspicious for money laundering or terrorist financing (mandatory)
  - Presence of key elements of an attempt i.e. intent to conduct a transaction with some form of concrete action
- Every situation is different and should be assessed on a case-by-case basis in light of the facts.

## Suspicious Attempted Transactions (cont'd)

- Example of an attempted transaction:
  - A customer asks an accountant to facilitate a financial transaction involving large amounts of cash. Accountant declines to conduct transaction.
- New information to be provided in STR form:
  - whether the transaction was completed
  - if not, the reason why it was not completed

# Changes to Client Identification

# Client Identification: New Triggers

- When receiving an amount of \$3000 or more in cash or otherwise (other than for professional fees):
  - Ascertain the identity of every individual at the time of the transaction.
  - Confirm the existence and ascertain the name and address of every corporation and name of its directors within 30 days of transaction.
  - Confirm the existence other than a corporation within 30 days of the transaction.

# Client Identification

- If client is present, refer to a valid government issued identification document.
- Options for ascertaining client identity are expanded in non face-to-face situations (e.g. telephone, Internet services).

# Client Identification: Non Face-to-Face Methods

- Specific combinations of new identification methods:
  - identification product method
  - credit file method
  - attestation method
  - confirmation of a deposit account
  - cleared cheque

# Client Identification: Non Face-to-Face Methods (cont'd)

- **Identification product:** Referring to an **independent** and **reliable** identification product that is based on personal information in respect of the individual and a Canadian credit history of the individual of at least six months duration. This type of product can use a series of specific questions, based on an individual's credit file, to enable verification of client identity.
- **Credit file:** Confirming the name, address and date of birth of client by referring to a **credit file** in respect of that individual in Canada that has been in existence for at least six months.
- Products for either of these methods are available commercially, such as those used for credit ratings.

## Client Identification: Non Face-to-Face Methods (cont'd)

- **Attestation method:** Obtaining an attestation from commissioner of oaths or guarantor in Canada that they have seen valid identification.
- **Cleared cheque:** Confirming that a cheque drawn by client on a deposit account with a financial entity has been cleared.
- **Confirmation of deposit account:** Confirming that client has a deposit account with financial entity.

## Client Identification: Non Face-to-Face Methods (cont'd)

- In non-face-to-face situations, will be possible to use one of the following combinations of ID methods:

ID product or credit file	<b>AND</b>	cleared cheque or confirmation of deposit account
attestation	<b>AND</b>	cleared cheque or confirmation of deposit account
attestation	<b>AND</b>	ID product or credit file

## Client Identification: Use of Agents

- Reporting entities may rely on an agent to take identification measures when they have signed a written agreement for that purpose.
- Reporting entities also have the obligation to obtain the customer information from the agent.

## Client Identification: Doubts about Identification

- If a new obligation to ascertain the identity of a client arises for an individual previously identified, reporting entities are not required to ascertain their identity again if they recognize the individual.
- **However**, reporting entities must ascertain the individual's identity again if they have **doubts** about the veracity or accuracy of the identification information obtained previously.

# Changes to Record Keeping

# Record Keeping: Receipt of Funds

When receiving \$3000 or more in any form, excepting professional fees, accountants or accounting firms are required to keep a receipt of funds record of which includes the following:

- name, address and date of birth of individual or entity from whom the funds were received
- nature of principal business/occupation
- date of transaction
- account number / type of account / account holder
- purpose and details of the transactions, i.e. how the funds were received, currency type.
- if received from corporation: must keep copy of binding document

# Record Keeping: New Exemption

- If a reporting entity keeps information in a record that is already readily available in any other record kept under the PCMLTFA regulations, they do not have to keep that information again.
- Effective since June 30, 2007

# Suspicious Transaction Reports

- Reporting entities must keep copies of suspicious transaction reports (STRs) concerning both attempted and completed transactions.
- Reporting entities must take reasonable measures to ascertain identity of the individual who is the subject of a suspicious completed transaction.
  - Except if the individual's identity was previously ascertained or there is a possibility of tipping-off the individual.

# Changes to Compliance Regime

# The Compliance Regime and New Changes

1. The appointment of a compliance officer responsible for implementing the compliance program
2. The development and application of compliance policies and procedures, these have to be:
  - in writing,
  - kept up-to-date, and
  - for an entity, approved a by senior officer
3. Assess and document the money laundering and terrorist financing risks

## The Compliance Regime and New Changes (cont'd)

4. If the reporting entity has employees or agents, must have an ongoing training program that is in writing and maintained.
5. A review of policies and procedures, training program and risk assessment
  - Must be carried out every 2 years by an internal or external auditor, or by the reporting entity itself.
  - For an entity, report in writing findings of the review to senior officer including updates and implementation status.

# Risk-Based Approach

- A risk-based approach (RBA) allows the reporting entity to identify and measure potentially higher risks and develop strategies to mitigate them so they can focus resources where they are most needed to manage risks within its own acceptable tolerance levels.
- Existing client identification, record keeping and reporting requirements still apply. The risk-based approach serves as an enhancement to those requirements.
- The risk-based approach will vary depending on the size and complexity of the reporting entity's operations.

# Risk-Based Approach: Requirements

- Assess and document, as appropriate for the reporting entity, the risk of money laundering or terrorist financing offences in the course of their activities.
- The risk assessment must take into account the reporting entity's:
  - clients
  - business relationships
  - products and services
  - delivery channels
  - geographic location of its activities and the location of its clients
  - other relevant factors related to the reporting entity's business

## Risk-Based Approach: Requirements (cont'd)

- For all activities that pose a **high** ML or TF risk, reporting entities must develop and apply policies and procedures to:
  - mitigate the identified risks of money laundering or terrorist financing offences;
  - take reasonable measures to keep client ID information up to date every two years; and
  - take reasonable measures to conduct ongoing monitoring to detect suspicious transactions.

# Risk-Based Approach: Tools

- FINTRAC's Guideline 4 provides more information on:
  - Legislative and regulatory requirements;
  - Risk mitigation measures;
  - Suggestions on how to monitor;
  - Checklists which can be used as a starting point for developing a risk assessment by analyzing:
    - Products & services,
    - Delivery channels, geographical locations, and clients and business relationships.

# Administrative Monetary Penalty Regime

## Administrative Monetary Penalty (AMP) Regime

- Starting December 30, 2008, FINTRAC will be able to issue administrative monetary penalties as a response to non-compliance with the PCMLTFA and related regulations.

# Other Information

# FINTRAC's Compliance Approach

- FINTRAC is committed to a cooperative approach to compliance
- Continue to provide guidance on upcoming and existing requirements through the updating and development of FINTRAC guidelines

## For More Information

- Revised FINTRAC guidelines and other communications tools available
- Sector-specific presentations, webcasts and fact sheets available online
- Updates cover new requirements, most of which are effective June 23, 2008

## For More Information

Please consult FINTRAC's Web site:

[www.fintrac-canafe.gc.ca](http://www.fintrac-canafe.gc.ca)