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AML regulatory update

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On June 9th 2018, the Department of Finance issued proposed new regulations announcing a number of amendments to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA). The proposed amendments are open for consultation and feedback until September 7, 2018. Upon completion of the consultation period, there will follow a period of implementation to give reporting entities time to put in place the required changes. On this point, Finance Canada stated that it "…recognizes that businesses, irrespective of size, will require time to implement these changes and will therefore provide 12 months of transition to comply with the new requirements."

Once the proposed amendments are approved, FINTRAC will update its guidance to set out its expectations for how the obligations are to be met as well as undertake possible outreach activities to ensure reporting entities are aware of the new obligations. FINTRAC will be responsible for monitoring compliance with the obligations and will scope the changes into their compliance examinations and processes. Should non-compliance be identified, FINTRAC could impose administrative monetary penalties (AMPs) AMPs or take other enforcement actions.

The new regulations include changes to bring virtual currency businesses, foreign money services businesses and prepaid card access within the scope of the regulations, as well as amendments to know-your-client (KYC) requirements, suspicious transaction reporting, beneficial ownership and reporting under the 24-hour rule of transactions that are $10,000 or more. Summarized below are key areas of the proposed amendments.

The proposed amendments outline many changes that will be consistent with international approaches to counter money laundering and terrorist financing but may also significantly impact a number of industries and businesses. The full proposed amendments can be found at: http://www.gazette.gc.ca/rp-pr/p1/2018/2018-06-09/html/reg1-eng.html

Area of change	Summary of the key proposed amendments
Virtual currency	Virtual currency is defined as: 'a digital currency that is not a fiat currency and that can be readily exchanged for funds or for another virtual currency that can be readily exchanged for funds' or 'information that enables a person or entity to have access to such digital currency.' Persons and entities that are 'dealing in virtual currency' would be financial entities or money services businesses (MSBs), either domestic or foreign. These 'dealing in' activities include virtual currency exchange services and value transfer services. As currently required of all MSBs, persons and entities dealing in virtual currencies would need to implement a full compliance program similar to the MSB requirements and register with FINTRAC. The amendments are targeted at the persons or entities that are engaged in the business of dealing in virtual currencies, and not the virtual currencies themselves. In addition, all regulated entities across all sectors that receive $10,000 or more in virtual currency (e.g. deposits, any form of payment) would have KYC, record-keeping and reporting obligations on these transactions; this includes domestic and international transactions. The exchange rate to be applied to a transaction involving a foreign currency or virtual currency to Canadian dollars would be the exchange rate published by the Bank of Canada for the foreign or virtual currency at the time of the transaction or, if there is no published rate by the Bank of Canada, the exchange rate that the person or entity would use in their normal course of business at the time of the transaction.
Foreign MSBs **(Money services businesses)**	Foreign MSBs that provide services to people located in Canada but do not have a place of business in Canada, such as those offering their services through the internet, will be required to comply with the regulations. This change would ensure that domestic and foreign MSBs are required to fulfil the same obligations (e.g. have in place a compliance regime to meet the requirements, including registering with FINTRAC, exercising customer due diligence, reporting appropriate transactions to FINTRAC, and keeping records) for the same activities. The amendments require that if a foreign MSB is found to be non-compliant with the requirements of the Act and its regulations, an administrative monetary penalty (AMP) would be issued; and if the penalty associated with that AMP is not paid, the foreign MSB's registration can be revoked, thus making it ineligible to do business in Canada. Canadian financial entities would be prohibited from opening or maintaining an account for, or having a correspondent banking relationship with, an unregistered foreign MSB.
Prepaid card access	Under the amendments, prepaid access products (e.g. prepaid credit cards) would be treated similar to bank accounts for the purposes of the regulations. Financial entities issuing prepaid access products would be subject to the same customer due diligence requirements as those imposed on reporting entities who offer bank accounts (e.g. verifying the identity of their clients, keeping records and reporting suspicious transactions related to a prepaid payment product account). The requirements would apply to both fiat funds and virtual currencies and only to products which provide a balance of $1,000 or more and/or $1,000 worth of transactions over a 24 hour period. The amendment would not apply to issuers of products restricted to use at a particular merchant or group of merchants, such as a shopping-centre gift card (i.e. 'closed-loop').

Area of change	Summary of the key proposed amendments
Client identification	The proposed amendments will allow a reporting entity to rely on customer identification that has already been performed by other entities. To rely on information from a third party, a reporting entity would have to be able to request and obtain information on the method of identity verification immediately or within three days of a request being made. A reporting entity would also be able to rely on identity verification information from a foreign affiliate. To do so, the reporting entity would be required to assess the level of risk associated with the country where the third party operates. While certainly a best practice for many regulated entities today, the amendments require client identification record keeping for authorized persons of entities, including name, address, telephone number, date of birth and occupation.
Identity documentation	The current regulations require that documents used to confirm the identity of a customer must be "original, valid and current" and must not include a scanned or photocopied document. The proposed amendments allow the use of scanned/photocopied documents as long as it can be determined that they are "authentic, valid and current".
Corporate existence	While the current regulations are not specific, the proposed amendments require that documents used to establish proof of corporate existence of a client be no more than one year old for the certificate of corporate status and 'most recent' for other permissible documents (e.g. the most recent annual audited financial statements available at the time of review). This change would help ensure that corporations exist at the time they open an account or conduct a financial transaction.
Beneficial ownership	When an account with an entity customer is opened, the regulations currently require that beneficial ownership information be obtained, that reasonable measures be taken to confirm the accuracy of this information, and that information is kept up to date on an ongoing basis. However, the regulations do not explicitly state that reporting entities must take steps to confirm the accuracy of new information as it comes in or as it is updated over time. The regulation amendments make the on-going requirement explicit. In June 2016, the regulations were amended to require reporting entities to keep a record of any 'reasonable measures' taken in cases where they were unsuccessful in meeting certain obligations, including beneficial ownership information. The amendments repeal the requirement to keep a record of the unsuccessful reasonable measures taken as this was seen as overly burdensome.
PEP (politically exposed person) determination	The current regulations require that a determination must be made whether an individual is a politically exposed foreign person, politically exposed domestic person, head of an international organization or family members or close associates of these individuals when they send or receive an international EFT of $100,000 or more. The proposed amendments have removed the 'international' component implying that the determination should be made for all EFTs of $100,000 or more including those related to virtual currencies. The proposed amendments require PEP determination for authorized users of a prepaid access product and also for a person who makes a $10,000 or more payment on a pre-paid product account; and this will have to be maintained on a periodic basis. Life insurance companies will be required to make PEP determinations for beneficiaries to whom $100,000 or more is remitted for certain products.
Source of wealth for PEPs	The current regulations require reporting entities to establish the source of funds to be deposited, received or expected to be deposited or received. The proposed amendments require reporting entities to also take reasonable measures to determine the source of the politically exposed person's wealth.

Area of change	Summary of the key proposed amendments
Electronic funds transfer	There are a significant number of changes proposed to the EFT recordkeeping and reporting requirements; a few key ones are summarized below: As proposed in the amendments, reporting entities that are intermediaries in a transaction or that send or receive a wire transfer will be required to identify, keep records of, and include information about the transaction. This change helps ensure this information remains with the wire transfer throughout the payment chain, and ensures that reporting entities have all of the relevant transaction information to detect and report suspicious transactions; it is significant as it appears that not only 'client initiated' transactions will be captured. It appears that 'last out and first in' reporting will no longer apply as requirements will now be on the initiating entity and the entity that is in final receipt of funds. A money services business or foreign money services business or financial entity would be required to verify the identity of a beneficiary (in addition to the initiator or remitter) of an electronic funds transfer of $1,000 or more, or of a transfer of an amount of $1,000 or more in virtual currency.
Reporting under the 24 hour rule - transactions of $10,000 or more	Current regulations require reporting of cash transactions and certain EFTs of $10,000 or more and those transactions that are less than $10,000 but accumulate to $10,000 or more within a 24 hour period, performed by the same conductor. The proposed amendments clarify that multiple transactions performed by an individual within a 24-hour period are considered a single transaction for reporting purposes when they total $10,000 or more, and that only one report should be submitted to capture all transactions within a 24-hour period that collectively meet or surpass this threshold. The new formula results in all transactions conducted in a 24 hour period reported to FINTRAC in one report (including any transactions of $10,000 or more; conductor and/or beneficiary).
Suspicious Transaction Reporting	The proposed amendments will require that suspicious transaction reports to FINTRAC be filed within three days (reduced from the current 30 days) once measures are taken to establish reasonable grounds to suspect that the transaction is related to the commission or attempted commission of a money laundering or terrorist activity financing offence. The amendments propose that additional information be included including ownership details of the entity and this will make report completion more onerous.
Life insurance	The proposed amendments now require the life insurance sector to be subject to the same record-keeping, reporting and customer due diligence requirements as other financial entities dealing with the issuance of loans and pre-paid products and ensure that the life insurance sector is treated the same as other reporting entities under Canada's AML/ATF regime.
New technology	The amendments would require reporting entities to assess and document the inherent risk associated with new technologies in their business, specifically including products and delivery/ access channels prior to product launch.

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