FINTRAC imposes administrative monetary penalties on securities dealers

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Compliance officers, risk officers and management at firms who meet the definition of "securities dealers" (including portfolio managers, exempt market dealers and CIRO members) take note: there has been a recent increase in the frequency and amount of administrative monetary penalties (AMPs) issued by the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) relating to deficiencies identified during audits of compliance programs under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and its regulations (the PCMLTFA).

When FINTRAC issues an AMP, it issues a public notice summarizing both the deficiencies and the amount of the penalty, which presents reputational risk and financial risk. FINTRAC has issued a notice indicating that additional details on the nature of violations are now included in public notices for all AMPs imposed on a reporting entity.

According to FINTRAC's *Administrative Monetary Penalties Policy*, FINTRAC can impose these penalties as a means of providing a response to non-compliance issues. FINTRAC seeks to deter non-compliance with the PCMLTFA obligations and imposing AMPs are a means of accomplishing this.

The amounts of the AMPs recently applied to "securities dealers" have ranged from $49,500 to $544,500. The details of the violations and the resulting AMPs are available at: Public notice of administrative monetary penalties. The deficiencies FINTRAC identified include failures to:

- develop and apply written compliance policies and procedures
- adequately assess and document risks relating to money laundering and terrorist financing
- implement a training program; and
- conduct an independent review of the AML compliance program at the prescribed two-year interval.

Additionally, we note that proposed amendments to the PCMLTFA and its regulations will increase the amount of AMPs that may be imposed for certain violations. The AMP for a minor violation would be a maximum of $40,000; for a serious violation, $4 million;

and for a very serious violation, $20 million. Cumulative penalties for multiple violations by an entity will be capped at the greater of $20 million or 3 per cent of a reporting entity's gross global revenue where such revenue exceeds $20 million. In the case of an individual, the cap is the greater of $4 million or 3 per cent of the individual's gross global income in the year before the year in which the penalty is imposed. The maximum punishments imposed for certain criminal offences under the PCMLTFA will also increase, ranging from $2.5 million to $20 million.

Over the last few years, there have been considerable changes to FINTRAC rules, guidance and audit expectations, all of which warrant attention. Further, proposed amendments to the PCMLTFA will require "securities dealers" to ensure their compliance programs are reasonably designed, risk-based and effective. The anticipated effect of such an amendment is that FINTRAC will have greater discretion in reviewing compliance programs and can take enforcement action where it determines that a compliance program does not meet the requirements of the PCMLTFA as to being reasonably designed, risk-based, and effective.

Registered firms should take note of the following publications of which they are expected to be aware and to reflect in their compliance programs:

- Ministerial Directive on Financial Transactions Associated with Russia issued on February 24, 2024
- Reporting suspicious transactions to FINTRAC
- Report suspected sanctions evasion; and
- Updated Assessment of Inherent Risk of Money Laundering and Terrorist Financing in Canada.

In addition to conducting regular audits, FINTRAC is circulating questionnaires to registered firms to obtain information on the state of their compliance programs, effectively enabling them to monitor more firms than was previously the case. This further increases the likelihood that an inadequate compliance program will be identified.

BLG Beyond AUM Law can help firms maintain an AML/ATF compliance program by drafting and updating policies and procedures, providing training, assisting with risk assessments, reviewing and drafting client onboarding forms and conducting two-year AML effectiveness reviews. We also provide related legal advice and guidance during audits. For further information on how we can assist with your AML needs, please reach out to the authors or to your usual BLG lawyer.

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