Canada Updates AML/ATF Regulations and Guidance

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The Canadian Governor General in Council issued an order with respect to certain amendments to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act.

On June 17, 2016 the Canadian Governor General in Council issued an order ("Order") with respect to certain amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* ("Act"). The amendments were part of the Economic Action Plan 2014 Act, No. 1 and will come into force on the first anniversary of the date of the Order. On the same date the Order was issued, amendments to regulations under the Act (the "Amended Regulations") were also published. The Government of Canada indicated that a portion of the Amended Regulations came into force upon publication in the *Canada Gazette* on June 29, 2016 and a portion will come into force one year later on June 17, 2017. In addition, the Financial Transactions and Reporting Analysis Centre of Canada (FINTRAC) has published a new Guideline entitled *Methods to ascertain the identity of individual clients* ("New Guideline").

Set forth below is a brief summary of certain significant elements of the Amended Regulations and the New Guideline.

Amended Regulations

The Amended Regulations are intended to update and strengthen the legislation to combat money laundering and terrorist financing activities. They adopt new approaches to KYC due diligence requirements, aim to close perceived gaps in Canada's anti-money laundering/anti-terrorist financing regime, to improve compliance, monitoring and enforcement efforts, and to strengthen Canada's AML/ATF information sharing regime.

Politically Exposed Persons

The Amended Regulations will update due diligence requirements regarding customers when dealing with politically exposed persons. As amended, the regulations will prescribe the circumstances under which a reporting entity must make a determination that a client is a domestic politically exposed person or the head of an international organization, or a close associate or family member of such a person, and the measures to be taken as a result (such as obtaining information on sources of funds

and requiring senior management approval to keep an account open). The current regulations contained requirements only with respect to politically exposed foreign persons.

The Amended Regulations will also require reporting entities to periodically determine whether existing account holders are politically exposed foreign persons, where such a determination has not already been made. Further, the Amended Regulations will extend the time within which a reporting entity must make a determination that a client is a politically exposed foreign person from 14 days to 30 days. This amendment aligns with the measures for politically exposed domestic persons and heads of international organizations. These changes come into effect on June 17, 2017.

Customer Information Requirements

The Amended Regulations will clarify the type of customer information that reporting entities must obtain and keep as part of the due diligence process regarding customers. Under the Amended Regulations, records that must be kept with respect to a client's credit file (i.e., a file related to a lending product). These amendments repeal the defined term "client credit file" and instead list the relevant types of information that must be maintained, when they are relevant to the client credit arrangement under consideration. These changes come into effect on June 17, 2017.

Client Identification — Amended Regulations and Guidelines

The Amended Regulations update the existing list of methods that reporting entities must use to verify the identity of their clients. The new permitted methods are more flexible and allow for a broader range of reliable and independent sources to be used. In particular, the amendment identifies the specific types of sources that are deemed reliable enough to be used on a standalone basis (e.g., government-issued photo identification documents), and broadly allow other types of sources that are reliable and independent to be referred to on a dual-method basis (i.e., in combination). The latter category is not prescriptive and will provide flexibility for reporting entities to consider various sources that are not currently accepted (e.g., a Notice of Assessment issued by the Canada Revenue Agency). The Amended Regulations include a transitional rule which will allow reporting entities a transitional period for the next year to use either the methods described in the Amended Regulations or the methods consistent with the prior version of the Regulation.

The New Guideline makes clear that as of June 17, 2017, this transitional year will end and reporting entities will be required to apply the methods listed in the Amended Regulations and described in the New Guideline to ascertain the identity of clients. The New Guideline also makes clear that if a reporting entity has already ascertained the identity of clients according to the regulations that were in force at that time, the reporting entity is not required to do so again as a result of these changes. Among other things, the New Guideline also clarifies when a reporting entity can rely on an agent or mandatory, or another entity to ascertain the identity of clients.

The Amended Regulations expand the definition of a signature to more broadly include electronic signatures, which would facilitate account openings in a non-face-to-face environment. Further, the Amended Regulations limit the duplication of identity verification efforts. As amended the existing exemption from ascertaining the identity of

a client where the client is recognized by voice (e.g., telephone) or sight (e.g., in person or through video conferencing) is extended to more broadly capture other forms of recognition (such as digitally, where a client logs in online). Further, as amended, a reporting entity that relies on an agent (e.g., deposit broker) to verify client identity on its behalf will be able to use identification measures that were previously undertaken by that agent on behalf of another reporting entity or itself with respect to the same client.

Closing Gaps

The Amended Regulations close gaps in Canada's anti-money laundering and anti-terrorist financing regime. The regulations list the elements that should be considered in a reporting entity's risk assessment. Added to this list is a requirement for reporting entities to assess and document the risks posed by the impacts of new developments and technologies on the existing risk assessment criteria (e.g., business relationships, products, delivery channels or geographic locations). This change comes into effect on June 17, 2017.

In addition, reporting obligations have been clarified and a prior exemption regarding reporting cash transactions of $10,000 or more in the life insurance sector for product purchases where the source of funds is not easily identifiable has been eliminated. This change comes into effect on June 17, 2017.

Compliance

The Amended Regulations seek to improve compliance, monitoring and enforcement efforts. Reporting entities are now required to keep a record of any "reasonable measures" they have taken in cases where they were unable to ascertain, establish or determine the information specified. This change comes into effect on June 17, 2017.

The existing list of provisions for which FINTRAC can issue an administrative monetary penalty have also been updated.

In addition, the Amended Regulations seek to strengthen information sharing in the regime. Among other things, they require reporting entities in a financial conglomerate to take into consideration the risks resulting from the activities of their affiliates as part of their compliance programs. This change comes into effect on June 17, 2017.

Finally, the Amended Regulations also clarify that, where a securities dealer is a reporting entity under the Act, any brokers employed by that securities dealer would not be considered reporting entities in their own right. Therefore, although the brokers would be required to abide by the compliance program of their securities dealer employer, they would not be required to maintain their own compliance program. This change came into effect on June 29, 2016.

Final Comments

Reporting entities will need to review the Amended Regulations carefully to ensure that their compliance programs are correctly aligned with the new and modified requirements.

We are continuing to review the Amended Regulations and the New Guideline and will report further if we identify any matters that we believe should be especially highlighted. At the same time we are working with many clients on AML/ATF compliance related matters and are happy to share our compliance expertise whenever requested.

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