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FEDERAL ANTI-MONEY LAUNDERING LEGISLATIVE CHANGES

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Changes to AML Law and Regulations

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BACKGROUND

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- ◆ Bill C-25:
 - Passed December, 2006.
 - Being implemented in stages
- ◆ PCMLTFA Regulations
 - Minor changes June 30, 2007
 - Major changes June 23, 2008
- ◆ Suspicious Transaction Regulations
 - Same implementation schedule



Act Changes

- ◆ Definition of a securities dealer now includes “other financial instruments”
 - Commodity futures
 - Other derivatives
 - GICs
- ◆ Movement of compliance requirements from Regulations to the Act
 - Compliance program
 - Risk Assessment
 - Special Measures
 - Penalties
 - Summary conviction - \$50,000; 6 months
 - Indictment - \$500,000; 5 years



PEPs

- ◆ Politically exposed *foreign* persons
- ◆ Positions in a foreign national state, but...
- ◆ “*holds or has held*”
- ◆ Positions:
 - head of state or head of government;
 - member of the executive council of government or member of a legislature;
 - deputy minister or equivalent rank;
 - ambassador or attaché or counsellor of an ambassador;
 - military officer with a rank of general or above;
 - president of a state-owned company or a state-owned bank;
 - head of a government agency;
 - judge;
 - leader or president of a political party represented in a legislature; or
 - holder of any prescribed office or position
- ◆ Plus their:
 - spouses, common-law partners, children, mothers, fathers, brothers and sisters
 - And their spouses or common-law partners, mothers and fathers



PEPs – Special Procedures

- ◆ Reasonable measures to determine whether a client is a PEP:
 - All new accounts
 - Existing accounts on the basis of a risk analysis
- ◆ Senior management approval
 - a director who is a full-time employee; the chief executive officer, chief operating officer, president, secretary, treasurer, controller, chief financial officer, chief accountant, chief auditor or chief actuary or any person who performs any of those functions; or any other officer who reports directly to the board of directors, chief executive officer or chief operating officer.
- ◆ Determination of source of funds
- ◆ Within 14 days of account opening
- ◆ Enhanced monitoring



Risk Assessment

- ◆ Part of the compliance program required under the Act
- ◆ Must be part of written procedures
- ◆ Must analyze and document the risks of money laundering/terrorist financing being conducted through the Member, taking into account the Member's clients, products and delivery channels and the location of its activities
- ◆ High risk clients
 - Reasonable measures to keep client information up-to-date
 - Reasonable measures for monitoring for suspicious transactions
 - Measures to mitigate the identified risk



FATF Guidance on Risk-Based Method Country-Geographic Risk

- ◆ Countries subject to sanctions, embargoes or similar measures issued by, for example, the United Nations (“UN”). In addition, in some circumstances, countries subject to sanctions or measures similar to those issued by bodies such as the UN, but which may not be universally recognized, may be given credence by a financial institution because of the standing of the issuer and the nature of the measures.
- ◆ Countries identified by credible sources as lacking appropriate AML/CFT laws, regulations and other measures.
- ◆ Countries identified by credible sources as providing funding or support for terrorist activities that have designated terrorist organisations operating within them.
- ◆ Countries identified by credible sources as having significant levels of corruption, or other criminal activity.



Customer Risk

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- ◆ Customers conducting their business relationship or transactions in unusual circumstances, such as:
 - Significant and unexplained geographic distance between the institution and the location of the customer.
 - Frequent and unexplained movement of accounts to different institutions
 - Frequent and unexplained movement of funds between institutions in various geographic locations
- ◆ Customers where the structure or nature of the entity or relationship makes it difficult to identify the true owner or controlling interests.
- ◆ Cash (and cash equivalent) intensive businesses
- ◆ Charities and other “not for profit” organisations which are not subject to monitoring or supervision (especially those operating on a “cross-border” basis)
- ◆ "Gatekeepers" such as accountants, lawyers, or other professionals
- ◆ Use of intermediaries within the relationship who are not subject to adequate AML/CFT laws and measures and who are not adequately supervised



Product/Service Risk

- ◆ Services identified by competent authorities or other credible sources as being potentially higher risk, including, for example:
 - International correspondent banking services involving transactions such as commercial payments for non-customers (for example, acting as an intermediary bank) and pouch activities.
 - International private banking services.
- ◆ Services involving banknote and precious metal trading and delivery.
- ◆ Services that inherently have provided more anonymity or can readily cross international borders, such as online banking, stored value cards, international wire transfers, private investment companies and trusts.



Factors Affecting Risk

- ◆ Purpose of the account
- ◆ Level of assets involved
- ◆ Level of AML oversight in the jurisdiction
- ◆ Regularity or duration of the relationship
- ◆ Familiarity of the Member with the country
- ◆ The use of intermediate corporate vehicles or other structures that have no apparent commercial or other rationale or that unnecessarily increase the complexity or otherwise result in a lack of transparency.



Risk Controls

- ◆ Increased awareness by the financial institution of higher risk customers and transactions within business lines across the institution.
- ◆ Increased levels of know your customer (KYC) or enhanced due diligence.
- ◆ Escalation for approval of the establishment of an account or relationship.
- ◆ Increased monitoring of transactions.
- ◆ Increased levels of ongoing controls and frequency of reviews of relationships.



Customer Due Diligence

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- ◆ Exemptions have been made consistent
 - No CDD requirement = no documentation requirement
- ◆ All exemptions moved into one section, 62, of the Regulations
- ◆ Significant timing changes:
 - Individual ID from 6 months after account opening to before the first transaction other than a deposit
 - Corporate documents and information from 6 months to 30 days after account opening
- ◆ Addition of date of birth to:
 - New account forms
 - Large cash transaction records
 - Third parties for both new accounts and large cash transactions



Identity Verification - Individuals

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- ◆ Face-to-face using documentation remains the same:
 - Documents must be original and valid (i.e. not expired)
 - Account form must record date of birth
 - Record of document (type, reference number and place of issuance) can be maintained with, not just on, the signature card or new account form
- ◆ Use of agents or mandataries
 - Written agreement with agent or mandatary
 - Member must obtain the customer information from the agent or mandatary



Non-face-to-face Verification

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- ◆ Face-to-face verification by an affiliate
 - Wholly-owned subsidiary, parent that wholly owns the Member or parent that wholly owns the affiliate and the Member
 - Must be a reporting entity as listed in the Act or
 - Foreign affiliate conducting the same type of activities as reporting entities
 - Member must verify that the name, address and date of birth of the client are the same in its records and those of the affiliate
 - Member must record the name of the affiliate and type and reference number of the identification document



- ◆ Dual method verification
 - Permitted combinations of the following methods as listed in the regulation
 - Identification product – independent and reliable ID product and a Canadian credit history of at least 6 months duration
 - Credit file – obtain (with permission) client's name, address and date of birth from a credit file in existence for at least six months
 - Attestation – legible photocopy of an allowable ID document with attestation of a Commissioner of oaths or a dentist, medical doctor, chiropractor, judge, magistrate, lawyer, notary (in Quebec), notary public, optometrist, pharmacist, professional accountant (APA, CA, CGA, CMA, PA, or RPA), professional engineer (Eng. in Quebec or P.Eng elsewhere) or veterinarian.



Non-face-to-face Verification

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- ◆ Dual method verification
 - Cleared cheque – same as current
 - Canadian financial entity only
 - Must be a deposit account
 - Confirmation of deposit account – same as current
 - Canadian financial entity only
 - Must be a deposit account



Corporations and other Entities

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- ◆ Corporations - reasonable measures to
 - obtain the names and occupations of directors
 - obtain the names, addresses and occupations of all individuals who own or control, directly or indirectly, more than 25% of the shares of the corporation
 - If the Member cannot obtain the information, it must record the reason why
- ◆ Other entities – reasonable measures to
 - obtain the names, addresses and occupations of all individuals who own or control, directly or indirectly, more than 25% of the shares of the entity
- ◆ Not for profit entities
 - Must determine whether it is a registered charity under the Income Tax Act
 - If not, whether it solicits donations from the public



CDD Exemptions

- ◆ New exemption for federally and provincially regulated pension funds and provincially regulated insurance companies and investment funds
- ◆ New exemption for subsidiaries of exempt entities if their financial statements are consolidated with those of the exempt entity
- ◆ New exemption where account is opened only to provide services to a securities dealer, i.e. a carrying broker is now exempt and all requirements rest on the introducing dealer
- ◆ Exemption for affiliates of Canadian financial entities is restricted to those whose activities are similar to those of such entities
- ◆ Cannot use verification by the same person if there are doubts about the accuracy of the previously collected information



Suspicious Transaction Reporting

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- ◆ Attempted Suspicious Transactions
 - Must be reported
 - Do not have to provide all mandatory information for attempted suspicious transactions if cannot obtain it using reasonable efforts
 - Must report on all STRs whether the transaction has been completed and, if not, why not
- ◆ Must make efforts to learn the identity of anyone about whom a STR must be filed, unless doing so would alert the client or prospective client
- ◆ Must report possession of property of listed terrorists to FINTRAC
 - Currently reported to RCMP and CSIS under UN Suppression of Terrorism Regulations and *Criminal Code*



Compliance Program

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- ◆ Policies and Procedures must be written, kept up-to-date and approved by a senior officer
- ◆ Training program must be written
- ◆ Audit
 - Moved from “as often as necessary” to ever two years
 - Must cover risk assessment and training
 - Must be documented and reported in writing to a senior officer within 30 days
 - Must also report changes in policies and procedures since the last review along with an update on implementation



Other Changes

- ◆ Prohibition from opening account if the client's identify cannot be established
- ◆ Foreign subsidiaries and branches
 - Applies to those in countries that are not FATF Members
 - Applies to those conducting activities similar to those of the Member
 - Foreign subsidiary must establish AML policies and procedures consistent with PCMLTFA requirements, including CDD and risk assessment requirements
 - Not required if doing so is precluded by law in the jurisdiction, but the Member must keep a record showing how the particular policy or procedure would violate local laws