

DATE: May, 2019

SUBJECT: New tools from FINTRAC to assist in meeting regulatory obligations

On February 7, 2019, the Financial Transactions and Reports Analysis Centre of Canada ("FINTRAC") issued a new [Compliance Framework](#) and [Assessment Manual](#), as well as a revised [Administrative Monetary Penalties Policy](#) and a [notice on Voluntary Self-Declaration of Non-Compliance](#).

These new tools published by FINTRAC provide insight into the examination and penalty assessment process.

FINTRAC's Compliance Framework

The Compliance Framework is a new tool that provides a high level overview of (i) FINTRAC's guiding principles (being transparency, engagement and clarity), (ii) the entities subject to the PCMLTFA¹, (iii) the key obligations under the PCMLTFA and (iv) the pillars of FINTRAC's compliance program (assistance, assessment and enforcement).

The Compliance Framework outlines FINTRAC's outreach to assist reporting entities with their compliance through its on-line publications, policy interpretation, Helpline and technology support Helpdesk. It also summarizes FINTRAC's processes for compliance examinations and determining AMPs.

FINTRAC's Assessment Manual

The Assessment Manual is a new tool that provides reporting entities with a detailed overview of the approaches and methods used by FINTRAC during the examination process. Reporting entities should carefully review this manual as it provides a helpful roadmap, both in preparing for an examination by FINTRAC and in conducting self-assessments of compliance.

Administrative Monetary Penalties (AMP)

The revised AMP policy is to support FINTRAC's efforts to ensure compliance with the Act and its regulations by providing a measured response to non-compliance issues. The program's guiding principles are:

- **Objectivity:** FINTRAC will make an objective assessment based on facts and circumstances;
- **Reasonableness:** FINTRAC will exercise professional judgment assessing relevant facts and circumstances when assessing an AMP;
- **Transparency:** reporting entities will be provided with FINTRAC's findings and observations and be given an opportunity to respond before the findings are finalized;
- **Fairness:** reporting entities will have a fair opportunity to respond and to understand the case for an AMP;
- **Consistency:** FINTRAC will follow policies and procedures to ensure consistency of penalty amount; and
- **Documentation:** FINTRAC will document the information used to support its analysis.

AMP Assessment

FINTRAC has the discretion to determine whether to issue an AMP and may issue one where it has "reasonable grounds to believe" a reporting entity has violated the PCMLTFA or its regulations. FINTRAC may use AMPs where

¹ Proceeds of Crime (Money Launder) and Terrorist Financing Act

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there has been repeated non-compliance, significant issues of non-compliance or a high impact on FINTRAC's mandate or the objectives of the PCMLTFA and its regulations.

AMP Amount

The Proceeds of Crime (Money Laundering) and Terrorist Financing Administrative Penalties Regulations set out the following monetary ranges for AMP amounts:

- "Minor" violation: \$1-\$1,000 per violation
- "Serious" violation: \$1-\$100,000 per violation
- "Very serious" violation: \$1-\$100,000 per violation for an individual and \$1-\$500,000 per violation for an entity

The Act and the AMP Regulations set out three criteria that must be taken into account when determining a penalty amount: (1) the purpose of the AMPs, which is to encourage compliance, rather than punish, (2) the harm done by the violation, and (3) the reporting entity's history of compliance.

The following guidelines are in place as benchmarks to assist FINTRAC officers in the calculation of a penalty amount (1) assessing the harm done, and (2) assessing the compliance history and making a non-punitive adjustment.

- **Step 1- Harm done assessment:** FINTRAC defines "harm" as the degree to which a violation interferes with achieving the objectives of the Act or with FINTRAC's ability to carry out its mandate. The first test to assess the harm done when calculating a penalty amount is to determine whether the reporting entity has completely failed to meet a requirement or only in part. When a reporting entity has completely failed to meet a requirement, the base penalty amount that is typically considered for that violation is the maximum amount set out by the AMP Regulations. When a reporting entity has failed to meet part of a requirement, the base penalty amount assessed for each violation depends on the part that is non-compliant and the extent of the failure.
- **Step 2- Compliance history and non-punitive adjustment:** FINTRAC will review the compliance history and will typically reduce a penalty by two-thirds for a first time violation, one-third for a second time violation and not at all thereafter.

Voluntary Self-Declaration of Non-Compliance

FINTRAC recognizes reporting entities may periodically come across instances where they have not met all the requirements of the PCMLTFA. These shortfalls may be in relation to reporting, client identification, record keeping, or effectively implementing an area of their compliance program. In such cases, FINTRAC strongly encourages reporting entities to voluntarily declare their non-compliance in order to resolve the issues identified.

When a voluntary self-declaration of non-compliance is made to FINTRAC in writing, it should include:

- Name of reporting entity and contact details of the individual submitting the voluntary self-declaration of non-compliance;
- For reporting issues: the number of reports impacted, type, and the time period during which the issues occurred, as well as the reason why the reports were not submitted, were late, or incorrect and other related details;
- For reporting issues: the number of reports impacted, type, and the time period during which the issues occurred, as well as the reason why the reports were not submitted, were late, or incorrect and other related details;
- A plan to resolve the issues and submit all outstanding (or incorrect/incomplete) reports, including measures and timelines for corrective action.

Importantly, FINTRAC states that: "When the voluntarily declared non-compliance issue is not a repeated instance of a previously voluntarily disclosed issue, and when this declaration has not been made after a reporting entity has been notified of an upcoming examination, we will work with the entity to resolve the issue and will **not** propose an administrative monetary penalty related to the submission²."

Information Resources

Detailed information on your obligations under the Act can be found at the www.fintrac-canafe.gc.ca.

² <http://www.fintrac-canafe.gc.ca/guidance-directives/exam-examen/vsdonc/1-eng.asp>