

EMERGING REGULATORY ISSUE

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NEW ANTI-MONEY LAUNDERING AND ANTI-TERRORIST FINANCING REGULATIONS REGULATORY GUIDE TO ADVISOR OBLIGATIONS

This bulletin provides background information on the recent sweeping changes to the federal government's anti-money laundering and anti-terrorist financing regime, and a guide to Advocis resources in the Best Practices Manual as well as a continuing education eligible training module to assist advisors in adhering to these mandatory regulatory requirements.

I. Background

On June 27, 2007 the Government of Canada released its final Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transaction Reporting Regulations to combat money laundering and terrorist financing and to bring Canada's regulatory regime in line with new Financial Action Task Force international standards. The new regulations are a direct result of significant changes made last year to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act. A copy of the regulations can be accessed at:

<http://canadagazette.gc.ca/partII/2007/20070627/html/sor122-e.html>

The new regulations impacting financial advisors will come into effect on June 23, 2008. A second phase of proposed regulatory amendments has been pre-published for public comment. However, advisors are encouraged to begin planning for these enhanced compliance requirements right away.

Anti-money laundering and anti-terrorist financing legislation and regulations apply to all financial advisors to the extent that they operate as insurance agents and persons authorized to engage in the business of dealing in securities. The Proceeds of Crime (Money Laundering) and Terrorist Financing Act consists of a reporting and identification regime to which financial advisors must subscribe that has been strengthened recently with the introduction of significant amendments.

Advocis has been actively engaged throughout the entire consultative process regarding the government's new anti-money laundering and anti-terrorist financing regime.

The Federal Minister of Finance introduced Bill C-25 in October 2006 to strengthen the Proceeds of Crime (Money Laundering) and Terrorist Financing Act and ensure Canada continues to be a global leader in combating organized crime and terrorist financing. It was evident from the proposed legislative amendments that the government was taking its international commitment seriously as it introduced a number of enhanced requirements on all reporting entities.

As a prelude to the legislative amendments, the Department of Finance issued a consultation paper entitled Enhancing Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime in June 2005. Over 50 submissions from stakeholders were received. Advocis made a detailed submission outlining its concerns with the potential impact on small, independent financial advisors. Advocis' submission responding to the consultation paper can be accessed at: http://www.advocis.ca/content/programs/advocacy/Sub-Anti-mon_Laund-se30-05.pdf

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While Bill C-25, which received Royal Assent in December 2006, contains amendments that seek to address industry concerns and minimize the compliance burden by tailoring, where at all possible, new requirements to existing business practices, the new regime is more onerous for financial advisors. The amendments impose stricter obligations to ascertain identity, especially in situations where there is doubtful client information, non-face-to-face situations and third party and beneficial ownership information. In addition, it introduces a new monetary penalty regime, which represents a considerable change affecting financial advisors.

Draft Regulations were released by the Department of Finance in March 2007 for public consultation. Advocis made a submission to the proposed Regulations Amending Certain Regulations Made Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, outlining a number of issues including obligations to monitor activities and ascertain identity of clients purchasing their products. A copy of Advocis' submission can be accessed at: http://www.advocis.ca/content/programs/advocacy/sub07/Sub-AML_Regs-apr10-07.pdf

While one of the main policy objectives of the Regulations is to maintain the credibility and soundness of the financial system, the government has attempted to balance the objective of achieving international standards without diminishing competition in the financial sector, and trying to minimize the compliance burden of reporting entities.

Nevertheless, the obligations of financial advisors will increase under the new regime. Amendments to the Regulations will affect financial advisors' legal obligations including reporting financial transactions where there are reasonable grounds to suspect that they are related to money laundering or terrorist financing activities; enhanced record keeping; and client identification.

II. Key Changes Impacting Financial Advisors

The following is a summary of some of the new requirements impacting financial advisors:

Attempted Suspicious Transactions

The regulations integrate the concept of an "attempted transaction" (not just a completed transaction) into the anti-money laundering and terrorist financing regime, which constitutes a significant change in the way reportable activities are defined. Reports of these transactions must be filed with the Financial Transactions and Reports Analysis Centre of Canada - FINTRAC (<http://www.fintrac.gc.ca>).

Information on Directors and Partners of Corporations

Financial entities, securities dealers, life insurance companies, life insurance brokers and agents will have to take reasonable measures to obtain information on directors or partners of a corporation or other entities or on persons who own or control 25 percent or more of that corporation or entity.

Politically Exposed Foreign Persons

Financial entities, securities dealers, life insurance companies, life insurance brokers and agents would have to determine whether purchasers of insurance, account holders or persons sending large electronic fund transfers or making large payments are politically exposed foreign persons (individuals who hold a prescribed list of positions in a foreign state).

Low-Risk Situations

The government has identified a number of low-risk situations, which the regulations explicitly exempt from reporting requirements. These include the following:

- transactions such as the purchase of a group life insurance policy, registered annuity policies, opening of RRSP accounts, and certain exempt policies as per Income Tax Regulations;
- situations where contributions to a group plan are made by means of payroll deductions, and

- sales of mutual funds where an account has been opened or the transaction is part of a series of transactions where the mutual fund advisor has reasonable grounds to believe that the identity has been ascertained by a securities dealer.

The Regulations also identify circumstances where insurance brokers or agents are not required to ascertain a person's identity where there are reasonable grounds to believe that the person's identity has already been ascertained by another broker or agent, or insurance company.

Compliance Regime

Enhanced due diligence measures will also require advisors to devote resources to develop internal policies and procedures, provide appropriate training and assess money laundering and terrorist financing risks in the course of business activities. A well-documented compliance regime is intended to ensure that advisors comply with all of their obligations.

Monetary Penalties and Offenses

The Act sets out penalties and sanctions against individuals and entities that are non-compliant. Criminal sanctions deal with willful non-compliance and other serious violations for the most severe offenses found in the Act, however, monetary penalties deal with a much wider range of infractions ranging from failure to keep appropriate records to failure to report suspicious activities. Some examples of the maximum penalties are:

- Knowingly failing to report suspicious transactions – penalty of up to \$2 million and/ or 5 years imprisonment
- Failure to report a prescribed transaction – up to \$500,000 for the first offence, \$1 million for subsequent offences, and
- Failure to meet record keeping requirements – up to \$500,000 and/or 5 years.

III. Guide to Advocis Resources – Compliance & Education Tools

Best Practices Manual – Anti-Money Laundering and Terrorist Financing Section

Advocis has updated its **Best Practices Manual (BPM)** to assist financial advisors in meeting their obligations under the government's new anti-money laundering and anti-terrorist financing regulatory regime. New content within the Regulatory Section of the BPM provides members with an executive summary of the regulatory requirements as well as a detailed examination on how to structure an advisory practice for effective compliance. Prepare yourself and your practice to demonstrate active compliance under these new rules and regulations by accessing the BPM at:

<http://www.advocis.ca/content/programs/bestprac.html>

The BPM provides useful information and guidance for:

- Life insurance brokers and agents
- Securities dealers, portfolio managers and investment counselors, and
- Employees of any of the above.

Areas covered in the BPM include, but are not limited to:

Advisor reporting obligations:

Advisors must report to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC):

- Suspicious transactions or attempted suspicious transactions
- Known or suspected terrorist property in your possession or control, and
- Cash transactions of \$10,000 or more.

Record keeping guidance regarding:

- Large cash transaction records
- Client information records
- Signature cards or account operating agreements
- Account holder information, and
- Confirmations of purchase or sale and trade authorizations.

Specific measures on ascertaining identification for:

- Any individual who conducts a large cash transaction
- Any individual or entity that purchases an annuity or life insurance policy for which it may pay \$10,000 or more
- Any individual who is authorized to give instructions for a securities account, and
- Any corporation or other entity for which a securities account is opened.

Establishing an effective compliance regime through:

- The appointment of a compliance officer
- The development and application of compliance policies and procedures
- Periodic review of the effectiveness of policies and procedures, and
- Implementation of an ongoing compliance training program for all staff.

Online Anti-Money Laundering and Terrorist Financing Professional Development Module

Advocis has developed an online module that takes advisors and their staff through an introduction and overview of money laundering and terrorist financing. The overview includes a definition of common methods used and key indicators for both the insurance and securities sectors.

This module also delves into the current legislation which is in place to combat money laundering and terrorist financing, including all of the recent amendments and additions to the *Regulations*.

Lastly, it discusses the role of the financial advisor including specific measures, mandatory requirements and implementation of a compliance regime.

The presentation consists of two parts and a quiz, totaling a module of one hour in length. Upon achievement of a successful pass rate of 70% of the online quiz, members will receive one Ethics related Professional Development credit. There is no charge for Advocis members to take this online presentation and it is available to Advocis members only accessible at:

<http://www.advocis.ca/secure/ethics/ethics2.aspx>

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