Compliance Update

CAILBA COMPLIANCE NEWSLETTER *Issue 21 – June 2018*

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Anti-Money Laundering and Anti-Terrorist Financing Draft Revisions to Regulations

The Department of Finance has published draft amendments to regulations under the Act. The proposed changes are far-reaching, with many aimed at addressing deficiencies identified by FATF in its 2015-2016 peer review of Canada's AML-ATF efforts. There is also a clear focus on the modernization of the financial sector and the need to respond to the new challenges posed by FinTech.

CAILBA will be commenting on the draft regulations. The comment period ends on September 7. It is expected that regulations will be finalized in the fall and will come into effect in the fall of 2019.

The most important change for MGAs is that the draft amendments call for an exemption for MGAs, which would no longer be treated as "reporting entities" when acting on behalf of an insurer. If the amendments are approved, MGAs would no longer be required to maintain compliance regimes, keep records or report suspicious transactions.

MGAs that maintain their own books of business or that in any way act as selling agents will continue to have to comply with all existing requirements for advisors under the Act.

CAILBA has long argued that MGAs acting as intermediaries for insurers should be exempt from the Act and its regulations. After nearly a decade, during which FINTRAC itself identified MGAs as low risk, it's clear that FINTRAC needs to redirect its attention and efforts in order to deal with significant existing and emerging risks.

MGAs should maintain their current compliance programs until the regulations are finalized sometime in 2019.

Licensed agents are still captured under the Act and its regulations, and the new obligations that will be imposed by the new regulations are extensive. Advisors will require information, support and training as the new regulations are rolled out. CAILBA will consult with FINTRAC and with insurers regarding expectations on a go-forward basis.

Note that the amendments will require ongoing analysis. What follows is a brief synopsis of some amendments that will affect advisors and insurers. We will keep you apprised as we attempt to determine the impact of other proposed changes.

- **Changing the deadline from 30 days to 3 days to file a Suspicious Transaction Report once the entity has reasonable grounds to suspect the transaction.**
- Allowing reporting entities to rely on customer ID verification performed by other entities as long as the reporting entity can request and obtain information on the method of ID verification within 3 days of the request.
- Insurers will be required to keep records, report and do customer due diligence when issuing mortgages and other loans against the value of a life insurance policy.

- Documents used to establish proof of a corporate client's existence can be no more than one year old for the certificate of corporate status and "most recent" for other permissible documents such as annual audited financial statements to "ensure that corporations exist at the time they open an account or conduct a financial transaction."
- Reporting entities must take steps to *confirm the accuracy* of new or updated beneficial ownership information.
- Exemptions from the requirement to conduct customer due diligence for certain low-risk customers (e.g. large companies listed on the Toronto Stock Exchange) subject to certain conditions. All other requirements would apply, including record keeping, ongoing monitoring and reporting.
- Repealing the requirement to maintain a "reasonable measures record" for unsuccessful attempts to obtain required information, based on stakeholder feedback about the burden this requirement imposes.
- Removing the prohibition on scanned or photocopied customer ID documents as long as such documents are "authentic, valid and current."
- Clarifying the risk assessment requirements so that the assessment of products and their delivery channels are included in an assessment of the risks associated with the use of new technologies *prior to their launch*."

- **Cash Transactions**
    - Multiple cash transactions performed by an individual within a 24-hour period will be treated as a single transaction for reporting purposes when they *total* $10,000 or more. Currently, the rule only applies to multiple single transactions of less than $10,000. Only one report should be submitted to capture all transactions within a 24-hour period that collectively meet or surpass this threshold.
    - The 24-hour rule will also apply to beneficiaries of multiple cash transactions (where deposits or transfers of money are received by the same person and the aggregate amount over a 24-hour period is $10,000 or more).
    - Any cash transactions that *any* reporting entity, regardless of its corporate structure, receives in the aggregate amount of $10,000 or more, must be reported.
- Reporting entities must take "reasonable measures" to determine the sources of a politically exposed person's wealth, and to assess whether the information is reasonable and consistent with the information provided *before the "reporting entity proceeds with the relationship or permits transactions to occur."*
- Requiring advisors and life insurance companies to keep an information record on annuities and life insurance not only when they are to receive $10,000 or more over the duration of the annuity or policy but also when they will "*remit an amount of $10,000 or more to a beneficiary over the duration of the annuity or policy."*
- Current regulations only require that reporting entities send a wire transfer to document information about the transaction. New rules would require reporting entities that are intermediaries in a transaction or that send or receive a wire transfer to identify the client, keep records of, and include information about the transaction to ensure information remains with the wire transfer throughout the payment chain and that reporting entities have all of the relevant transaction information to detect and report suspicious transactions.
- The eight schedules to the Regulations set out the types of information that reporting entities have to provide to FINTRAC. These schedules reflect current practices and requirements (e.g. online identifiers and email addresses).

New topics addressed by the draft amendments:

Prepaid cards

Cards not restricted to use at a particular merchant or group of merchants, such as a shopping centre gift card would be treated as bank accounts and

reporting entities would be required to verify client ID, keep records and report suspicious transactions.

Virtual currency

Persons and entities "dealing in virtual currency" including virtual currency exchange services and value transfer services including money services businesses (MSBs), would be required to implement a full compliance program and register with FINTRAC. In addition, all reporting entities that receive $10,000 or more in virtual currency would have record-keeping and reporting obligations.

Record-keeping obligations apply to life insurance when virtual currency is paid or received.

Foreign Money Services Businesses (MSBs)

Foreign businesses that offer foreign exchange dealing, money transferring and/or cashing or selling money orders, traveller's cheques or anything similar to people located in Canada but that do not have a place of business in Canada, (such as those offering such services through the Internet), would become subject to the same sections of the Act and its regulations as domestic MSBs already are. Requirements would include registering with FINTRAC, customer due diligence, making a report, and keeping records. An amendment allows revocation of a foreign MSB's registration to do business in Canada for failure to pay any AMPs. "Financial entities would be prohibited from opening or maintaining an account for, or having a correspondent banking relationship with, an unregistered foreign MSB." See http://www.gazette.gc.ca/rp-pr/p1/2018/2018-06-09/html/reg1-eng.html

What's New with CCIR and CISRO

Segregated Funds Disclosure

On June 14, CCIR released its final version of the proposed minimum required content for and a prototype of a client account statement, which lay out the minimum content. CCIR points out that the prototype is not a prescribed form for disclosures, but insurers must ensure that consumers are provided with all of the new information outlined. Insurers will be able to determine the layout and look as well as the language of their disclosure documents.

Fair Treatment of Consumers

In May, CCIR and CISRO issued joint guidance on the fair treatment of consumers, following Quebec and Ontario. CAILBA has commented on the guidance.

See https://www.ccir-ccrra.org/en/

CISRO has solicited CAILBA's input regarding the issues and concerns it feels should be considered in CISRO's strategic plan for 2019-2022. In developing this plan, CISRO will consider the current insurance environment, projects currently underway and the priorities of its members.

What's New in the Provinces

British Columbia

The province's Ministry of Finance has released a consultation paper following its review of the Financial Institutions Act. Recommendations include:

- Disclosure requirements for referral payments to advisors.
- Create an insurer code of conduct for fair treatment of customers.
- Change the rebate cap to the lesser of 25% of FYC and 25% of first year premium.
- Requiring restricted licenses for all incidental sales of insurance; requiring insurers to oversee sales by restricted licensees and exempt sellers; and applying certain market conduct requirements to the sale of these products.
- Design legal framework for online insurance sales.
- Give credit unions ability to promote insurance on their websites.
- Making FICOM a Crown agency with rule-making authority and giving it discretion to depart from

federal solvency standards to address "unique" BC risks.
- Allowing FICOM to provide information to the national insurance complaints database.

See http://www.fin.gov.bc.ca/pld/files/FIA_CUIA_Review_Paper.pdf

Ontario

On June 28, FSCO issued new standards of practice for all mortgage brokerages dealing in syndicated mortgages, which include suitability and disclosure requirements, investment limits and cooling off periods. See http://www.fsco.gov.on.ca/en/mortgage/bulletins/pages/m-01-18.aspx.

Saskatchewan

The Saskatchewan Insurance Council has asked CAILBA to meet in mid-July to begin "some detailed discussion concerning the recommendation to our Councils and the Superintendent's office regarding expectations/responsibilities under the new MGA licence."

Quebec

The province has abandoned its effort to integrate the two SROs for life and P&C insurance into the AMF. Both SROs will continue to operate independently.

In May, the AMF put out a bulletin seeking candidates for a distribution advisory committee that will examine the practices of representatives pursuing activities under the *Act respecting the distribution of financial products and services* (the "Distribution Act"). We will keep you apprised of this committee's activities.

What's New with CLHIA

CLHIA announced at the end of May that it will make changes to its approach towards Guideline G19, Compensation Disclosure in Group Benefits and Group Retirement Services including:

- Allowing advisors to deliver the disclosure to the client.
- A materiality threshold for tracking and disclosing in-kind compensation.
- Extending the implementation timeline for group benefits to January 1, 2020. For group retirement services, disclosure for new contracts will be January 1, 2019.

Trending Topics

Financial Abuse of Seniors

AMF has published an excellent summary of efforts being made by the CSA and provincial regulators to identify and deal with instances of elder abuse. This topic is no less important in the insurance industry and we will likely see much more activity on this front. See **https://lautorite.qc.ca/en/general-public/media-centre/news/fiche-dactualites/securities-regulators-urge-canadians-to-watch-for-red-flags-of-financial-abuse-of-older-canadians/**

Embedded Commissions

On June 21, CSA issued Staff Notice 81-330, which announced its policy decision on mutual fund embedded commissions, which require registrants to address conflicts of interest associated with embedded commissions and 3rd party compensation in the best interest of the client. The CSA will issue rule proposals for comment in September to prohibit:

- Deferred sales charges option, including low-load with upfront commissions; and
- payment of trailers to dealers who do not make a suitability determination.

CAILBA submitted comments to the CSA, in which it supported choice for consumers on how they pay fees, which should include embedded commissions.