

Compliance Update

CAILBA COMPLIANCE NEWSLETTER

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Anti-Money Laundering and Anti-Terrorist Financing – New FINTRAC Guidance

FINTRAC has published new suspicious transaction guidance, which replaces Guidelines 2, 3A and 3B. The revised guidance includes:

- **“What is a suspicious transaction report”**, which provides valuable information on how to review concerning transactions and what “reasonable grounds to suspect” (and therefore report) really means. See <http://www.fintrac-canafe.gc.ca/guidance-directives/transaction-operation/Guide2/2-eng.asp>
- **“Reporting suspicious transactions to FINTRAC”**, which provides detailed instructions on how to file reports. See <http://www.fintrac-canafe.gc.ca/guidance-directives/transaction-operation/Guide3/str-eng.asp>
- **“Money laundering and terrorist financing indicators,”** which is sector specific. See http://www.fintrac-canafe.gc.ca/guidance-directives/transaction-operation/indicators-indicateurs/li_mltf-eng.asp
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The replaced Guidelines 2, 3A and 3B are referenced extensively in the AML-ATF unit of the CAILBA Compliance Toolbox.

Because MGAs are proposed to lose their status as “reporting entities”, which would therefore exempt them from AML-ATF requirements, CAILBA has decided not to update the AML-ATF section of the Toolbox. Instead, we recommend that members consult the new guidance and ensure that it forms part of their existing compliance regime, including staff and advisor training. In the event of a FINTRAC audit, it’s important to show that you are aware of current guidance. In addition, MGAs should maintain an understanding of the rules in order to offer continuing education and guidance to advisors for their AML-ATF compliance.

On an unrelated note, FINTRAC reports that an **Ottawa dentist has been convicted of tax evasion and money laundering**, the first such conviction in Canada. It is unlikely to be the last such conviction. MGAs should take note that professionals should automatically be considered high risk, given the attention that the CRA and FINTRAC pay to them. See <https://www.canada.ca/en/revenue-agency/news/newsroom/criminal-investigations-actions-charges-convictions/20190117-ottawa-dentist-sentenced-for-tax-fraud-and-laundering-proceeds-of-crime.html>

Privacy

Privacy Breaches

As a reminder, the Privacy unit of the CAILBA Toolbox was updated late last year to reflect the new OPC privacy breach reporting requirements. Please make sure to review and update your privacy programs.

New OPCC Guidelines for obtaining meaningful consent

In May, the Office of the Privacy Commissioner of Canada released new Consent Guidelines, which they have applied since January 1. The Guidelines provide 7 guiding principles:

1. **Emphasize key elements:** (i) what personal information is being collected; (ii) which parties' personal information is being shared; (iii) for what purposes personal information is collected, used or disclosed, and (iv) the risk of harm and other potential consequences.
2. **Allow individuals to control the level of detail they get and when.**
3. **Provide individuals with clear options to say 'yes' or 'no'.**
4. **Be innovative and creative.** Consider a variety of communication strategies, like just-in-time notices, interactive tools and customized mobile interfaces to highlight privacy issues.
5. **Consider the consumer's perspective.** Use clear explanations and a level of language that is suitable to a diverse audience.
6. **Make consent a dynamic and ongoing process.**
7. **Be accountable: Stand ready to demonstrate compliance.**

The Consent Guidelines contain a checklist to assist organizations in their compliance efforts, including a "must do" list. CAILBA encourages members to review the Guidelines and must do list. The CAILBA Toolbox will be amended at a later date.

The Guidelines are generally consistent with those of Alberta and BC. See

https://www.priv.gc.ca/en/privacy-topics/collecting-personal-information/consent/gl_omc_201805/

The Provinces

In 2018, FSCO released "**Treating Financial Services Consumers Fairly Guideline - Superintendent's Guideline No. 03/18,**" which is similar to that

published by the CCIR. See

https://www.fSCO.gov.on.ca/en/about/superintendent_guidelines/Pages/fair-treatment-guidelines.aspx

What's Happening in Related Arenas

IIROC Compliance Priorities

Released in January, these priorities include a heightened focus on compensation-related conflicts of interest.

See

http://www.iIROC.ca/Documents/2019/6BEB3DD4-FD5A-4F09-B831-A66CEFA9CFBD_en.pdf

Referral Arrangements

A decision of the **BC Securities Commission** indicates that some referral arrangements cross the line and become trading, which requires registration. A licensed insurance agent whose mutual fund registration had lapsed entered into referral arrangements and was found to have "acted in furtherance of a trade" and thus of "trading." The BCSC asserted that by finding and soliciting a large number of investors, and connecting them with issuers for a long period of time in exchange for significant compensation, the Respondents were "in the business of trading".

The BCSC list of factors that are material for determining where a referral falls on the spectrum include but are not limited to:

- was there material (relative to the amount invested) compensation paid for the referral?
- was that compensation tied to specific trades, which would suggest that the referrer played a material role in causing the trade?
- what is the range of securities offered by the person to whom the investor is referred? If there is only one product, this suggests that the referrer anticipated a trade in that product as the likely outcome of the referral.
- was the investor receiving financial services from the referrer prior to the referral? An existing financial services relationship indicates a level of

trust and that a referral would be more likely to be interpreted as a recommendation.

This case is relevant to the insurance business and useful in assessing the risks associated with certain referral arrangements routinely engaged in by insurance advisors, such as real estate syndication and syndicated mortgages. If an MGA has advisors engaged in these activities, the BCSC case is worth reviewing. See https://www.bcsc.bc.ca/Enforcement/Decisions/PDF/2018_BCSECCOM_372/

Banks

Bill C-86, Budget Implementation Act, 2018, No. 2 has been introduced and is in its second reading. Likely spurred by the FCAC's reviews of domestic bank practices, the Act aims to foster fair treatment of consumers and strengthen the consumer protection provisions of the Bank Act that apply to banks and authorized foreign banks by creating a federal financial consumer framework, that includes:

- placing more responsibility on bank boards for consumer protection, including requiring the bank to establish a committee to ensure compliance with specific requirements;
- new requirements aimed at FTC and responsible business conduct, including suitability of products, managing compensation and conflicts of interest and staff training;
- stronger complaints reporting; and
- strengthening the role of the FCAC Commissioner, including increasing penalties for non-compliance and requiring publication of violations and violators.

CAILBA consultations

In November, we participated with IFB and ADVOCIS in an initial meeting of **CCIR/CISRO's FTC implementation working group** and will meet quarterly in 2019. CAILBA would appreciate members' feedback on barriers to FTC as well as recommendations on how to best implement FTC through the industry.

CAILBA met several times in 2018 with **FSRA, the new Ontario regulator** to discuss its proposed fee rules. We continue to dialogue with FSRA on their **2019 priorities**, which are out for public comment and we will meet regularly with FSRA's new executive and Board on this topic in Q1 2019.

New Brunswick is updating its insurance Act and proposes to include licensing of MGAs, similar to Saskatchewan. CAILBA will be meeting with NB to discuss.

Saskatchewan has released amendments to its regulations and proposes that these and the amended Insurance Act will come into force on January 1, 2020. CAILBA will be reviewing shortly.

CAILBA provided input to the **Canadian Securities Administrators (CSA) on National Instrument 31-103, "Registration Requirements, Exemptions and Registrant Obligations," which are also referred to as "client focused reforms."** We considered the amendments to be quite consistent with requirements in the life insurance industry and with the emerging Fair Treatment of Customers standard. In particular, we supported the CSA decision not to create an overarching and rigid best interest standard, but rather to create more targeted and practical reforms of conflicts of interest and suitability requirements.

CAILBA recently consulted directly with the **Department of Finance** regarding language used to ensure the exemption of MGAs from reporting entity requirements under the AML-ATF Act and regulations. We have been assured that the exemption will apply as intended.