MASTERING COMPLIANCE
Anti-Money Laundering Training for Brokers

MODULE 5: RISK ASSESSMENTS

LESSON 1 OF 10

Welcome

Introduction

Module 5 discusses risk in the context of money laundering and terrorist financing as it relates to real estate. Learners will identify inherent risks in real estate, their brokerage's risk tolerance, and the importance of having a risk assessment. FINTRAC's expectations, the steps to implement a risk-based approach, mitigating controls, and elements to consider when creating and documenting a risk assessment are also discussed in this module.

Learning Objectives

By the end of this module, learners will be able to:

1. describe the required elements to be considered in preparing a risk assessment of their brokerage's business and clients,
2. define "inherent risk" and "residual risk" with respect to a brokerage's business and clients,
3. identify risk factors that are unique to the British Columbia real estate market, and
4. describe FINTRAC's expectations regarding the risk-based approach to combat money laundering and terrorist financing in the real estate sector.

LESSON 2 OF 10
Introduction to Risk Assessments

Risk and Money Laundering/Terrorist Financing

FINTRAC defines risk in the context of money laundering and terrorist financing as threats and vulnerabilities presented by money laundering and terrorist financing that put at risk the integrity of Canada's financial system and the safety and security of Canadians.

For reporting entities, such as real estate brokerages, "risk" means **threats** and **vulnerabilities** that put the brokerage at risk of being used to facilitate money laundering and terrorist financing.

THREATS	VULNERABILITIES
Threats could be criminals, facilitators, or even terrorist groups.	Vulnerabilities are elements of a brokerage that could be exploited by the identified threat. These could be weak controls or operating in a high-risk geographical area, as described in more detail later in this module.

What Is a Risk Assessment?

A risk assessment is an analysis of the potential risks that could expose a brokerage to money laundering. The PCMLTFA requires all brokerages to conduct a risk assessment of their business and their client relationships.

According to FINTRAC, the risk assessment should include:

- the brokerage's clients and business relationships, including their activity patterns and geographic locations;
- the services and delivery channels that the brokerage offers;
- the geographic location(s) where the brokerage conducts their activities;
- new technologies and their impacts on the brokerage's clients, business relationships, and services or delivery channels of their activities; and
- other relevant factors affecting the brokerage's business (e.g. turnover, rules and regulations for the real estate industry, etc.).

The risk assessment must be documented in writing and must include the risk mitigation measures and strategies applied by the brokerage.

These materials are current as of October 5, 2020. Changes to the legislation and contents of this material are expected in spring of 2021.

The Importance of a Risk Assessment

> *"By regularly assessing their money laundering and terrorism financing risks, reporting entities [including real estate brokerages] can protect and maintain the integrity of their businesses while contributing to the integrity of the Canadian financial system as a whole."*
>
> – FINTRAC Guidance on the risk-based approach to combatting money laundering and terrorist financing

Resources

FINTRAC provides a workbook for the real estate sector to assist in assessing and documenting money laundering and terrorist financing risks.

In addition, the individuals completing the brokerage's risk assessment should consider consulting publicly available information in the media, government registries, or other sources to learn more about individual clients in order to appropriately rate the risk of each client.

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LESSON 3 OF 10

Introduction to the Risk-Based Approach

Defining "Risk-Based Approach"

> *There are no universally accepted methodologies that prescribe the nature and extent of a risk-based approach. However, an effective risk-based approach does involve identifying and categorising money laundering and terrorist financing risks and establishing reasonable controls based on risks identified.*
>
> – FATF Risk Based Approach Guidance for Real Estate Agents

In the context of money laundering and terrorist financing, a risk-based approach is a process that encompasses:

- **Risk Assessment –** The risk assessment of a brokerage's business activities and clients, based on its services and delivery channels, geography, clients and business relationship, and other relevant factors.
- **Risk Mitigation –** Risk mitigation through the implementation of controls and measures that are tailored to the identified risk.
- **Client Identification –** Keeping client identification and, if required, beneficial ownership and business relationship information up to date.
- **Ongoing Monitoring –** Ongoing monitoring of transactions and business relationships.

Under a risk-based approach, risk assessment and mitigation are dynamic, ongoing activities.

Identified risks may evolve over time as new services or new threats enter a brokerage's business context. As such, a brokerage's risk-based approach should be re-evaluated and updated whenever risk factors change.

The Importance of a Risk-Based Approach

The risk-based approach is aimed at ensuring efficient allocation of a brokerage's resources by providing for mitigation measures and controls that are proportional to the identified risks. Under the risk-based approach, the greatest risks will receive the greatest attention.

The risk-based approach aims to avoid simply meeting regulatory requirements by "ticking a box"; instead it encourages a flexible approach that allows compliance officers to use their professional knowledge, judgement, and expertise to determine how to apply resources on the basis of risk. This flexible approach also allows the brokerage to adapt its risk-mitigation measures and controls to risks as they emerge and evolve over time.

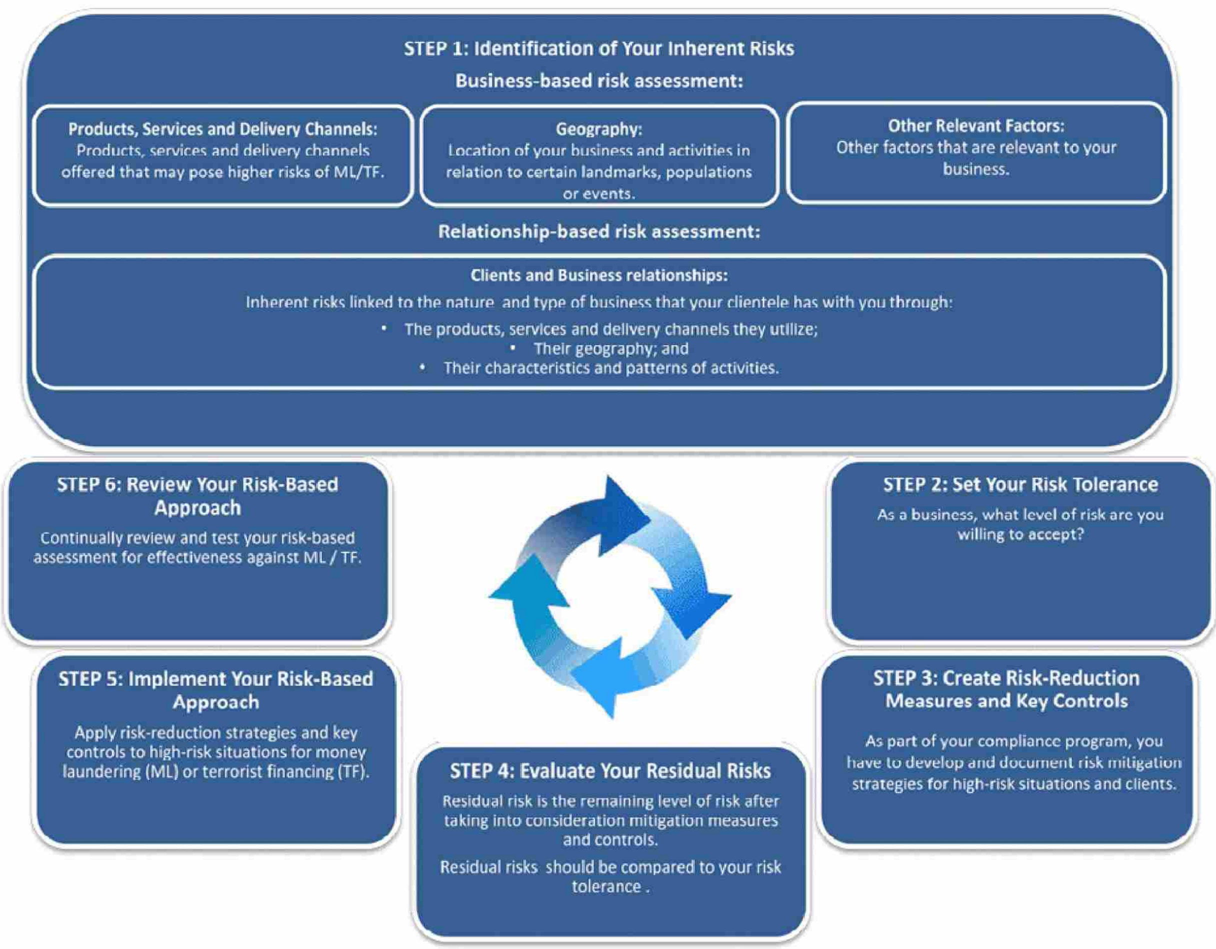
Source: FATF Risk-based Approach Guidance for Real Estate Agents

Six Steps for the Risk-Based Approach

The risk-based approach has six steps:

1. Identify the brokerage's inherent risks
2. Set the brokerage's risk tolerance
3. Create risk-reduction measures and key controls
4. Evaluate the brokerage's residual risks
5. Implement the risk-based approach
6. Review the risk-based approach

The following chart from FINTRAC provides a summary of the six steps and indicates the circular nature of these processes: as risks and vulnerabilities change, the process continues and evolves to meet the brokerage's needs. More information on this process can be found on FINTRAC's website under the subheading Risk-Based Approach Cycle.



These six steps are looked at in greater detail over the next six lessons.

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LESSON 4 OF 10
Step 1: Identifying Inherent Risk

Defining Inherent Risk

Inherent risk is the level and type of risk that exists **before** a brokerage implements controls or measures to mitigate the risk. Inherent risk can be contrasted with **residual risk**, which is the level of risk that remains **after** controls or mitigation measures are implemented.

The Government of Canada's Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada determined that the services offered by brokerages and developers inherently provide opportunities for criminals and money launderers.

For example, the real estate sector is very significant in terms of its size and scope and generates a large number of high-value financial transactions on an ongoing basis. A money launderer may take advantage of the fact that a real estate transaction is integrated with many other sectors, allowing them opportunities to access financial institutions through a gatekeeper, such as a Realtor or lawyer. Complex ownership structures that obscure the beneficial owner and the source of funds used for the purchase also present inherent risk.

> A brokerage's risk assessment should focus on inherent risks to the brokerage's business, activities, and clients.

Identifying a Brokerage's Risks

The PCMLTFA does not prescribe a specific methodology for identifying and assessing risks. FINTRAC has also stated that risk assessments should be adapted based on the business situation of eachreporting entity, including a brokerage. To that end, FINTRAC suggests assessing risk through the lenses of **business-based** and **relationship-based** risks.

Business-Based Risks

Conducting a business-based risk assessment will ensure managing brokers and compliance officers are aware of the services provided by the brokerage that may pose higher risks of money laundering and terrorist financing.

A brokerage's business-based risk assessment includes an evaluation of a brokerage's:

1. Services and delivery channels
2. Geography
3. Any other relevant factors

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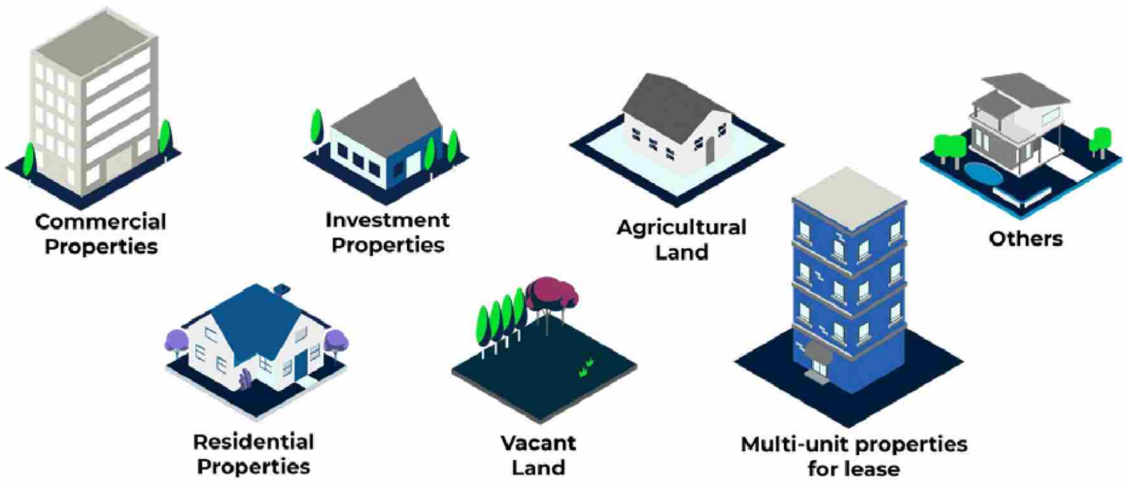
SERVICES AND DELIVERY CHANNELS

FINTRAC notes that a brokerage with a business model that includes purchasing and selling services along with builder or developer activities will have a higher level of money laundering and terrorist financing risk associated with it.

The types of property listed by the brokerage also needs to be considered. Are they:



Providing services with respect to certain kinds of properties will carry more risk than others.

GEOGRAPHY

A brokerage's geography means the location where the brokerage operates. For example, a risk assessment should consider whether the brokerage's property listings are in high-crime areas or are near a border.

> Vancouver's proximity to the US border, as well as its large international port and airport, are considered factors that increase the risk of money laundering and terrorist financing in the Vancouver area.

OTHER RELEVANT FACTORS

Other relevant factors could include if a brokerage has high employee turnover, as this may present greater risk that the brokerage can be exploited by money launderers. Other factors relevant to the real estate sector are set out later in this module.

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Relationship-Based Risk Assessment

A brokerage's relationship-based risk assessment includes an evaluation of risks associated with a brokerage's client and business relationships. The establishment of a business relationship was discussed in Module 3.

- **Before June 21, 2021**

  Before June 1, 2021, a business relationship is established the second time the brokerage is required to ascertain a client's identity.

- **Effective June 1, 2021**

  Effective June 1, 2021, a brokerage will be considered to have entered into a business relationship with a client the **first time** the client undertakes a transaction that requires the brokerage to ascertain the identity of the client.

In preparing for the upcoming change, it may be good for brokerages to consider adapting their practices now, including updating any policies and procedures to be compliant with the June 1, 2021 requirement.

Even if the brokerage's dealings with a client do not create a business relationship, the PCMLTFA still requires the brokerage to complete a risk assessment of that client to determine the money laundering or a terrorist activity financing risk associated with that client.

> *The real estate business consists of a combination of transactional as well as ongoing client relationships and is exposed to high-risk clients, including [politically exposed persons], foreign investors (including from locations of concern) and individuals in vulnerable occupations and businesses.*
>
> – Government of Canada's Assessment of Inherent Risks of Money laundering and terrorist financing in Canada

RISK RATING CLIENTS

Each of a brokerage's clients must be risk rated, either individually or in "clusters" or groups of clients that share similar characteristics. For example, clients conducting similar real estate transactions, such as residential property purchases within a certain price range, could be grouped together. In CREA's FINTRAC Office Policy 2020, there are sample clusters for client's risk assessments. These can be used to help create brokerage specific groupings.

Every high-risk client that the brokerage identifies will be subject to special, enhanced measures to mitigate risk.

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ASSESSING RELATIONSHIP-BASED RISKS

1. **Relationship-based risks include inherent risks related to the nature and type of business that a brokerage's clients have with it.**

   For example, a brokerage that typically facilitates large-value transactions may be more attractive to those looking to launder money through real estate.

2. **Relationship-based risks include the services and delivery channels that the brokerage provides to its clients.**

   The managing broker or compliance officer should consider whether the services that the brokerage provides may enable some clients to engage in high-risk transactions. For example:

   - Does the brokerage provide services where clients register property in a nominee's name?
   - Are there third-party intermdiaries involved in the purchase or sale of the property?

   They should also consider whether Realtors meet and communicate with clients in person and whether the brokerage relies on a Realtor to conduct identity verification.

   The less face-to-face contact a brokerage has with its clients, the higher the money-laundering and terrorist-financing risk.

3. **Relationship-based risks include the geographic locations where a brokerage's clients are based or operate.**

   It is important to consider whether there is a significant and unexplained geographic distance between the Realtor and client as this may be one indicator of potentially suspicious activity.

   FINTRAC expects brokerages to consider clients who are based in countries subject to Canadian sanctions or embargoes as high risk. It is also relevant to consider the jurisdiction where the financing for a transaction originates.

   A managing broker or compliance officer may also consider whether the client is based in a jurisdiction that the Financial Action Task Force, International Monetary Fund, or another credible source has determined lacks appropriate money-laundering and counter-terrorist financing laws.

4. **Relationship-based risks include the characteristics and patterns of clients' transactions.**

   For example, consider whether the brokerage's clients are corporations, individuals, families, or others and whether the pattern of transactions matches what would be expected of a client of this type.

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A compliance officer may also consider other client characteristics, such as whether an individual is a politically exposed person or whether an entity's business is cash intensive or has an ownership structure that makes it difficult to determine true ownership and control.

Transaction patterns, such as successive transactions taking place in a short period of time; the purchase and sale of under-value or over-value transactions; or complex loans or large amounts of cash used to finance a transaction may also be indicators of a high-risk client relationship.

Noticing Red Flags

Refer to online content to view video.

Identifying High-Risk Clients

It is important to consider that identifying one high-risk indicator for a client does not necessarily create a high-risk client relationship. A complete picture of the client's risk profile must be considered in order to consider a risk rating. Furthermore, it is not against the law to do business with high-risk clients. If a brokerage represents high-risk clients, FINTRAC will simply expect that the brokerage implements risk mitigation measures and controls to adequately address the risk.

It should be noted that conducting high-risk activities or having high-risk business relationships is not against the law. Defining clients as high-risk does not cast your business in a bad light; it is an assessment that allows you to ensure that controls are put in place to mitigate the risks and to apply prescribed special measures.

- FINTRAC Guidance on the risk-based approach to combatting money laundering and terrorist financing

Examples of High-Risk Indicators for the Real Estate Sector

FINTRAC has set out the following examples to assist a brokerage in identifying client characteristics, transactions, services, and delivery channels that may be high risk. These could be some of the "other relevant factors" a brokerage may consider in conducting its risk assessment.

CLIENT CHARACTERISTICS

The following examples from FINTRAC may be indicators that a client is high risk:

- A client arriving at a real estate closing with a significant amount in cash.
- A client who wants to purchase a residential property in the name of a nominee, other than a family member, for no apparent reason.

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- A client who resides overseas purchases a commercial property for no apparent reason.
- A client who is contacting you to purchase or sell real estate but the reason as to why they are contacting you makes no sense (e.g. client is not a local resident or is outside your normal customer base).
- A client is based in, or conducts business in a country with known higher corruption, known organized criminal activity, is known tax haven or is known to have links to terrorist organizations.
- A client negotiates a purchase at market value or above asking price, but requests that a lower value be recorded on documents, paying the difference under the table.
- A client buys back a recently sold property, or is involved in multiple transactions (purchases and sales) for reasons unknown or that do not make sense; or a client sells a recently purchased property for no apparent reason.
- A client has been named in the media as being involved with criminal organizations is purchasing a residential property.
- The value of a property is not within the means of a client based on his stated occupation or income.
- A client insists on providing signatures for transactions through non-face-to-face means.
- A client over justifies or over explains a purchase, or exhibits unusual concerns regarding the agency's compliance with government reporting requirements and the firm's anti-money laundering principles.

TRANSACTIONS

The following examples from FINTRAC may be indicators that a transaction is high risk:

- Behaviour or transactions that are unusual compared to other similar clients. For example, high levels of assets or unusually large transactions compared to what might reasonably be expected of clients with a similar profile.
- Transactions involving an individual whose address is unknown or is likely to be false.
- Transactions involving foundations, non-profit entities, where the characteristics of the transaction do not match the goals of the entity.
- Multiple transactions involving one party or transactions carried out by groups of legal persons that may be related, where the transactions are otherwise unusual.
- Transactions that use unusual or unnecessarily complex legal structures for no apparent legitimate business reason.
- Transactions where the parties do not show a particular interest in the characteristics of the property (quality of construction, location, date on which it will be handed over, etc.).

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- Transactions conducted by foreign or non-resident parties for the purpose of capital investment (e.g. clients do not show any interest in living at the property they are buying).
- Transactions that must be completed quickly, without reason.
- Transactions that make use of third-party vehicles (e.g. trusts) that may obscure the ownership or the buyer. Transactions involving complex loans or other obscure means of financing.
- Transactions involving foreign individuals where the property is paid entirely without using a mortgage.
- Transactions involving properties that are likely over-valued or under-valued, when compared to similar properties in the area.
- Transactions where the buyer has no interest in a property inspection, for no apparent reason.

SERVICES AND DELIVERY CHANNELS

The following examples may be additional high-risk indicators:

- **Offering services by non-face-to-face means (phone, fax, online).**

  These delivery channels may pose higher risks as it may be more difficult for your business to identify the client.

- **The use of third party vehicles, such as trusts, to purchase property.**

  There is a greater risk of ML as third party vehicles can obscure the identity of the true owner or buyer.

- **Clients identified through agency or mandatary agreements.**

  When a third party identifies clients on your behalf, there may be a greater risk that they may not be following policies and procedures to properly identify the client.

Sample Worksheets

FINTRAC provides relationship-based and business-based worksheets that brokerages can adapt to meet their specific needs in considering their risk factors. The use of a worksheet can be an efficient way for brokerages to assess and present inherent risks related their brokerage. The sample worksheets from FITNRAC can be found on their website under subsection Business-based risk assessment worksheet and subsection Relationship-based risk assessment worksheet.

FINTRAC's Expectations

FINTRAC expects that a brokerage will have considered and assessed its business-based and relationship-based risks and be able to explain them and provide a rationale for its assessment. Each high-risk element will need to be mitigated by a documented control.

A brokerage must also be able to demonstrate that it has assessed the risks of each individual client or group of clients based on the services and delivery channels used by the brokerage's client; geographical elements related to the client; and the client's characteristics and patterns of activities.

Assessing groups of clients or business relationships that share similar characteristics is fine if the brokerage can demonstrate that the groupings are logical and specific enough to reflect the reality of the brokerage's business.

FINTRAC expects that a brokerage will be able to demonstrate that it has considered high-risk indicators or that it can demonstrate its rationale for not considering that indicator as high risk in the circumstances. In situations where high-risk indicators are not considered (i.e. FINTRAC considers a specific element as high risk but it is decided to downgrade the same element), the brokerage must be able to provide reasonable rationale for their decision.

For every high-risk relationship, prescribed special measures must be put in place and documented as part of the brokerage's policies and procedures.

If the brokerage is using a service provider to perform a risk assessment of the business and clients on behalf of the brokerage, it's important to understand that there may be vulnerabilities associated with this as the brokerage is ultimately responsible for the risk assessment obligation.

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LESSON 5 OF 10

Step 2: Setting the Risk Tolerance

Defining Risk Tolerance

A brokerage's risk tolerance is the level of exposure to risk that the brokerage considers tolerable. Understanding the brokerage's risk tolerance is an important element of risk management.

In Module 1, learners looked at the following risk categories that can impact the brokerage:

1. Regulatory risk
2. Reputation risk
3. Financial risk

Determining Risk Tolerance

To determine its risk tolerance, a brokerage may want to consider whether they are willing to take on regulatory, reputational, and financial risk and how much they are willing to take on.

A brokerage may consider the following:

- What inherent risks is the brokerage willing to accept?
- What risks is the brokerage willing to accept only after implementing risk mitigation measures?
- What risks is the brokerage not willing to accept at all?
- Determining the brokerage's risk tolerance is an exercise that should include obtaining senior management approval. The compliance officer should approve the brokerage's risk tolerance.

FINTRAC's Expectations

While establishing risk tolerance is not a requirement under the PCMLTFA, FINTRAC expects that brokerages will dedicate time to considering and establishing their risk tolerance. Establishing risk tolerance is an important component for achieving effective risk management.

FINTRAC places so much importance on the establishment of a brokerage's risk tolerance because the risk tolerance will have a direct impact on creating risk-mitigation measures and key controls and developing the brokerage's policies, procedures, and training programs.

LESSON 6 OF 10

Step 3: Creating Risk-Mitigating Measures and Controls

Risk Mitigation and Controls

Implementing controls to mitigate the brokerage's identified risks will enable the brokerage to stay within its risk tolerance. If a brokerage sets a higher risk tolerance, this will require stronger risk mitigation measures and controls. The brokerage will want to ensure that the risk mitigation and controls correspond with the risks that have been identified.

For all clients and business relationships, brokerages will be required to:

- Conduct ongoing monitoring for all their business relationships, and
- keep a record of the measures and information obtained.

> Ongoing monitoring of clients and business relationships was discussed in Module 3 and 4.

EXAMPLE INTERNAL CONTROLS

In all situations, the brokerage should consider implementing internal controls. According to CREA's FINTRAC Office Policy 2020, internal controls may include, for example:

- having the compliance officer focus on the brokerage's operations (services, clients and business relationships, geographic locations, and any other relevant factors) that are more vulnerable to abuse by money launderers and criminals;
- having the compliance officer inform senior management of the brokerage with respect to compliance initiatives, identified compliance deficiencies, corrective action taken, and suspicious transaction reports filed;
- providing for program continuity despite changes in management, employees, or structure;
- having the compliance officer focus on meeting all regulatory record-keeping and reporting requirements, responding to recommendations for anti-money laundering and anti-terrorist financing compliance, and providing timely updates in response to changes in requirements;
- enabling the timely identification of reportable transactions and ensure accurate filing of required reports;
- incorporating anti-money laundering and anti-terrorist financing compliance into job descriptions and performance evaluations of appropriate personnel; and
- providing for adequate supervision of Realtors and brokerage staff that handle currency transactions, complete reports, monitor for suspicious transactions, or engage in any other activity that forms part of the anti-money laundering and anti-terrorist financing program.

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EXAMPLE INTERNAL MEASURES

Measures that the brokerage may undertake to mitigate their risk of money laundering include, for example:

- Increasing the awareness of high-risk situations within business lines across the brokerage.
- Increasing the frequency of ongoing monitoring of transactions or business relationships.
- Increasing the levels of ongoing controls and reviews of relationships with the brokerage.
- Reviewing the brokerage's own internal controls, to ensure that it has: personnel that have clear lines of authority, responsibility, and accountability; adequate segregation of duties; propert procedures for authorization; and internal reviews to validate the risk-assessment processes.

For example, the proper procedures for authorization may be that an employee processing a transaction for which the amount exceeds a certain threshold must follow a procedure to get approval for the transaction by someone else in the organization.

Enhanced Measures for High-Risk Clients

For high-risk clients and business relationships, risk mitigation controls will include special, enhanced measures. These may include conducting the periodic ongoing monitoring on a more frequent basis for the purposes of:

- **Detecting** suspicious transactions.
- **Keeping** client information up to date.
- **Reassessing** a client's risk level based on transactions and activities.
- **Determining** whether the client's transactions or activities are consistent with what the brokerage knows about that client.

A brokerage may also determine that other enhanced measures are appropriate to mitigate the risks it has identified. Other enhanced measures could include, for example:

- Obtaining the approval of senior management for services that are new for clients.
- Obtaining additional information on a client, beyond the minimum requirements, such as information available through public databases or the internet.
- Obtaining information on the source of funds or source of wealth of a client.
- Obtaining information on the reasons for attempted or conducted transactions.
- Increasing the frequency of monitoring of higher-risk transactions, services, and channels.
- Gathering additional documentation, data, or information or taking additional steps to verify the authenticity of any documents the brokerage has obtained in respect of a high-risk client.

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- Implementing an appropriate process to approve all relationships identified as high risk as part of the client acceptance process or declining to do business with potential clients because they exceed the brokerage's risk tolerance level.
- Implementing a process to exit from an existing high-risk relationship which management sees as exceeding the brokerage's risk tolerance level.

FINTRAC's Expectations

FINTRAC expects that a brokerage will have risk-mitigation measures and controls that are commensurate with identified risks. These mitigation measures must be written and included as part of the brokerage's policies and procedures.

FINTRAC also expects that the brokerage will keep client identification and beneficial ownership information up to date and establish and conduct the appropriate level of periodic ongoing monitoring for its business relationships (i.e., less frequently for low-risk clients and more frequently for high-risk clients).

> The brokerage must also apply these controls and procedures consistently as FINTRAC may assess controls by conducting transaction testing.

LESSON 7 OF 10

Step 4: Evaluating Residual Risk

Defining Residual Risk

Residual risk is the risk that remains even after a brokerage implements risk mitigation measures and controls. No matter how strong a brokerage's risk mitigation measures are, there will always be some remaining exposure to money laundering and terrorist financing risks. Although risks will have been mitigated and reduced, they are still considered risks.

> *"A reasonably designed and effectively implemented risk-based approach will provide an appropriate and effective control structure to manage identifiable money laundering and terrorist financing risks. However, it must be recognised that any reasonably applied controls, including controls implemented as a result of a reasonably designed and effectively implemented risk-based approach, will not identify and detect all instances of money laundering or terrorist financing."*
>
> – FATF Risk Based Approach Guidance for Real Estate Agents

A brokerage's residual risk should be in line with and not exceed the risk tolerance the brokerage has set for itself. If residual risk is higher than the brokerage's risk tolerance, the risk mitigation measures will need to be strengthened.

Types of Residual Risk

According to FINTRAC, residual risk falls under two categories:

MITIGATED RISKS	TOLERATED RISKS
Mitigated risks are the risks that have been reduced but not eliminated through risk mitigating measures. Although they are "mitigated", they are still risks. In practice, the controls put in place may fail from time to time (for example, the monitoring system or transaction review process fails, and some transactions are not reported).	Tolerated risks are the risks that the brokerage has accepted as part of its business. Although they are "tolerated", they are still risks. Acceptance means there is no benefit in trying to reduce them. However, the tolerated risks may increase over time, for example, when a new service is introduced or a new threat appears.

FINTRAC's Expectations

FINTRAC expects that a brokerage will, as a best practice, take the time to evaluate its level of residual risk and confirm that the level of residual risk is aligned with what it is willing to tolerate to ensure the integrity of its own business.

LESSON 8 OF 10

Step 5: Implementing the Risk-Based Approach

Implementation

After the risk assessment is complete, the next step is the implementation of the risk-based approach as part of the brokerage's day-to-day activities.

The brokerage's risk assessment must be documented as part of the brokerage's compliance program. A detailed and well documented compliance program demonstrates the brokerage's commitment to prevent, detect, and address non-compliance.

> CREA's Risk Based Assessment form can assist brokerages in assessing and documenting the threats and vulnerabilities of money laundering and terrorist financing to which the brokerage may be exposed.

It is important that the brokerage's compliance policies and procedures are effectively communicated, understood, and adhered to by all the Realtors and staff. This includes anyone who is delegated duties and responsibilities in the brokerage's compliance program. They need enough information to process and complete a transaction properly as well as identify clients and keep records as required.

Documentation

As was discussed in Module 3, the brokerage's compliance policies and procedures should incorporate, at a minimum, the requirements for:

- Reporting,
- Record keeping,
- Client identification,
- Risk assessment, and
- Special measures for high risks.

The brokerage's policies and procedures should also explain how to detect suspicious transactions and the process for dealing with such situations; determine and explain what kind of monitoring is done for particular situations (i.e. low vs. high-risk clients / business relationships); and describe all aspects of monitoring:

- When it is done (its frequency)
- How it is conducted
- How it is reviewed

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Ongoing Monitoring

Brokerages must conduct ongoing monitoring of all their business relationships and enhanced ongoing monitoring for the business relationships that pose a high risk of money laundering and terrorist financing. The brokerage also must apply prescribed special measures for high-risk clients/relationships.

Senior Management

It is important to remember that risk assessment and risk mitigation requires the leadership and engagement of senior management. Senior management is ultimately responsible for making decisions related to policies, procedures, and processes that mitigate and control the risks of money laundering and terrorist financing within a brokerage.

FINTRAC's Expectations

FINTRAC expects that a brokerage will ensure that its risk assessment describes the risk-based approach process, the frequency of its monitoring for low-risk and high-risk clients, and the measures and controls put in place to mitigate the high risks that have been identified.

FINTRAC also expects that a brokerage will:

- Apply its risk-based approach as described in its documentation.
- Keep client identification and beneficial ownership documentation up to date.
- Conduct ongoing monitoring of all of its business relationships.
- Conduct more frequent ongoing monitoring of business relationships that pose a high risk of money laundering and terrorist financing.
- Apply appropriate special, enhanced measures for its high-risk clients.
- Involve the brokerage's senior management, such as the managing broker and compliance officer when dealing with high-risk situations.

LESSON 9 OF 10

Step 6: Reviewing the Risk-Based Approach

Periodic Review

Part of the brokerage's risk assessment must include a periodic review (minimum every two years) to test the effectiveness of the brokerage's compliance regime, which includes:

1. Policies and procedures
2. The risk assessment related to money laundering and terrorist financing
3. A training program (for Realtors and staff)

The review of the brokerage's assessment of risks related to money laundering and terrorist financing must cover all components, including policies and procedures on risk assessment, risk mitigation, and enhanced ongoing monitoring.

It is important for brokerages to review their risk-based approach on an ongoing basis, as part of their compliance program. A risk-based approach is dynamic: risks change and evolve over time, new services and threats enter into the business, and these must be assessed by the brokerage. Doing so helps brokerages evaluate the need to modify existing policies and procedures or to implement new ones to help ensure an effective risk-based approach that is specific to the brokerage.

FINTRAC's Expectations

FINTRAC expects that a brokerage will review its risk-based approach whenever there are changes in its business model, and at a minimum every two years as part of the brokerage's biennial review of its compliance program.

FINTRAC also expects that a brokerage will ensure that:

The review covers its compliance policies and procedures, assessment of risks related to money laundering and terrorist financing, and its training program to test their effectiveness.

The review is documented and reported to the brokerage's senior management within 30 days.

The results of the review are also documented, along with the corrective measures and follow-up actions the brokerage takes.

These materials are current as of October 5, 2020. Changes to the legislation and contents of this material are expected in spring of 2021.

How Does FINTRAC Assess a Brokerage's Risk Assessment?

When conducting the risk assessment portion of a compliance examination, FINTRAC's focus is on verifying that the brokerage has:

- **Considered** and rated the risk of all aspects of its business.
- **Provided** rationales for its decisions.
- **Applied** special measures to areas identified as posing a high risk.

As part of its consideration of a brokerage's risk assessment, FINTRAC may do the following:

- Verify that the brokerage has assessed and documented the risks to its business related to money laundering and terrorist financing, that it has identified measures to mitigate these risks, and that it has applied special measures for any high risks.
- Verify that the brokerage has a documented risk assessment that includes consideration of the brokerage's services and delivery channels, clients and business relationships, geographic locations, the impact of any new technologies and developments, and any other relevant factors.
- Verify that the brokerage's risk assessment takes into account the type, nature, size, and complexity of the brokerage's business.
- Consider the brokerage's rationale for its assessment of each risk.
- Verify that the brokerage has assessed risks adequately. To do this, FINTRAC may look at the areas the brokerage has identified as posing a high risk and the brokerage's written rationale. FINTRAC may also review a sample of client records and records of transactions in order to determine whether the brokerage's risk assessment is reasonable and consistent with its business's risk profile and its policies and procedures.
- Verify whether the brokerage documents and applies special measures to elements it has determined pose a high risk, such as enhanced measures to identify clients and to mitigate risks by keeping client identification information up to date and conducting ongoing monitoring for the purpose of detecting suspicious transactions.
- Verify that the controls the brokerage has in place are consistent with its identified risk rankings and adequately mitigate its business risks.
- Verify that the brokerage's compliance program is in line with and informed by the results of its risk assessment. For example, FINTRAC will confirm that the brokerage's policies and procedures, ongoing training documentation, and two-year review documentation adequately address the areas that the brokerage has assessed as posing a higher risk and that these provide adequate guidance to the brokerage's Realtors and staff.
- Verify how the brokerage uses publicly available information to inform its compliance program.
- Interview the brokerage's Realtors and staff responsible for its risk assessment to assess their knowledge of the requirements associated with conducting a risk assessment.

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LESSON 10 OF 10

Actions

Learners are encouraged to download and use the fillable PDF document on the following pages to stay up to date and prepared for changes related to anti-money laundering compliance. The document provides an opportunity to identify areas in which the brokerage is doing well and areas that need improvement. It is also rich in resources that brokerages can benefit from.

This document does not need to be submitted as part of the Mastering Compliance program.

MODULE 5: ACTIONS

To determine how well your brokerage is meeting FINTRAC's expectations for assessing risk, it is helpful to understand the key elements FINTRAC is likely to focus on in an examination.

When conducting the risk assessment portion of a compliance examination, FINTRAC's focus is on verifying that the brokerage has:

- considered and rated the risk of all aspects of its business,
- provided rationales for its decisions, and
- applied special measures to areas identified as posing a high risk.

1. Risk Based Approach

Review the list and linked resource below to assess how well prepared for a FINTRAC examination your brokerage is with respect to the risk assessment and identify where there are any gaps or further action is required.

i. Has your brokerage assessed and documented the risk to its business in relation to money laundering and terrorist financing?

Resource: FINTRAC's Risk-Based Approach Workbook - Real Estate Sector

Taking into consideration:

- the brokerage's services and delivery channels, clients and business relationships, geographic locations, the impact of any new technologies and developments, and any other relevant factors;
- the type, nature, size, and complexity of the brokerage's business;
- the rationale for its assessment of each risk.

☐ The risk assessment is documented

☐ The risk assessment is up to date

☐ Identify any gaps and follow-up actions

☐ Determine when the next review should be completed

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ii. What measures does the brokerage have in place to mitigate the risk?

Resources:

- Assessment Inherent Risks Money Laundering Terrorist Financing
- CREA's Risk Assessment form or similar can be used to assist brokerages in assessing and documenting the threats and vulnerabilities of money laundering and terrorist financing to which the brokerage may be exposed.

☐ Review a sample of your brokerage's client and transaction records in order to determine whether your brokerage has assessed risk adequately.

☐ Verify that the brokerage's rationale for identifying and rating level of risk is documented.

☐ Verify that the controls in your brokerage are consistent with its identified risk.

☐ Verify that the special measures documented in your compliance manual are consistent with the day-to-day activities in relation to any high risks.
(For example: enhanced measures used to identify clients, measures taken to keep client identification information up to date are consistently done in practice)

☐ Identify any gaps and follow up actions.

2. Preparation for Module 6

☐ In preparation for Module 6, the brokerage's policies and procedures should explain how to detect suspicious transactions and the process for dealing with such situations; determine and explain what kind of monitoring is done for particular situations (i.e. low vs. high-risk clients/business relationships); and describe all aspects of monitoring. If not already completed in Module 3 Actions, take time to review your policies and procedures.

☐ Make note of any questions or areas requiring clarification pertaining to the risk assessment that you would like to bring to the class to discuss with Jacqueline Shinfield. To help ensure we are able to address your questions, please email them in advance of the class to pdpeducation@bcrea.bc.ca with the subject line: Module 6 – Suspicious Transactions.

☐ There are many money laundering and terrorist financing (ML/TF) indicators that are potential red flags that could initiate suspicion or indicate that something may be unusual in the absence of a reasonable explanation. Red flags typically stem from one or more factual characteristics, behaviours, patterns or other contextual factors that identify irregularities related to financial transactions. Each red flag alone does not necessarily trigger a suspicious transaction report. However, a series of red flags or when they indicate inconsistencies with what is expected of your client based on what you know about them, could trigger a suspicious transaction report. Therefore, it is helpful to have a broad understanding of many possible indicators.

FINTRAC provides guidance on money laundering and terrorist financing (ML/TF) indicators organized by different topic areas and they provide examples. It is not an exhaustive list; however, it can provide a general understanding of what is or could be unusual or suspicious. These topics include:

- identifying the individual or entity
- client behaviour
- the individual/entity financial profile
- atypical transactional activity
- transactions structured below the reporting or identification requirements
- transactions that involve non-Canadian jurisdictions
- use of other parties (third parties)
- terrorist financing
- specifically, to Realtors and developers
- specific to real estate brokers and Realtors

You can find and review this guide here: fintrac-canafe.gc.ca/guidance-directives/transaction-operation/indicators-indicateurs/real_mltf-eng

ADDITIONAL RESOURCES:

Understanding the risks in the real estate sector

Understanding how the real estate industry, in general, is vulnerable to criminals and money launderers will position you to better assess your own brokerage's risks. Additionally, you will be better prepared to answer the "Why?" or "How?" questions around money laundering in real estate with both Realtors and clients.

In 2015, the Government of Canada released the Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada, which was referenced in Module 5. The document reviews at-risk industries and includes sections on the products and services offered by real estate agents and developers. You may choose to read this document in its entirety to understand the landscape across multiple sectors or make particular note of the sections specific to real estate.

The Government of Canada encourages entities in sectors identified as at risk to use the findings in this report to inform their efforts in assessing and mitigating risks. Understanding Canada's risk context and the main characteristics that expose sectors and products to inherent money laundering and terrorist financing (ML/TF) risks in Canada is important in being able to apply measures to effectively mitigate them.

Sections of the report referencing the real estate sector:

- Executive Summary
- Areas vulnerable in Real Estate:
  - Mortgage fraud – page 22
  - Loan sharking – page 26
  - Vulnerabilities of the Real Estate Sector (High) – page 41
- Real Estate Sector Overview – page 53

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