



MODULE 8: EFFECTIVENESS REVIEW AND EXAMINATIONS PART 1

LESSON 1 OF 8

Welcome

Introduction

This module discusses the requirement for brokerages to conduct an effectiveness review, at minimum, every two years. This review is mandatory for all brokerages who are subject to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)* to ensure that their compliance program is up to date and in keeping with legislative requirements. This module also discusses the voluntary self-disclosure regime, under which brokerages are encouraged to report non-compliance that they discover during their activities. Primarily, this module focuses on the examination procedures used by the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) when it conducts compliance examinations. Some of these elements have already been covered in the program; however, they are now viewed through the lens of a FINTRAC examination.

Learning Objectives

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

1. undertake a two-year effectiveness review of their compliance program,
2. recognize the importance of voluntary self-disclosures, and
3. understand FINTRAC's examination process and expectations.

RESPONSIBILITY

The PCMLTFA applies to real estate brokerages and REALTORS® who act as agents in respect of the purchase or sale of real estate. Where a Realtor is employed by a brokerage, the brokerage is responsible for meeting the requirements under the PCMLTFA and ensuring its employees understand their obligations (although, as discussed in Module 3, employees may be subject to reporting requirements in some cases).

This module proceeds from the brokerage's point of view, recognizing that in some cases specific obligations may be administered by individual Realtors, the compliance officer, or brokerage staff.

LESSON 2 OF 8

The Two-Year Effectiveness Review

Self Assessments and Effectiveness Reviews

As part of their compliance program, brokerages must institute and document an effectiveness review of their compliance policies and procedures, risk assessment, and training program.

It is important to understand that the requirement to complete an effectiveness review is **separate** from the requirement to undergo an ongoing risk assessment, which was discussed in more detail in Module 5.

The two-year effectiveness review involves testing to ensure the adequacy and effectiveness of the program. The effectiveness review is required to ensure that the compliance program performs the functions it is supposed to and effectively identifies and mitigates the risk of money laundering and terrorist-activity financing offences.

The effectiveness review should aim to identify any gaps or weaknesses in the compliance program. This comprehensive review can assist brokerages in evaluating the need to modify existing policies or procedures or to implement new ones.

The scope of the effectiveness review depends on the nature, size, and complexity of a brokerage's business.

Remember, a well designed, implemented, and monitored program provides a solid foundation for compliance with the legislation and FINTRAC.

Who Conducts the Effectiveness Review?

The effectiveness review should be conducted by an internal or external auditor or, if a brokerage does not have such an auditor, by an individual who has working knowledge of the obligations under the PCMLTFA and its associated regulations and who is not directly involved in the compliance program. Whether an external or internal auditor is used will depend on the size and complexity of the brokerage.

A brokerage should consider hiring an external auditor if there were significant deficiencies found in their last FINTRAC examination.

When Does the Effectiveness Review Occur?

This review must occur at least once every two years. To that end, the review should begin no later than 24 months after the beginning of the last review.

To ensure the effectiveness review is done as required, it can be helpful to schedule it into a calendar as a reminder.

What Does the Effectiveness Review Include?

[FINTRAC](#) has provided the following examples of what can be included in the effectiveness review:

“Interviews with those handling transactions to evaluate their knowledge of your policies and procedures and related record-keeping, client identification, and reporting obligations.”

“A review of your criteria and process for identifying and reporting suspicious transactions.”

“A sample of large cash transactions followed by a review of the reporting of these transactions.”

“A sample of your clients followed by a review to see if the risk assessment was applied correctly.”

“A sample of your clients followed by a review to see if the frequency of your ongoing monitoring is adequate.”

“A sample of high-risk clients followed by a review to ensure that enhanced mitigation measures were taken.”

“A review of a sample of your records to ensure proper record-keeping procedures are being followed.”

“A review of your risk assessment to ensure it reflects your current operations.”

“A review of your policies and procedures to ensure they are up to date with the current legislative requirements.”

– FINTRAC Guidance: [“Compliance program requirements under the Proceeds of Crime \(Money Laundering\) and Terrorist Financing Act \(PCMLTFA\) and associated Regulations”](#). December 2017

Reporting Results

TIMING

The brokerage must report the following information, in writing, to a senior officer of the brokerage within 30 days of the assessment:

- ◆ The findings of the review (including any deficiencies that were identified, along with proposed corrections and implementation timelines)
- ◆ Any updates made to the compliance policies and procedures within the reporting period
- ◆ The status of the implementation to updates made to the brokerage’s policies and procedures, if applicable

RECORDS

The methods, scope, frequency, and timing of the effectiveness review must be documented. If any deficiencies are identified, the brokerage should determine the root cause of the problem. The results of the review are required to be documented along with the corrective measures and follow-up actions. The documentation should also list the person who conducted the review.

The brokerage should keep these records for at least five years after they are created.

Required Follow Up

If the effectiveness review exposes any deficiencies in a brokerage's compliance program, the brokerage must take corrective action to bring the program into compliance. The brokerage should create a timeline for this corrective action and should follow up on the status of the updates to ensure they are completed.

Policies and Procedures

Brokerages should include documentation in their policies and procedures regarding the two-year effectiveness review. This may include policies such as the appointment of the auditor and their role.

For example, the auditor shall document their findings using the brokerage's template and report the findings, any updates to the brokerage's policies and procedures during the review period, and the status of implementation of the updates to a senior officer at the brokerage within 30 days of the review.

Brokerages should consider policies and procedures that are specific to their brokerage and that consider the brokerage's nature, size, and complexity.

LESSON 3 OF 8

Voluntary Disclosures

Voluntary Reporting

FINTRAC strongly encourages brokerages to voluntarily report issues of non-compliance that they discover, for example:

- ◆ During their periodic review of the program
- ◆ When conducting an ongoing risk assessment
- ◆ When conducting quality control activities

These deficiencies can be in relation to reporting, client identification, record keeping, or effectively implementing elements of their compliance program.

FINTRAC's objective is to encourage compliance, not to impose penalties.

| BEFORE | AFTER |
|---|---|
| When a voluntarily declared non-compliance issue is not a repeated instance of a previously voluntarily disclosed issue, and when this declaration has been made before a reporting entity has been notified of an upcoming examination, FINTRAC works with the entity to resolve the issue and does not propose an administrative monetary penalty related to the submission. | Issues of non-compliance that a brokerage submits to FINTRAC after they are notified of an upcoming FINTRAC examination are still marked as a deficiency during the examination. |

Unreported transactions still have intelligence value to FINTRAC and need to be reported, while other shortfalls need to be addressed without delay.

Information Required

According to [FINTRAC](#), voluntary declarations of non-compliance should include only the following information:

"Name of reporting entity and contact details of 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 other issues: the period of time during which the issues occurred, the reason for their occurrence”

“A plan to resolve the issues and submit all outstanding (or incorrect/incomplete) reports, including measures and timelines for corrective action”

– [FINTRAC Guidance, Voluntary self-declaration of non-compliance](#)

A voluntary declaration of non-compliance should be sent to FINTRAC by email to: VSDONC.ADVNC@fintrac-canafe.gc.ca

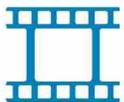
Personal Information

Brokerages are discouraged from providing personal or protected information about their Realtors, staff, or clients. If a brokerage determines that the inclusion of such information is necessary, they should first ask FINTRAC how to send that information separately and securely.

LESSON 4 OF 8

FINTRAC Examinations Overview

Introduction from FINTRAC



Refer to online content to view video.

Examinations

FINTRAC has the statutory ability to conduct examinations of Canadian businesses who are regulated under the PCMLTFA, including real estate brokerages. FINTRAC conducts these examinations to determine whether brokerages have implemented and are maintaining a compliance program that meets all of the requirements under the PCMLTFA and its associated regulations.

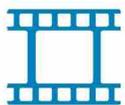
To assist reporting entities in the examination process, FINTRAC has published an Assessment Manual, which describes how FINTRAC conducts its examinations. The majority of this module refers to the assessment procedures described in the [Assessment Manual](#), which is available on FINTRAC's website.

FINTRAC Examination Approach

FINTRAC's examination approach is described in the Assessment Manual and is summarized below.

| Part 1: Examination Framework | Part 2: Phases of an Examination | Part 3: Methods used in Examinations |
|--|---|--|
| <p>Risk-based Examination</p> <hr/> <p>Assessment Method</p> <hr/> <p>Assessment Approach to Evaluate Findings</p> | <p>Roles and Responsibilities</p> <hr/> <p>Phase 1 – Planning and Scoping</p> <ul style="list-style-type: none"> • Planning the examination • Setting the scope of the examination • Desk vs. on-site examinations • Examination Notification letter • Reviewing Materials <hr/> <p>Phase 2 – Examination and Assessment</p> <ul style="list-style-type: none"> • Conducting interviews • Exit Interview <hr/> <p>Phase 3 – Developing Conclusions and Finalizing the Examination</p> <ul style="list-style-type: none"> • Deciding on Findings • Examination Findings Letter • Follow-up Activities • Penalties for Non-compliance • Notices • Publishing Results | <p>Conducting assessments may be done using the following methods, for example:</p> <ul style="list-style-type: none"> • Reviewing documents • Interviewing Realtors and staff • Verifying information <hr/> <p>FINTRAC may assess:</p> <ul style="list-style-type: none"> • Compliance program requirements • Client identification requirements • Other know your client requirements • Financial transaction reporting requirements • Record-keeping requirements • Ministerial Directives |

LESSON 5 OF 8

Examinations Part 1: Examination Framework**FINTRAC's Examination Framework**

Refer to online content to view video.

When conducting examinations, FINTRAC employs a risk-based approach. That is, FINTRAC focuses on areas that present a higher risk for money laundering or terrorist-activity financing and on areas where there is a higher risk of non-compliance. FINTRAC also conducts its examinations on a holistic basis, taking into account the overall soundness of the compliance program. The framework is comprised of three main elements:

1. Risk-based examinations

Examinations are based on areas of higher risk for the brokerage, such as:

- being used for money laundering or terrorist financing activity, and
- of being non-compliant.

2. Assessment methods

Once the risk has been considered, FINTRAC selects an assessment method. This method is used to assess how the brokerage is meeting its regulatory requirements.

3. Assessment approach to evaluating findings

When evaluating examination findings, FINTRAC takes a holistic approach rather than evaluating them in isolation.

FINTRAC reviews information to ensure the compliance program is implemented in practice and complete. FINTRAC aims to be reasonable, fair, and balanced in their findings.

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Examinations Part 2: Phases of an Examination**Scope of Examinations**

Before an examination, FINTRAC develops a plan to determine the scope of the examination. This involves a determination of the risks that may apply to the brokerage or to the real estate sector generally. In making this determination, FINTRAC may refer to a variety of resources, such as:

- ◆ The internet
- ◆ Compliance history
- ◆ Previous FINTRAC examinations
- ◆ Voluntary self-declarations of non-compliance that the brokerage has submitted

FINTRAC may also consider previous transaction reports that the brokerage has submitted and the characteristics of similar businesses.

Once the scope has been determined, FINTRAC calls the compliance officer at the brokerage to discuss the scope and date and then follows up with a notification letter. The notification letter will generally be sent 30-45 days before the examination date. The length of any particular examination will depend on the nature, size, and complexity of the brokerage.

Types of Examinations

| ON-SITE EXAMINATIONS | DESK EXAMINATIONS |
|--|---|
| FINTRAC may conduct compliance examinations at the business premises of a brokerage. On-site examinations are conducted between 8 am and 5 pm on weekdays. | Alternatively, a FINTRAC compliance officer may conduct an examination from a FINTRAC office. |

FINTRAC's Examinations during COVID-19

Due to COVID-19, FINTRAC is not currently conducting on-site examinations. In the case of desk examinations, FINTRAC is being flexible and reasonable by providing additional time to respond to requests. FINTRAC also considers the effects of the pandemic on a brokerage's ability to update their policies and procedures, comply with interim COVID-19 measures, and meet time-sensitive deadlines (such as completing the two-year effectiveness review). If the ability to meet requirements under the PCMLTFA or its regulations has been impacted by COVID-19, a brokerage should document why this is the case. Mitigating measures should also be put in place.

Updates on FINTRAC's compliance activities during this pandemic can be found on their [website](#).

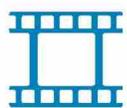
What Brokerages can Expect

According to FINTRAC, brokerages can expect the following when they are the subject of a compliance examination:

- ◆ **Professionalism**
Brokerages should expect to be treated professionally and courteously.
- ◆ **Clear information**
FINTRAC's compliance officers strive to provide clear and consistent explanations of the examination findings, and guidance to facilitate the brokerage's understanding of their legislative obligations, as well as of FINTRAC guidelines, policies, and procedures.
- ◆ **Fairness**
If the brokerage feels that the findings given during the examination are incorrect or unfair, a dispute resolution program exists to address their concerns. For more information, brokerages can contact FINTRAC.
- ◆ **Privacy and confidentiality**
Personal, transactional, and financial information is protected against unauthorized use or disclosure.
- ◆ **Bilingual service**
Service is available in every region in both official languages: English and French.
 - FINTRAC Guidance, "[FINTRAC examinations: your responsibilities and what you can expect from FINTRAC](#)," July 2019.

Examination and Assessment

OVERVIEW



Refer to online content to view video.

REQUESTS FOR INFORMATION

To speed up the examination process, a FINTRAC compliance officer may request relevant documentation prior to the examination date. This might include a copy of the brokerage's:

1. Compliance policies and procedures
2. Risk assessment
3. Samples of transaction records

During the review, FINTRAC expects access to all relevant facts and information.

In this regard, FINTRAC might request access to client records, transaction records, and transaction reports. FINTRAC might also conduct interviews with the brokerage's Realtors and staff to determine whether they understand their role in the anti-money laundering compliance regime.

FINTRAC may request the following types of information:

- ◆ Information on the size and nature of the brokerage, including:
 - the number of full-time staff,
 - the number of part-time staff,
 - the number of Realtors under contract,
 - the number of offices,
 - annual gross revenues, and
 - net income (as of the most recent financial year)
- ◆ The brokerage's policies and procedures manual
- ◆ A biography/sketch of the compliance officer
- ◆ Job descriptions and mandates of individuals reporting to the compliance officer
- ◆ The organizational chart, including reporting lines to the brokerage's compliance officer
- ◆ Meeting agendas and minutes where AML was discussed in the scope period
- ◆ A brief statement of the sufficiency of resources to support the AML program
- ◆ All reports or memos received or sent by the compliance officer that discuss the health of the AML program
- ◆ A summary of recent material changes to the program, including new technologies, staff turnover, and remediation projects
- ◆ A copy of the training program and materials
- ◆ In connection with the risk assessment, client risk scores and special measures to mitigate high-risk clients
- ◆ The volume of transactions by Realtor, a list of Realtors, and copies of agreements in place between the brokerage and the Realtor
- ◆ An overview of the transaction monitoring process
- ◆ An overview of the process for identifying, escalating, and investigating unusual transactions
- ◆ Copies of the last two-year effectiveness reviews showing methodology, working papers, and action plans
- ◆ A review of required records
- ◆ Record(s) of high-risk clients
- ◆ Copies of any production orders or adverse media received
- ◆ A list of all files submitted for escalation

FINTRAC considers the examination process to begin on the date that the brokerage is advised of the examination during the notification call.

Therefore, FINTRAC may consider any compliance policies or procedures that are created after that date to be deficient. In that regard, FINTRAC generally does not accept documents, records, or reports once the examination has started.

INTERVIEWS

| FINTRAC INTERVIEWS | EXIT INTERVIEWS |
|---|---|
| <p>FINTRAC regularly conducts interviews during its examination process to ensure that interviewees are aware of the requirements under the PCMLTFA that are relevant to their roles and have resources to seek clarification when necessary. These interviews may be with the brokerage's Realtors and staff. In conducting these interviews, FINTRAC aims to minimize business interruptions and to make interviewees feel at ease.</p> | <p>Once a FINTRAC compliance officer has completed their review, they will share their preliminary findings in an exit interview. The purpose of an exit interview is to clearly communicate FINTRAC's expectations in terms of corrective action that must be taken, if any.</p> |

A brokerage may provide additional information or materials if they believe the information may be helpful to FINTRAC.

Decision on Findings

EXAMINATION FINDINGS LETTERS

The examination concludes when the FINTRAC compliance officer details their findings in a findings letter. The findings letter reviews the information that was examined and the results of any Realtor and staff interviews. Any deficiencies that were discovered are also listed in the letter, as well as some observations that may assist the brokerage in strengthening its compliance program.

Depending on the results of the examination, the findings letter will state either:

- ◆ **NO ACTION**
No further compliance or enforcement action is required
- ◆ **POSSIBLE ACTION**
There may be a possible follow-up compliance action
- ◆ **PENALTY RECOMMENDED**
An administrative monetary penalty is recommended

Where follow-up actions are required to bring the program into compliance, FINTRAC may ask the brokerage to send an action plan describing how and when the causes of the deficiencies will be addressed.

This must be done within 30 calendar days of receipt of the findings letter, unless otherwise specified.

Where FINTRAC recommends an administrative monetary penalty, the brokerage has 30 calendar days to submit any additional information that may influence FINTRAC's decision on issuing an administrative penalty. In cases where FINTRAC adjusts its findings based on the additional information provided, they will provide a revised findings letter.

DEFICIENCY FOLLOW-UPS

FINTRAC expects brokerages who have been informed of deficiencies in their compliance program to address those deficiencies in a reasonable amount of time. As previously mentioned, FINTRAC may require the brokerage to draft an action plan that details how the deficiency will be addressed. Even if an action plan is not requested, the brokerage should address the deficiencies and their causes. What is required to address the deficiencies depends on the deficiencies found and the brokerage's resources.

To ensure that deficiencies have been addressed, FINTRAC may:

- ◆ conduct a follow-up examination;
- ◆ monitor the reports the brokerage sends to FINTRAC (if the deficiencies relate to the quality or timeliness of reports); and
- ◆ monitor the action plan progress, if applicable

PENALTIES FOR NON-COMPLIANCE

FINTRAC emphasizes that the purpose of compliance examinations is to help brokerages comply with the PCMLTFA and its associated regulations. If FINTRAC imposes administrative monetary penalties, its intent is to encourage compliance and not to punish. As mentioned in Module 1, the administrative monetary penalties are:

- ◆ **Minor violation:** \$1 to \$1,000 per violation
 - E.g., failure to report a large cash transaction
- ◆ **Serious Violation:** \$1 to \$100,000 per violation
 - E.g., failure to appoint a person responsible for implementing an anti-money laundering compliance program
- ◆ **Very Serious Violation:** \$1 to \$100,000 per violation for an individual; \$1 to \$500,000 per violation for an entity
 - E.g., failure to file a suspicious transaction report

ASSESSMENT OF HARM DONE

In considering whether to impose an administrative monetary penalty, FINTRAC assesses the harm done by the non-compliance, with reference to the following factors:

- ◆ **The nature of the non-compliance**

FINTRAC considers the nature of the requirement that was not complied with (e.g., compliance program, reporting, or identification requirements).

- ◆ **The relative importance of the requirement**

FINTRAC places greater emphasis on those requirements that have a large impact on its ability to carry out its statutory mandate. For example, the failure to report a suspicious transaction has a greater impact on FINTRAC's mandate than the submission of a report with minor quality issues.

- ◆ **The extent of the non-compliance**

FINTRAC inquires into the degree of the non-compliance by considering, for example, how much information is missing from a required report or record, how many times the non-compliance has been repeated, and whether the non-compliance is a signal of a larger compliance issue.

- ◆ **Mitigating or aggravating factors**

FINTRAC considers other factors that may increase or decrease the seriousness of the non-compliance. An example of a mitigating factor in the context of the failure to submit a large cash transaction report might be if a suspicious transaction report is filed in respect of the same transaction.

In determining the amount of a penalty, FINTRAC also considers whether the brokerage has a history of serious or repeated non-compliance.

For more information on administrative penalties, visit FINTRAC's [website](#).

NOTICES

If FINTRAC believes that a brokerage has committed a violation, it may issue a notice of violation and impose a penalty. In some cases, FINTRAC may offer to reduce the proposed penalty by half if the brokerage enters into a compliance agreement with FINTRAC in respect of the violation.

A compliance agreement identifies the violation and requires the brokerage to comply with the provision to which the violation relates. The agreement specifies the deadline for compliance and may include terms and conditions. FINTRAC may issue a notice of default if it considers that a compliance agreement has not been complied with.

If a brokerage believes that the notice of violation is unjustified, it may make representations in response. In this case, the Director of FINTRAC will consider whether the brokerage committed the violation. If the Director decides in favour of FINTRAC, the brokerage may appeal the decision to the Federal Court, depending on the severity of the violation. Review and appeal rights also apply in the context of notices of default received in respect of compliance agreements.

To learn more about this process, visit FINTRAC's [website](#).

PUBLISHING RESULTS

When a brokerage has committed a violation (or has been confirmed by the Director to have committed a violation), FINTRAC is required to publish:

- ◆ NATURE – The nature of the violation
- ◆ NAME – The name of the brokerage
- ◆ AMOUNT– The amount of the penalty

FINTRAC is also required to publish this information if a brokerage has received a notice of default in respect of their obligations under a compliance agreement and has:

- ◆ PAID – Paid the amount of the additional penalty
- ◆ DECLINED – Declined to pay the amount of the additional penalty or file an application for review
- ◆ DEFAULTED – Been confirmed by the Director to have defaulted under the compliance agreement

OFFENCES

When there is extensive non-compliance or little expectation of immediate or future compliance with the PCMLTFA, FINTRAC may disclose the non-compliance to law enforcement. Law enforcement will then decide whether to investigate and take further action with respect to the non-compliance.

Depending on the offence, non-compliance that is criminally prosecuted may result in imprisonment and/or more substantial fines than the administrative monetary penalties described above. For example, the failure to report suspicious transactions may result in a fine of up to \$2 million and/or imprisonment for up to five years. This is exceedingly rare.

LESSON 7 OF 8

Examinations Part 3: Methods Used in Examinations**Assessment Methods**

To ensure a brokerage is meeting its compliance requirements, FINTRAC may assess:

- ◆ compliance program requirements,
- ◆ client identification and other know your client requirements,
- ◆ financial transaction reporting requirements,
- ◆ record-keeping requirements, and
- ◆ ministerial directives.

Compliance Requirements

FINTRAC's examination reviews the five required elements of a compliance program to ensure that they have been adequately implemented and maintained in the compliance program.

FINTRAC reviews:

1. The appointment of a compliance officer
2. The policies and procedures manual
3. The risk assessment
4. Ongoing training
5. The two-year effectiveness review

1. APPOINTMENT OF BROKERAGE COMPLIANCE OFFICER

FINTRAC assesses whether a brokerage has formally appointed a compliance officer with proper authority and sufficient knowledge of the real estate brokerage's functions, structure, and anti-money laundering obligations, as well as the risks and vulnerabilities that are specific to the real estate sector. FINTRAC focuses on whether the compliance officer is adequately performing their duties under the PCMLTFA and its associated regulations.

In doing so, FINTRAC looks at:

- ◆ The compliance officer's background and experience
- ◆ The brokerage's policies and procedures to confirm that the compliance officer has sufficient guidance
- ◆ The compliance officer's training

FINTRAC may confirm that the compliance officer has direct access to individuals who control the brokerage or make important compliance decisions.

For more information regarding the appointment of a compliance officer and the compliance officer's duties, review Module 2.

2. POLICIES AND PROCEDURES

FINTRAC confirms that a brokerage's policies and procedures include all applicable requirements, including:

- ◆ Compliance program requirements
- ◆ Know your client requirements
- ◆ Transaction reporting requirements
- ◆ Record-keeping requirements
- ◆ Ministerial directive requirements

In that regard, FINTRAC also expect the policies and procedures to be written, up to date, and approved by a senior officer.

FINTRAC also considers whether a brokerage's policies and procedures are adequately tailored to their business and risks. To test whether Realtors and staff have an adequate understanding of the policies and procedures, FINTRAC may conduct interviews. This also assists FINTRAC in determining whether the policies and procedures are applied in practice.

For more information regarding policies and procedures, review Module 3.

3. RISK ASSESSMENT

FINTRAC confirms that a brokerage has a risk assessment in place that considers its:

- ◆ Services and delivery channels
- ◆ Clients and business relationships
- ◆ Geographic locations
- ◆ New technologies
- ◆ Applicable ministerial directives

During the examination, FINTRAC considers whether a brokerage has:

- ◆ **Identified**
Identified the risks that are applicable to their business as well as properly identified areas and clients as high risk
- ◆ **Provided**
Provided rationales for their decisions

- ◆ **Documented**
Documented and applied special measures in high-risk situations
- ◆ **Imposed**
Imposed controls that adequately mitigate risks
- ◆ **Applied**
Effectively applied the results of their risk assessment to the rest of their compliance program
- ◆ **Used**
Used publicly available information in preparing the compliance program.

For more information regarding risk assessments, review Module 5.

4. ONGOING COMPLIANCE TRAINING

FINTRAC examines a brokerage's training program by reviewing who receives the training, the topics that are covered, how often the training takes place, and how the training is delivered. In doing so, FINTRAC:

- ◆ **REVIEWS**
Reviews the brokerage's policies and procedures to ensure that they cover the ongoing training program and provide enough guidance for Realtors and staff to put their training into practice.
- ◆ **INTERVIEWS**
May also interview Realtors and staff to confirm that they understand the requirements as they relate to their position and have received adequate ongoing training.

Particular attention is paid to suspicious transaction reporting and the use of money laundering and terrorist-activity financing indicators in the detection of suspicious transactions.

Recall that in Module 7's Actions, there is a presentation on anti-money laundering and suspicious transactions that can be delivered as an important component of ongoing compliance training in the brokerage. For more information regarding ongoing training, review Module 7.

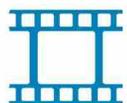
5. TWO-YEAR EFFECTIVENESS REVIEW

FINTRAC also confirms that a brokerage conducts an effectiveness review, verifying:

1. That the brokerage conducts a review of its policies and procedures, risk assessment, and training program at least every 2 years
2. That the brokerage's effectiveness review is tailored to its business
3. That the brokerage's policies and procedures provide enough guidance relating to the effectiveness review
4. That the brokerage's previous effectiveness reviews looked at the scope and methodology of previous reviews;
 - in terms of scope, the review should cover the brokerage's policies and procedures, risk assessment, and ongoing compliance training program and test all requirements that are applicable to the brokerage; and
 - in terms of methodology, FINTRAC considers who carried out the review, whether the review was conducted within required timelines, and whether the testing methods were reasonable, and they may interview the person who conducted the review
5. Whether a written report was provided to a senior officer within 30 days of the review that included the findings of the review, any updates made within the reporting period, and the status of the implementation of those updates
6. Whether the findings of the review are being actioned

The virtual class, Module 9, will provide more information regarding the two-year effectiveness review.

COMMON DEFICIENCIES



Refer to online content to view video.

Client Identification Requirements

FINTRAC assesses a brokerage's compliance with client identification requirements by:

- ◆ Confirming that policies and procedures provide adequate guidance on how to identify individuals and entities
- ◆ Reviewing client and transaction records to ensure that identification policies and procedures are followed (e.g., identification is performed in the required circumstances and within the required timeframes, proper identification records are kept)
- ◆ Confirming that individuals and entities are identified using the permitted identification methods, and that documents or information used for this purpose are authentic, valid, and current, as applicable

FINTRAC verifies if the brokerage has taken the necessary steps to ensure the identity of a person or entity.

Other Know Your Client Requirements

FINTRAC assesses a brokerage's compliance with other know your client requirements including:

- ◆ business relationships and ongoing monitoring requirements; and
- ◆ third-party determination requirements.

Effective June 1, 2021, brokerages will also be required to comply with beneficial ownership and politically exposed persons requirements. For more information on the changes coming June 1, 2021, review Module 3.

FINTRAC may review the brokerage's policies and procedures and transaction records to ensure these requirements are complied with.

BUSINESS RELATIONSHIPS AND ONGOING MONITORING

In terms of business relationships and ongoing monitoring requirements:

- ◆ FINTRAC confirms that the brokerage has considered their risk assessments in determining how often they monitor their clients.
- ◆ FINTRAC verifies that the brokerage monitors high-risk business relationships more frequently and applies special measures to mitigate risks.
- ◆ FINTRAC ensure that business relationships are adequately ranked in terms of risk by comparing clients that are ranked as low and medium risk against those that have been classified as high risk.
- ◆ FINTRAC verifies that medium-and low-risk clients are adequately monitored.
- ◆ FINTRAC reviews a brokerage's records to ensure that they identify and address inconsistencies between actual and expected transactional activity.
- ◆ FINTRAC verifies that the brokerage has adequate ongoing monitoring processes in place.

BENEFICIAL OWNERSHIP AND POLITICALLY EXPOSED PERSONS

In terms of beneficial ownership and politically exposed persons requirements:

- ◆ FINTRAC generally focuses on whether the brokerage properly rates clients as high risk when required.

- ◆ FINTRAC verifies that entities that are treated as high risk are monitored more frequently and whether the brokerage applies special measures to mitigate risks.
- ◆ FINTRAC verifies that the brokerage is taking reasonable steps to confirm who the individuals are that own or control an entity and if its clients are politically exposed persons.

THIRD PARTY REQUIREMENTS

In terms of third-party determinations, FINTRAC focuses on whether the brokerage is taking reasonable steps to determine whether there is a third party. FINTRAC will also consider situations where a brokerage is unable to determine whether a client is acting on behalf of a third party. In this case, FINTRAC will confirm whether the brokerage has policies and procedures as well as processes and controls in place to determine whether there is a third party to a transaction.

For more information on client identification and other know your client requirements, review Module 3.

Reporting Requirements

GENERAL REPORTING OBLIGATIONS

FINTRAC will assess the brokerage's compliance in regard to all report types including:

- ◆ Large cash transaction reports (if cash is accepted at brokerage)
- ◆ Suspicious transaction reports
- ◆ Terrorist property reports

FINTRAC seeks to ensure that brokerages have adequate procedures in place to meet their reporting obligations. In particular, FINTRAC:

- ◆ **Ensures that reports are filed**
FINTRAC reviews transaction records to ensure reports are filed when required. In that regard, FINTRAC determines whether all relevant types of reports are filed.
- ◆ **Reviews changes in reporting behaviour**
FINTRAC reviews a brokerage's reporting history to see whether their reporting frequency has increased or decreased. FINTRAC will expect explanations for any changes in reporting behaviour.
- ◆ **Ensures that rejected reports are resubmitted**
If FINTRAC rejects a report due to technical errors, it expects the reporter to resubmit the report once the issues have been corrected. FINTRAC will question why any such reports are not resubmitted.

- ◆ **Ensures reporting issues are fixed**

If FINTRAC has identified previous reporting issues, it expects that the brokerage will correct these issues.

- ◆ **Ensures transactions are reported and sent on time**

FINTRAC may request a list of Realtors that work on behalf of a brokerage and a list of the transactions conducted by each Realtor to ensure that transactions are reported when required. FINTRAC may compare the reports against the transaction records to determine if reporting timelines were properly complied with.

- ◆ **Ensures reports are complete and accurate**

FINTRAC assesses the quality of any reports by checking to see whether any information is missing, inadequate or incomplete.

- An example of **missing** information is if an address field is left blank.
- An example of **inadequate** information is if an address field is composed only of a post office box as opposed to a civic address.
- An example of **incomplete** information is if an address field is composed of a civic address without a corresponding city.

LARGE CASH TRANSACTION REPORTS

If the brokerage's policies allow it to deal in cash, FINTRAC will review its compliance with large cash transaction reporting requirements. When reviewing large cash transaction reports, FINTRAC will ask for a list that includes information about large cash transactions to compare against the brokerage's actual reporting activity.

If a brokerage does not have an automated list containing this information, it may provide other records that provide details of the transactions. FINTRAC will also verify that a brokerage correctly applies the 24-hour rule in respect of transactions that together total \$10,000 or more.

If a brokerage does not file a report with FINTRAC because a cash amount is received from a financial entity or public body, FINTRAC will confirm whether the entity from whom the amount is received actually meets the applicable definition.

SUSPICIOUS TRANSACTION AND UNUSUAL TRANSACTION REVIEWS

In assessing whether a brokerage is complying with the suspicious transaction reporting requirements, FINTRAC:

1. **Reviews policies and procedures relating to monitoring activities**

FINTRAC confirms that a brokerage has a monitoring process that allows it to detect, assess, and report suspicious transactions

2. Reviews monitoring rules

FINTRAC reviews the monitoring rules to confirm that they enable a brokerage to detect unusual transactions in line with its risk assessment.

3. Reviews unusual transactions

FINTRAC reviews transactions that were initially flagged as unusual but ultimately not reported. FINTRAC looks to confirm that these transactions were not suspicious transactions that were required to be reported. If a brokerage employs a risk-based approach to identify unusual transactions, FINTRAC will review whether this approach is reasonable.

4. Reviews high-risk areas

FINTRAC reviews areas that a brokerage has marked as high risk to determine whether suspicious transactions were reported where necessary.

5. Ensures consistent treatment of money laundering and terrorist activity financing indicators

FINTRAC ensures that transactions that present similar money laundering and terrorist activity financing indicators are treated consistently in terms of suspicious transaction reporting.

6. Reviews transactions for money laundering and terrorist activity financing indicators

FINTRAC identifies money laundering and terrorist activity financing indicators that a brokerage sees in its business activities and verifies that transactions that present these indicators were assessed further. FINTRAC seeks to ensure that suspicious activity is not overlooked.

7. Reviews the use of publicly available information

FINTRAC verifies that a brokerage makes use of publicly available information. For example, if a brokerage discovers suspicious information about a client through the media, FINTRAC will expect that the brokerage reviews its transactions with that client to determine if a suspicious transaction report should be filed.

8. Reviews the use of information from credible sources

FINTRAC also verifies that a brokerage appropriately deals with information it receives from police, law enforcement, national security agencies, or regulatory or supervisory bodies. FINTRAC also verifies that a brokerage takes this information into account in its client risk assessments and suspicious transaction reporting.

9. Ensures that variances in actual vs. expected behaviour are monitored

FINTRAC verifies that a brokerage pays attention to the actual behaviour of their clients compared to their expected behaviour, based on their financial profile. For example, a brokerage should give particular consideration to cases where a client conducts more transactions or transactions of a higher value than what is expected when compared to a group of similar clients.

10. Ensures that unusual patterns are detected

FINTRAC reviews a brokerage's records to ensure that it pays attention to any unusual patterns or connections that appear in the course of its activities. Example unusual patterns were discussed in Module 5.

11. Reviews refunds, cancellations, and overpayments

FINTRAC pays attention to cases where refunds were issued because a transaction was cancelled or overpaid. Brokerages should assess these situations when they arise as they can often be red flags for suspicious behaviour.

12. Reviews how market values and local market conditions are used

As discussed in Module 6, real estate transactions that are drastically below or above market value can be red flags for suspicious activity relating to money laundering or terrorist activity financing. Accordingly, FINTRAC ensures that a brokerage is aware of local market conditions and flags transactions that occur outside the normal range.

TERRORIST PROPERTY REPORTS

As discussed in Module 3, brokerages are required to notify FINTRAC and the Royal Canadian Mounted Police (RCMP) or the Canadian Security Intelligence Service (CSIS) when they are in possession or control of property owned or controlled by, or on behalf of, a terrorist, terrorist group, or a listed person. FINTRAC will review any correspondence between a brokerage and the RCMP or CSIS to determine whether the information contained therein is consistent with information that was provided to FINTRAC.

FINTRAC will review the process that a brokerage follows to determine whether it is in possession or control of terrorist property. FINTRAC will also confirm that terrorist property reports were filed when required, and they may compare the names of the brokerage's clients to the names published at [Public Safety Canada](#) under the *Criminal Code* and the [Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism](#) under the *United Nations Act*. FINTRAC will also verify that suspicious transaction reports are filed when necessary.

Record-keeping Requirements**◆ FINTRAC VERIFIES**

FINTRAC verifies that a brokerage complies with applicable record-keeping requirements by providing adequate guidance to their Realtors and staff.

◆ FINTRAC REVIEWS

FINTRAC reviews client and transaction records to ensure they contain the required information, are stored in the correct format, and are kept for the required period of time.

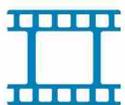
Ministerial Directives

FINTRAC ensures that a brokerage has policies and procedures in place that explain the concept of ministerial directives and how they should be followed. The policies and procedures should also provide information on how to access applicable ministerial directives and how often to check for new or amended directives.

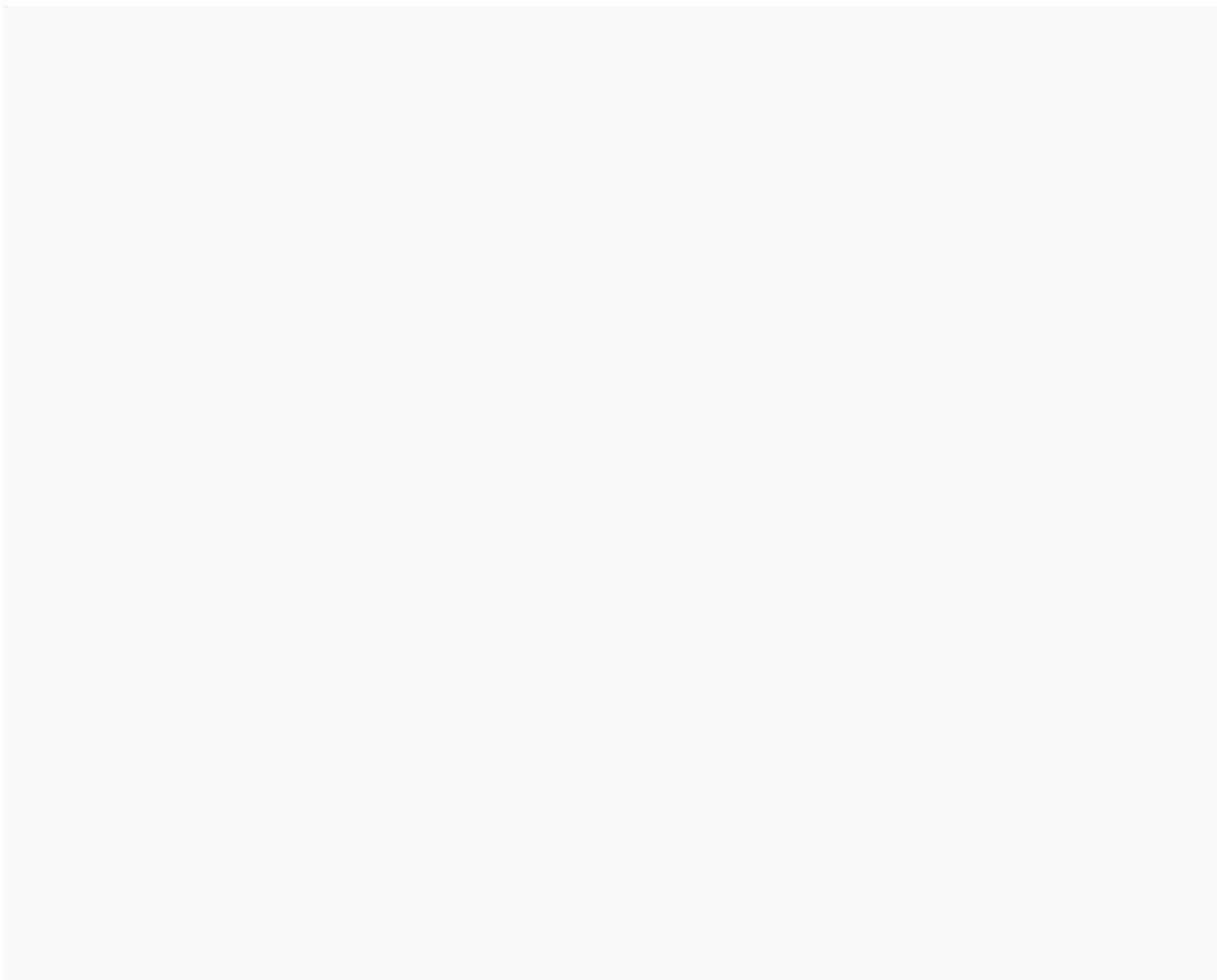
FINTRAC also confirms that ministerial directives are complied with in practice by reviewing client and transaction records. For example, the Ministerial Directive on the Democratic People's Republic of Korea (DPRK) requires brokerages to treat all transactions originating from, or destined to, North Korea as high risk.

FINTRAC expect brokerages who engage in such transactions to apply the special measures required for high-risk clients, including enhanced client identification and ongoing monitoring activities.

Further Resources



Refer to online content to view video.

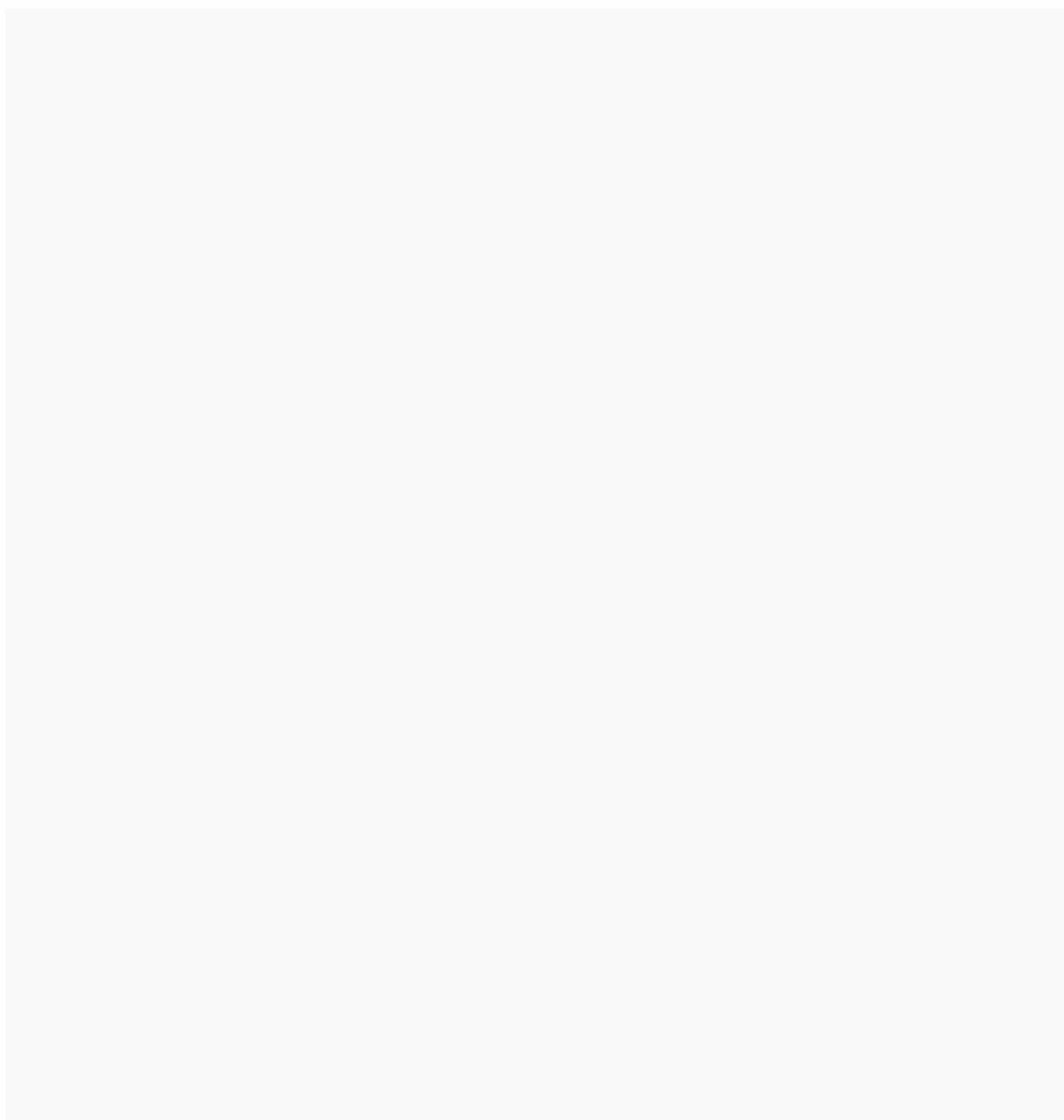


LESSON 8 OF 8

Actions

Learners are encouraged to download and use the following fillable PDF document 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 8: ACTIONS

1. Review Past Actions

Many of the Actions included in at the end of each module were designed to walk you through some of the requirements of a Compliance Program self-assessment in a step-by-step process. By completing each of the Actions throughout the program, you will have already completed many of the elements expected in a compliance program self-assessment. If you've completed them and documented your process, excellent! If not, you may wish to review those Actions and identify any elements that may be missing.

2. Examination Checklist

FINTRAC may request some or all of the following types of information as a part of the examination process. Review the list below and check off the items that would be accessible to provide to FINTRAC within 30 days.¹ This list is a helpful guide and not exhaustive.

Note, most items in the list below were incorporated in the Actions throughout the previous modules and referenced above. If you have reviewed and completed the previous modules' Actions, you are well positioned to being prepared for completing a self-assessment, having an effectiveness review and/or a FINTRAC examination. Congratulations!

Resource: FINTRAC Assessment Manual:

fintrac-canafe.gc.ca/guidance-directives/exam-examen/cam/cam-eng.pdf

- information on the size and nature of the brokerage, including:
 - the number of full-time staff,
 - the number of part-time staff,
 - the number of Realtors under contract,
 - the number of offices,
 - annual gross revenues, and
 - net income (as of the most recent financial year)
- brokerage's FINTRAC policies and procedures manual
- biography/sketch of the compliance officer
- job descriptions and mandates of individuals reporting to the compliance officer

¹ FINTRAC considers the examination process to begin on the date that the brokerage is advised of the examination during the notification call.

- organizational chart, including reporting lines to the brokerage's compliance officer
- meeting agendas and minutes, training sessions where AML was discussed within the indicated time frame
- a brief statement of the sufficiency of resources to support the AML program
- all reports or memos received or sent by the compliance officer that discuss the health of the AML program
- a summary of recent material changes to the program, including new technologies, staff turnover, and remediation projects
- a copy of the training program and materials
- in connection with the risk assessment, client risk scores and special measures to mitigate high-risk clients
- the volume of transactions by Realtor, a list of Realtors, and copies of agreements in place between the brokerage and the Realtor
- an overview of the transaction monitoring process
- an overview of the process for identifying, escalating, and investigating unusual transactions
- copies of the last two-year effectiveness reviews showing methodology, working papers, and action plans
- a review of required records
- record(s) of high-risk clients
- copies of any production orders or adverse media received
- a list of all files submitted for escalation

For items that might not be easily accessible or do not exist, consider how you may proactively address now.

