

Fulfilling request from Cullen Commission – RSU Input

In a letter dated June 3, 2020, Cullen Commission requested removal of redactions on the content of some ATIPs. They also requested some additional information based on the content in some of the release packages they reviewed. The following content is developed to answer some of the questions from the Cullen Commission.

Request 2b:

At p. 9, this document states, “The most common deficiencies across all sectors and all report types included quality issues with some of the reporting fields [...]” Please explain what is meant by “quality issues.”

Data quality issues pertain to the information submitted by REs that do not meet standards established by legislation and regulations and defined by FINTRAC in its guidance for reporting of certain fields. FINTRAC maintains field-by-field criteria for inputting and submitting data that represent the minimum standards for REs based on those requirements and have corresponding validation rules that assess data at time of submission. In addition, FINTRAC also assesses some of these in various assessments that it conducts of the REs. When REs input data that fail to meet these requirements, FINTRAC identifies these deficiencies as “data quality issues”.

Here are some examples where FINTRAC maintains a standard for various fields that require a minimum level of specificity and can be viewed as data quality issues.

- Occupation: Submissions such as “manager” or “president” are considered too vague and therefore would be identified as a “data quality issue”.
- Address: Submission of data that does not constitute a valid address (e.g. PO Box 123, Ottawa, ON) or incomplete address. (e.g. Bay Street, Toronto, ON)
- Identification document: Submission of identification provided does not constitute valid information (e.g. Drivers License# 1111111)

Request 2c:

At p. 18, the document describes a shift in FINTRAC’s examination approach “away from the simple measuring of technical compliance (an audit, or ‘check-box’ approach) and toward an evaluation of the impact of non-compliance to Canada’s AML/ATF regime taking into account the totality of the circumstances (an assessment approach).” Please explain the steps FINTRAC has taken to effect this shift, including what information is provided to reporting entities on examination findings, and how FINTRAC is measuring its progress in this regard.

The shift in FINTRAC’s compliance program from an **audit to an assessment approach has been program-wide**. The assessment approach now informs the suite of activities that fall under FINTRAC’s Compliance Framework’s [pillars](#): Assistance, Assessment and Enforcement.

As part of our efforts to inform key stakeholders of this shift, we launched our “**transparency**” initiative spanning late 2018 and early 2019. The initiative embodied the program’s core guiding principles, namely transparency, engagement, and clarity. The initiative was intended to highlight a **maturing, transparent, and supportive** compliance program.

The **key milestones of the initiative** included issuing a press release and related communications; conducting a print media interview with FINTRAC’s Director and CEO; participating in a panel at the 2018 ACAMS conference in Toronto; releasing three flagship publications online; and providing refresher training on the assessment approach to FINTRAC regional compliance officers.

These **flagship publications included**, FINTRAC’s [Compliance Framework](#), [Assessment Manual](#), and Administrative Monetary Penalty Policy and related [Harm Done](#) assessment guides.

The **assessment manual and harm guides, in particular, contain the blueprint** to our assessment approach. The **assessment manual**, published in early 2019, is meant to help reporting entities understand how we assesses their compliance programs and prepare for an examination. It describes our **assessment approach**; the **phases** of our examinations; and the **methods** we use during examinations to assess if they are adequately meeting the legal requirements. Upon the manual’s publication, we received positive feedback and mentions from various sources, including reporting entities, news media, and national and international regulators for our transparency and support to entities.

The revised AMP Policy and the related **harm done guides**, published as part of Transparency Initiative, are meant to describe how FINTRAC assesses the impact of non-compliance on its mandate and on Canada’s AML/ATF regime as a whole. Although written from the perspective of AMP calculations, the guides are equally relevant to how FINTRAC officers assess in an examination setting the harm, or potential harm, non-compliance has caused.

In addition to the steps described above, we have continued to reach out to reporting entities and communicate our assessment approach through various channels, including during examinations, assistance calls, outreach and engaging sessions, policy interpretations requests, etc.

Compliance examinations represent our core assessment activity. From an examination perspective, we **refer reporting entities to our assessment manual in the letters** we issue informing them of an upcoming examination. This way, entities are able to better prepare for the examination and know what to expect in terms of how we will assess their compliance with the legal requirements.

In the spirit of transparency, openness, and fairness, we **share and explain our findings with an entity throughout the examination** process and give them the **opportunity to provide additional information** on these findings for our consideration.

Once we are ready to leave an entity’s premises or have concluded our desk examination call, we hold an **exit interview** with the entity, either in person or by telephone, to discuss our preliminary findings with the entity. The findings are presented as “deficiencies”. Each deficiency maps to a violation of a provision in the PCMLTFA or associated Regulations.

During the exit interview, we **explain how we apply our assessment approach**. We explain how we focus less on technical non-compliance and more on the overall soundness of the areas of your compliance program we are assessing. How we evaluate findings holistically, rather than in isolation, to determine if the entity is adequately meeting the requirements.

We may also need to explain how we evaluate **harm** by assessing the **nature, relative importance, extent, and root cause of the non-compliance, and any mitigating or aggravating factors**. Finally, we may also refer entities to our assessment manual and harm done guides for more details.

At this point, the entity may **offer us additional information to help clarify a deficiency**. We agree on a timeline for the entity to provide this material. Once our findings finalized, we send our **examination findings letter** to the entity's compliance officer. This letter describes the findings that we discussed during the exit interview. We aim to write each finding in a clear, concise, and well-organized manner using an assessment lens.

The **letter indicates** the documents, client records, records of transactions and financial transaction reports we have examined, as well as the consolidated results of our interviews with employees and agents. When applicable, we provide additional information, such as the number of documents we sampled and the number of instances of non-compliance that were found in the sample. The individual records and reports that we have found to be deficient are listed in an **annex** to the letter. In some cases, the letter may also include "**observations**". They are included to help entities improve their business processes and practices to strengthen their compliance programs.

The letter also states which of the **following three actions** we may take following an examination based on the results of our assessment:

- no further compliance or enforcement action;
- possible follow-up compliance action; or
- a recommendation for an enforcement action, such as an AMP.

When entities receive a findings letter, we expect them to **address the root causes of the identified deficiencies within a reasonable amount of time**. In certain cases, we may ask them to send us an **action plan** that describes how and when the cause of the deficiencies will be addressed. When requested, an action plan must be sent within 30 calendar days of the receipt of the findings letter, unless otherwise specified. When an action plan is not requested, we still expect that entities will take the time to address the cause of the deficiencies. Whether an action plan has been requested or not, entities do not need to send us documents that demonstrate that the deficiencies have been addressed. We will evaluate these documents should we conduct a follow-up compliance activity.

If, on the basis of the examination findings, FINTRAC is considering issuing an **administrative monetary penalty**, this is stated in the findings letter. The findings letter also inform entities that they have 30 calendar days from the day they receive the letter to send FINTRAC any additional information that they believe could influence our findings or our decision to issue an administrative monetary penalty. We take into consideration additional relevant information the entity provides us within the established timeline and send them a written response of our decision. In cases where any adjustment to the findings is required, our response includes a revised findings letter.

FINTRAC measures the success of this transition through the ultimate outcome, which is to change behavior and bring the reporting entity into compliance. To validate that FINTRAC can conduct a number of activities including follow-up examinations, database examinations to ensuring improvement in reporting quality and timing, portfolio follow-ups for strategically important reporting entities etc.

Request 4c:

At p. 32, the report states FINTRAC conducted 172 examinations in the real estate sector. Please advise how many examinations were conducted on BC reporting entities.

The answer is 48 exams were conducted in BC alone. This represents:

- 28% of all real estate exams
- 30% of all exams conducted in BC
- 20% of all exams conducted by the Vancouver office (responsible for BC, AB, SK, MB and three territories)

Request 4d:

On page 35, the Report lists “% of Compliant Real Estate,” with marks of 53% for “Client ID” and 52% for “Training.” Please explain what these categories represent and how they are assessed.

Since FINTRAC’s examinations and scope follow the risk-based approach, it is important to note that not all 172 examinations that year assessed training or client identification. However, of the examinations where these elements was assessed, 52% of the entities were found to be compliant with training requirements and 53% of the entities were found to be compliant with client identification requirements.

Furthermore, it does not mean that 48% or 47% of the entities were fully non-compliant for training or client ID respectively. For example, it means that 48% of entities where training was assessed were found to have either a fully deficient training program (i.e. they have none) or partially deficient training program (i.e. they have something but it is either incomplete or inadequate as explained below).

Each deficiency is currently classified in three different categories:

- Compliant
- Partially compliant
- Fully non-compliant

The percentages in the report were to highlight the ones that were fully compliant. These percentages may also vary from year to year depending on the nature of our examination plan. For example, if during a year we focus on examining businesses that have never been examined before; we will most likely find higher levels of non-compliance. On the other hand, examining entities for a second time to confirm that they have addressed previously identified non-compliance could change these percentages (i.e., that will result in higher levels of compliance).

In addition, the type of examination (desk vs onsite) may also influence our findings. Typically, when we perform an onsite examination, FINTRAC compliance officers tend to test the various components of the entity's compliance program. For a desk examination of a real estate entity, we may find that the training program is compliant from a presence standpoint. Meaning, it captures the required information and they may get a compliant rating. However, an examination done onsite may find a similar compliance in regards to the presence but during interviews with staff/agents, we may find that although the training program appears complete from presence perspective, it is not adequate due to the fact that agents are not able to explain key concepts (e.g. reporting thresholds, suspicious indicators, ID requirement, etc.). This entity would then get a rating of partially compliant.

Training:

We look at who receives training, what topics are covered, when and how often training takes place, and how training is delivered. We also verify that the reporting entity's training program is adequate, takes into account the size, type, nature and complexity of their business, and is put into practice.

To conduct this assessment, FINTRAC may:

- Review the policies and procedures to confirm that they provide enough guidance to their employees or agents to develop, implement and maintain an ongoing training program.
- Interview the employees and agents to confirm that they understand the requirements as they relate to their positions, understand and follow the policies and procedures, and have received adequate ongoing training.

While we assess the ongoing training program, we will focus on whether it helps the employees and agents understand the requirements, their policies and procedures, and indicators and trends of money laundering and terrorist activity financing. We also pay close attention to the training that reporting entities provide regarding the detection of suspicious transactions.

Client ID:

To conduct our assessment of the compliance with client identification requirements we may:

- Review the policies and procedures to confirm that they give enough guidance to the employees or agents to verify the identity of your clients.
- Review client records and records of transactions to confirm that the entity applies these policies and procedures.
- Confirm, through a review of client records and records of transactions, that the entity verifies the identity of persons and confirm the existence of entities in all situations where they are required to do so. These situations include, but are not limited to, when the entity:
 - opens an account for a client, if applicable;
 - receives cash in the amount of \$10,000 or more from, or on behalf of, the same person or entity within a 24-hour period;
 - must submit a Suspicious Transaction Report;
 - must create a client information record; and

- are unable to obtain or confirm beneficial ownership information and must therefore take reasonable measures to identify the most senior managing officer of the entity.
- Verify that the entity uses the methods prescribed by law to verify the identity of a person or confirm the existence of an entity; and that, for persons, they rely on valid and current information, or original, valid and current documents to do so.
- Confirm that they verify the identity of their clients within the prescribed timeframe.
- Interview the employees and agents to assess their knowledge of client identification requirements.

If the entity uses an agent to help them verify the identity of clients, we may:

- Verify that they have a written agreement with the agent.
- Verify that they receive all the required information from the agent.
- Verify how they ensure that their agent is using the verification methods required by law.

We focus on the steps they take to ensure that they verify the identity of a person and confirm the existence of an entity.