



**Requirements under the  
*Proceeds of Crime  
(Money Laundering) and  
Terrorist Financing Act***

**Dealers in Precious  
Metals and Stones**

October 2008

# Presentation Overview

- Introduction
- About the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)
- Overview of money laundering and terrorist financing
- Dealers in precious metals and stones and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)*
- FINTRAC's compliance approach
- Timeline

# Introduction

- New requirements under the PCMLTFA for dealers in precious metals and stones are effective on December 30, 2008.
- FINTRAC will be responsible for ensuring compliance with these legislative and regulatory obligations.

# FINTRAC

- FINTRAC is Canada's financial intelligence unit. The Centre produces financial intelligence for law enforcement and national security agencies. FINTRAC is uniquely positioned to analyze millions of financial reports to produce this intelligence.
- Created in 2000 under the PCMLTFA.
- Plays an integral role in Canada's effort to combat organized crime and terrorism.
- Independent agency reporting to the Minister of Finance and Parliament.
- Operates at arm's length from law enforcement and other bodies.
- Works in partnership with individuals and entities subject to the PCMLTFA.

# FINTRAC's Role

- **Collect, analyze, assess and disclose** information related to money laundering, terrorist activity financing and threats to the security of Canada.
- **Ensure compliance** with obligations under Part 1 of the PCMLTFA and related regulations.
- Ensure **protection of personal information** under its control.
- Enhance **public awareness** of money laundering and **terrorist financing**.

# What Is Money Laundering?

- The United Nations defines money laundering as “any act or attempted act to disguise the source of money or assets derived from criminal activity”.
- Essentially it is the process where “dirty money” is transformed into “clean money”.
- More than just cash, it also includes valuable items (for example real estate, diamonds) and other kinds of funds (for example electronic funds).

# Stages of Money Laundering

- **Placement** – initial stage of putting the cash into the financial system
- **Layering** – creating layers of financial transactions to disguise the audit trail and sources of funds
- **Integration** – returning the laundered funds back into the economy to create a perception of legitimacy

For more information, please consult *Guideline 1: Background*.

# What Is Terrorist Financing?

- Terrorist financing is the process by which money is provided to an individual or group to fund terrorist activities
- Different from money laundering—funds may be either from legitimate or illegitimate sources, but used to help facilitate a terrorist act
- Often deal in smaller amounts than money laundering

For more information, please consult *Guideline 1: Background*.

# Reasons for Including Dealers

- Closing the gap in the current regime
- Cases of money laundering and terrorist financing involving precious metals and stones in Canada and abroad
- Meeting international standards:
  - Financial Action Task Force (FATF) recommendations
  - Other countries already have similar legislation (i.e. United States, Belgium, Australia)

# Examples of Money Laundering for Dealers

- Retail gold purchases: a money launderer or someone acting on their behalf purchases gold from a retail merchant with funds that were generated directly by an illegal activity.
- Laundering proceeds through diamond market: a criminal who had benefited from a fraud attempts to wire money to jeweller with a view to purchase diamonds.
- Sale of gold to jeweller: a money launderer sells gold (that may have been stolen or smuggled) to a jeweller. The gold itself may be the “proceeds” of crime that need to be laundered.

Source: FATF Typologies

# Examples of Terrorist Financing for Dealers

- Use of diamonds as a means of financing terrorist activities.
- A diamond dealer was used as an intermediary to sell diamonds bought at market price and shipped in another country. Profits on the transaction were apparently used to fund a terrorist organisation.

Source: FATF Typologies

# What Is a Dealer in Precious Metals and Stones?

- An individual or an entity that, in the course of their business activities, buys **or** sells precious metals, precious stones or jewellery.
- Includes an agent of the Crown that sells precious metals.

# Key Concepts

- Precious metals: gold, silver, platinum or palladium in the form of coins, bars, ingots or granules, or other similar form.
- Precious stones: diamonds, sapphires, rubies, emeralds, alexandrite or tanzanite.
- Jewellery: objects made out of precious metals, precious stones or pearls intended to be worn as personal adornment.

# Are all Dealers Subject to the PCMLTFA?

- A dealer that engages in the purchase or sale of precious metals, precious stones or jewellery in an amount of \$10,000 or more in a single transaction.
- Does **not** include transactions carried out for the purpose of :
  - manufacturing jewellery;
  - extracting from a mine; or
  - polishing and cutting stone.

# Obligations for Dealers

As of December 30, 2008, dealers will have to:

- Report large cash transactions, suspicious transactions and terrorist property;
- Keep records and ascertain identity
  - when receiving \$10,000 or more in cash; or
  - when reporting a suspicious transaction.
- Implement a compliance regime.

# Large Cash Transactions

- A dealer will have to report transactions involving amounts of \$10,000 or more received in **cash**
- Will have to be reported to FINTRAC within 15 days of receipt of cash
- 24-hour rule

For more information, please consult *Guideline 7: Submitting Large Cash Transaction Reports to FINTRAC.*

# Large Cash Transactions (cont'd)

- When conducting a large cash transaction, dealers will have to:
  - Create and keep a record of transaction on file.
  - Identify client and keep client identification information.
  - Take measures to determine whether cash is coming from a third party.

For more information, please consult *Guideline 6I: Record Keeping and Client Identification for Dealers in Precious Metals and Stones*

# Suspicious Transactions

- If you suspect that a transaction or attempted transaction is related to the commission or attempted commission of a money laundering offence or a terrorist activity financing offence, you will have to:
  - Report within 30 days following the fact that gave rise to the suspicion;
  - Keep a copy of the report;
  - Take reasonable measures to ascertain identity of the individual conducting suspicious transaction (some exceptions apply);
- Whether in cash or not and regardless of amount.

For more information, please consult *Guideline 2: Suspicious Transactions*, *Guideline 3: Submitting Suspicious Transaction Reports to FINTRAC* and *Guideline 6I: Record Keeping and Client Identification for Dealers in Precious Metals and Stones*.

# Suspicious Attempted Transactions

- An attempted transaction is an incomplete transaction that a client intended to conduct and took some form of action.
- An attempted transaction includes negotiations or discussions to conduct the transaction and involves concrete measures taken by either the dealer or the client.
- The fact that a transaction was not completed does not by itself imply suspicious activity.

## Example of an attempted transaction:

- A cash deposit of \$10,000 is cancelled because the client refuses to provide identification as requested by a jeweller.

# Indicators of Suspicious Transactions - Retailers

- Paying for high-priced jewellery with cash only
- Asking about the possibility of returning goods and obtaining a cheque (especially, if client asks for a cheque to be written to a third party)
- Not asking for the reduced price or haggling over the list price
- Purchase appears to be beyond the means of the customer based on his stated or known occupation or income
- Customer attempts to use a third party cheque or credit card

# Indicators of Suspicious Transactions - Wholesalers

- The funds come from an offshore financial centre instead of a local bank.
- Payment is going to be made in foreign currency.
- Transaction seems to lack business sense.

# Terrorist Property

- When you know or believe that there is property in your possession or control that is owned or controlled by or on behalf of a terrorist, a terrorist group or a listed person, you will have to:
  - Report it to FINTRAC using a terrorist property report (TPR) **paper** form
  - TPRs must be submitted to FINTRAC **without** delay
- Current obligations require similar reports be made to the RCMP and CSIS.

For more information, please consult *Guideline 5: Submitting Terrorist Property Reports to FINTRAC*.

# How to Submit Reports to FINTRAC?



- A dealer must submit all STRs and LCTRs electronically if it has the technical capability to do so. TPRs are submitted on paper.
- Reporting mechanisms
  - Electronic:
    - By F2R (via FINTRAC's secure Web site)
    - By batch
  - Paper:
    - By fax
    - By mail

# Client Identification

- If client is present, refer to a valid government-issued identification document.
- Other options for ascertaining client identity are available in non face-to-face situations (e.g. telephone, Internet services).
- May rely on an agent to take identification measures when there is a written agreement for that purpose.
- If a new obligation to ascertain the identity of a client arises for an individual previously identified, a dealer is not required to ascertain their identity again if they recognize the individual.
- Dealers must always ascertain the individual's identity again if they have **doubts** about the accuracy of the identification information obtained previously.

For more information, please consult *Guideline 6I: Record Keeping and Client Identification for Dealers in Precious Metals and Stones*.

# Compliance Regime

Dealers will also have to implement a compliance regime that includes:

- The **appointment of a compliance officer**
- The development and application of **written compliance policies and procedures.**
- The **assessment and documentation of risks** of money laundering and terrorist financing and measures to mitigate high risks
- Implementation and documentation of an **ongoing compliance training program** for all employees and agents
- A **documented review** of the effectiveness of policies and procedures, training program and risk assessment every two years
  - For corporations and other entities, report in writing findings of the review to senior officer including updates and implementation status

For more information, please consult *Guideline 4: Implementation of a Compliance Regime.*

# Risk-Based Approach

- A risk-based approach allows the dealer to identify and measure potentially higher risks and develop strategies to mitigate them so they can focus resources where most needed to manage risks within its own acceptable tolerance levels.
- Client identification, record keeping and reporting requirements still apply. The risk-based approach serves as an enhancement to those requirements.
- The risk-based approach will vary depending on the size and complexity of the dealer's operations.

# Risk-Based Approach: Requirements

- Assess and document, as appropriate for the dealer, the risk of money laundering or terrorist financing offences in the course of its activities.
- The risk assessment must take into account the following elements:
  - clients
  - business relationships
  - products and services
  - delivery channels
  - geographic location of activities and the location of its clients
  - other relevant factors.

# Risk-Based Approach: Requirements (cont'd)

- For all activities that pose a **high** money laundering or terrorist financing risk, dealers must develop and apply policies and procedures to:
  - mitigate the identified risks of money laundering or terrorist financing offences;
  - take reasonable measures to keep client ID information up to date every two years; and
  - take reasonable measures to conduct ongoing monitoring to detect suspicious transactions.

For more information, please consult *Guideline 4: Implementation of a Compliance Regime*.

## Risk-Based Approach – Tools

- FINTRAC's Guideline 4 provides checklists which can be used to help develop a risk assessment.
- The checklists take into account products & services, delivery channels, geographical locations, and clients and business relationships.
- Guideline 4 also includes information on what the risk assessment must include, risk mitigation measures and suggestions on how to monitor high risk clients when needed.
- For more information, a Web-based seminar on the risk-based approach is also available on FINTRAC's Web site.

# FINTRAC's Compliance Approach

- FINTRAC favours a cooperative approach.
- FINTRAC will work with dealers to assist them in understanding their requirements.
- Our experience indicates that the vast majority of individuals and entities subject to the PCMLTFA wish to comply with their legislative obligations.

# FINTRAC's Compliance Authority

- FINTRAC officers have the authority to enquire into the business of individuals and entities subject to the PCMLTFA.
- FINTRAC officers also have the authority to require from individuals or entities subject to the PCMLTFA, any document or other information relevant for compliance purposes.
- Can be done by :
  - Administration of a questionnaire
  - Examination
  - Request for information

# How Examinations Are Conducted

## Examination process:

- May contact dealer in advance to schedule meeting
- Test effectiveness of mechanisms and controls
- Exit meeting
- Findings letter

## Examination findings and follow-up action

- If compliant – report highlights scope and results
- If non-compliance detected - report identifies areas in need of corrective action
- Request action plan (if required)

# Penalties

- FINTRAC will have the ability to issue an administrative monetary penalty as a response to non-compliance.
- Criminal penalties, including fines up to \$2 million or up to five years in jail, can also apply for serious non-compliance.

# Timeline

- Requirements for dealers in precious metals and stones become effective as of **December 30, 2008.**

## For More Information

Please consult FINTRAC's Web site:

[www.fintrac-canafe.gc.ca](http://www.fintrac-canafe.gc.ca)