

# The Future of OSFI Supervision of AML

July 7, 2021

In Canada, both the Office of the Superintendent of Financial Institutions (OSFI) and the Financial Transactions and Reports Analysis Centre (FINTRAC) have roles to play in combatting money laundering and terrorist financing (referred collectively to AML/CTF in this article).

Historically, OSFI has assessed the effectiveness of a federally-regulated financial institution's (FRFI) AML/ATF program pursuant to OSFI Guideline B-8 – *Deterring and Detecting Money Laundering and Terrorist Financing* (B-8). While the Guideline acknowledges FINTRAC's responsibility for ensuring compliance with Part 1 of the PCMLTF regime, OSFI maintained that its:

*mandate includes supervising financial soundness and promoting the adoption of policies and procedures designed to mitigate risk. OSFI believes that the risk management outcomes identified in this Guideline will further reduce the susceptibility of FRFIs to being used by individuals or organizations to launder funds and fight terrorist financing, thereby reducing their exposure to damages to their reputation, a key asset in the financial services industry.*

OSFI stresses that B-8 “does not create any new regulatory requirements.” Instead, it is “intended to assist FRFIs in identifying and complying with applicable AML/ATF requirements and measures contained in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the PCMLTFA) and Regulations.”

B-8 was first released in 1996, five years after the PCMLTFA was declared in force. Both the Guideline and the Act were governmental responses to the 40 recommendations from the relatively new Financial Action Task Force (the FATF) – an intergovernmental body that develops, monitors and evaluates country AML/ATF standards. With the formation of FINTRAC four years later, in 2000, the two regulatory bodies had a certain degree of joint oversight over FRFIs' AML/ATF programs. The FATF has not considered this arrangement optimal. In its 2016 report *Anti-money laundering and counter-terrorist financing measures in Canada – 2016*, the FATF states:

*Supervisory coverage of FRFIs is good, but the current supervisory model generates some unnecessary duplication of effort between OSFI and FINTRAC.*

*FINTRAC has increased its supervisory capacity to an adequate level but its sector-specific expertise is still somewhat limited. OSFI conducts effective AML/CFT supervision with limited resources...*

*[Canada should] coordinate more effectively supervision of FRFIs by OSFI and FINTRAC to maximize the use of resources and expertise and review implementation of Canada's supervisory approach to FRFIs.*

Over the past several years, OSFI and FINTRAC have been working to eliminate duplicative oversight and manage the regulatory burden on FRFIs. This new regulatory approach confirms FINTRAC as the agency responsible for conducting AML/ATF assessments of FRFIs to ensure compliance with the PCMLTF regime.

Note that in March 2020, the COVID-19 pandemic paused OSFI's transitional work while the regulator redirected

resources to other pressing priorities. In October 2020, as this work resumed in earnest, OSFI issued an Industry Letter seeking FRFI input into the “ongoing relevance of... B-8... given FINTRAC’s role as the Canadian federal supervisor for AML/ATF.” Specifically, the Industry Letter sought FRFI views on:

- Whether amendments to Guideline E-13 (Regulatory Compliance Management) are needed to clarify OSFI’s expectations for compliance risk management generally; and
- Whether B-8 should be rescinded, or whether certain B-8 elements should be incorporated into a revised Guideline E-13.

On May 17, 2021, OSFI published its Consultation Response. In that response, the regulator indicated that most respondents supported rescinding B-8 in its entirety, without expressing a need for corresponding amendments to other OSFI Guidelines. Because OSFI is planning on carrying out a comprehensive review of Guideline E-13 in 2022, the regulator will endeavor to address its compliance management approach more generally, rather than focusing on their approach through multiple guidelines separately. OSFI also indicated that it will rescind B-8 on July 26, 2021.

It is important to note that, while B-8 may be rescinded, OSFI still has oversight of any AML/ATF risk that could have an impact on a FRFI’s financial soundness. The regulator will continue to coordinate and share information with FINTRAC as required, and in keeping with international best practices.

For more information on this and other Financial Services Regulatory matters, please contact Tracy Molino or Angela Shaffer.

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