



Guideline 6H: Record Keeping and Client Identification for Agents of the Crown that Sell or Redeem Money Orders

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This replaces the previous version of *Guideline 6H: Record Keeping and Client Identification for Agents of the Crown that Sell or Redeem Money Orders* issued in July 2010. This version includes guidance on obligations, which come into effect February 1, 2014, to better understand your clients and related business relationships.

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1 General

The objective of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* is to help detect and deter money laundering and the financing of terrorist activities. It is also to facilitate investigations and prosecutions of money laundering and terrorist activity financing offences. This includes implementation of reporting, record keeping, client identification and compliance regime requirements for agents of the Crown that sell or redeem money orders .

If you are an agent of the Crown and you sell or redeem money orders, this guideline has been prepared to help you meet your record keeping and client identification obligations.

This guideline uses plain language to explain the most common situations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* as well as the related Regulations. It is provided as general information only. It is not legal advice, and is not intended to replace the Act and Regulations.

Record keeping and client identification obligations for other types of reporting persons or entities are explained by sector in other versions of this guideline (financial entities; securities dealers; life insurance companies, brokers and agents; money services businesses; accountants; real estate; dealers in precious metals and stones; British Columbia notaries; and casinos).

For more information about money laundering and terrorist financing, or other requirements under the Act and Regulations applicable to you, see the other guidelines in this series:

- *Guideline 1: Background* explains money laundering, terrorist financing, and their international nature. It also provides an outline of the legislative requirements as well as an overview of FINTRAC's mandate and responsibilities.
- *Guideline 2: Suspicious Transactions* explains how to report a suspicious transaction. It also provides guidance on how to identify a suspicious transaction, including general and industry-specific indicators that may help when conducting or evaluating transactions.
- *Guideline 3: Submitting Suspicious Transaction Reports to FINTRAC* explains to reporting entities when and how to submit suspicious transaction reports. There are two different versions of Guideline 3, by reporting method.
- *Guideline 4: Implementation of a Compliance Regime* explains the requirement for reporting entities to implement a regime to ensure compliance with their obligations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and associated Regulations.

- *Guideline 5: Submitting Terrorist Property Reports to FINTRAC* explains to reporting entities when and how to submit terrorist property reports.
- *Guideline 6: Record Keeping and Client Identification* explains the requirement for reporting entities to ascertain the identity of their clients and keep records. There are several different versions of Guideline 6, with each one applicable to a particular sector.
- *Guideline 7: Submitting Large Cash Transaction Reports to FINTRAC* explains when and how to submit large cash transaction reports. There are two different versions of Guideline 7, by reporting method.
- *Guideline 8: Submitting Electronic Funds Transfer Reports to FINTRAC* explains when and how to submit electronic funds transfer reports. There are three different versions of Guideline 8, by type of electronic funds transfer and reporting method.
- *Guideline 9: Submitting Alternative to Large Cash Transaction Reports to FINTRAC* explains when and how financial entities can choose the alternative to large cash transaction reports. This is only applicable to financial entities.
- *Guideline 10: Submitting Casino Disbursement Reports to FINTRAC* explains when and how to submit casino disbursement reports. There are two different versions of Guideline 10, by reporting method.

If you need more help after you read this or other guidelines, call FINTRAC's national toll-free enquiries line at 1-866-346-8722.

Throughout this guideline, several references are provided to additional information that may be available on external websites. FINTRAC is not responsible for the accuracy, reliability or currency of the information contained on those external websites. The links provided are based on information available at the time of publishing of this guideline.

Throughout this guideline, any references to dollar amounts (such as \$10,000) refer to the amount in Canadian dollars or its equivalent in foreign currency. Furthermore, all references to cash mean money in circulation in any country (bank notes or coins). In this context, cash does not include cheques, money orders or other similar negotiable instruments.

Your policies and procedures may cover situations other than the ones described in this guideline, for purposes other than your requirements under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. For example, the retention period for your records may vary for purposes other than what is described in this guideline.

2 Record Keeping and Client Identification Obligations

As an agent of the Crown that sells or redeems money orders, you have the following record keeping and client identification obligation:

- When you conduct a large cash transaction, your obligations are as follows:
 - Keep a large cash transaction record (see section 3);
 - Ascertain the identity of the individual (see section 4); and
 - Make a third party determination and keep related records (see section 6).

- When you create a client information record, your obligations are as follows:
 - Keep a client information record (see section 3);
 - Ascertain the identity of the client(s) (see section 4); and
 - Make a third party determination and keep related records (see section 6).

- When you conduct certain transactions of \$3,000 or more, your obligations are as follows:
 - Keep a record about the transaction (see section 3); and
 - Ascertain the identity of the individual (see section 4).

- When you have to submit a suspicious transaction report to FINTRAC, your obligations include the following:
 - If you have not already identified the individual who conducted or attempted to conduct the transaction, ascertain the identity of the individual (see section 4); and
 - Keep a copy of the report (see section 3).

- When you have to ascertain the identity of your client or confirm the existence of a corporation or other entity, you may have a business relationship with that client. If so, your obligations are as follows:
 - Conduct ongoing monitoring of your business relationship and keep related records (see section 5); and
 - Keep a record of the purpose and intended nature of the business relationship (see section 5).

There are some exceptions and these are explained throughout each section.

The use of personal information by federal agents of the Crown is protected by the *Privacy Act*. You have to inform individuals concerning the collection of personal information about them. However, you should not inform individuals when you include personal information about them in any suspicious transaction reports that you are required to make to FINTRAC. You can get more information

about your responsibilities in this area from the Office of the Privacy Commissioner of Canada (<http://www.priv.gc.ca>).

3 Records to Be Kept

As an agent of the Crown that sells or redeems money orders, in addition to the records described in sections 5 and 6, you have to keep the following records:

- Large cash transaction records;
- Client information records;
- Records for money orders of \$3,000 or more; and
- Suspicious transaction report records.

Details about each of these types of records are provided in subsections 3.2 through 3.5. Also, section 7 explains how your records should be kept.

See section 4 for information about identification requirements that may be associated to the events triggering record keeping requirements.

3.1 General exceptions to record keeping

If you keep information in a record that is already readily available in any other record that you have kept under these rules (as described throughout this guideline), you do not have to keep that information again.

You do not have to keep any of the records described in subsections 3.3 to 3.4 when you conduct a transaction for a public body or a very large corporation. The same is true regarding a subsidiary of either of those entities, if the financial statements of the subsidiary are consolidated with those of the public body or very large corporation.

In this context, a public body means any of the following or their agent:

- a Canadian provincial or federal department or Crown agency;
- an incorporated Canadian municipal body (including an incorporated city, town, village, metropolitan authority, district, county, etc.); or
- a hospital authority. A hospital authority means an organization that operates a public hospital and that is designated to be a hospital authority for GST/HST purposes. For more information on the designation of hospital authorities, refer to GST/HST Memoranda Series, Chapter 25.2, *Designation of Hospital Authorities* available from the Canada Revenue Agency website (<http://www.cra-arc.gc.ca>) in the forms and publications listed by document type.

Also in this context, a very large corporation is one that has minimum net assets of \$75 million on its last audited balance sheet. The corporation's shares have to be traded on a Canadian stock exchange or on a stock exchange outside Canada that is designated by the Minister of Finance. The corporation also has

to operate in a country that is a member of the Financial Action Task Force (FATF). For more information about stock exchanges outside Canada that are designated by the Minister of Finance, refer to the July 2, 2008 news release available in the News area of the Department of Finance's website (<http://www.fin.gc.ca>).

To find out which countries are members of the FATF, refer to its website (<http://www.fatf-gafi.org>).

3.2 Large cash transaction records

This is a record for every amount of cash of \$10,000 or more that you receive from a client in a single transaction. For example, if your client brings you \$10,000 in cash to issue a money order, you have to keep a large cash transaction record. In addition to this record, a large cash transaction will also require a report to FINTRAC, as explained in *Guideline 7: Submitting Large Cash Transaction Reports to FINTRAC*.

If you know that two or more cash transactions of less than \$10,000 each were made within a 24-hour period (that is, 24 consecutive hours), by or on behalf of the same client, these are considered to be a single large cash transaction if they add up to \$10,000 or more. In this case, you would have to keep a large cash transaction record, and report the transaction to FINTRAC.

Do **not** keep a large cash transaction record or make a large cash transaction report to FINTRAC if the cash is received from a financial entity or a public body. In this context, a financial entity means any of the following:

- a bank (that is, one that is listed in Schedule I or II of the *Bank Act*) or an authorized foreign bank with respect to its operations in Canada;
- a credit union or a caisse populaire;
- a financial services cooperative (in the province of Quebec) or a credit union central (in all other provinces);
- a trust and loan company; or
- an agent of the Crown that accepts deposit liabilities.

For information about what is considered a public body in this context, see subsection 3.1.

Contents of a large cash transaction record

For any large cash transaction, the information you have to keep in a large cash transaction record includes the following:

- the amount and currency of the cash received;
- the name, date of birth and address of the individual from whom you received the cash and that individual's principal business or occupation;
- the date of the transaction;

- the purpose, details and type of transaction (for example, the cash was used to buy a money order, etc.), including whether any other individuals or entities were involved in the transaction;
- how the cash was received (for example, in person, by mail, by armoured car, or any other way); and
- if an account was affected by the transaction, include the following:
 - the number and type of any such account;
 - the full name of the client that holds the account; and
 - the currency in which the account's transactions are conducted.

Be as descriptive as possible regarding the business or occupation. Record information that clearly describes it, rather than use a general term. For example, in the case of a consultant, the occupation recorded should reflect the area of consulting, such as "information technology consultant" or "consulting forester." As another example, in the case of a professional, the occupation should reflect the nature of the work, such as "petroleum engineer" or "family physician."

If you have to identify the individual conducting a large cash transaction, see subsection 3.6 for additional information that is required on the large cash transaction record.

3.3 Client information records

If you have an ongoing business relationship with your client, you have to keep any client information records that you create about your sales or redemptions of money orders. A client information record sets out your client's name, address and the nature of the client's principal business or occupation.

For more information about recording business or occupation, see subsection 3.2, under the heading "Contents of a large cash transaction record."

A client information record about an individual also has to include the individual's date of birth. Furthermore, for a client information record about an individual, if you have to identify that individual, see subsection 3.6 for additional information that is required on the client information record.

If you create a client information record about a client that is a corporation, and you obtain a copy of the part of the official corporate records showing the provisions that relate to the power to bind the corporation regarding the transactions, you have to keep the copy. This could be a certificate of incumbency, the articles of incorporation or the bylaws of the corporation that set out those duly authorized to sign on behalf of the corporation, such as the president, treasurer, vice-president, comptroller, etc. If there were changes subsequent to the articles or the bylaws that relate to the power to bind the corporation regarding the transaction and these changes were applicable at the

time that the record had to be kept, then the board resolution stating the change would be included in this type of record.

3.4 Transactions of \$3,000 or more

You have to keep a record for every one of the following transactions that you conduct with an individual or entity:

- if you receive \$3,000 or more for the issuance of money orders or other similar negotiable instruments (for example, drafts, cheques, bill of exchange, etc.). In this case, keep a record of the date, the amount received and the name, address and date of birth of the individual who gave you the amount. This record also must indicate whether the amount was received in cash, cheques, traveller's cheques, money orders or other similar negotiable instruments; or
- if you cash \$3,000 or more in money orders. In this case, keep a record of the name, address and date of birth of the individual cashing the money order. This record also must indicate the name of the issuer of the money order.

If you have to ascertain the identity of the individual conducting any of these types of transactions, see subsection 3.6 for additional information that is required on the record.

3.5 Suspicious transaction report records

When you have to report a suspicious transaction to FINTRAC, you have to keep a copy of the report. See *Guideline 3: Submitting Suspicious Transaction Reports to FINTRAC* for more information about obligations related to this report.

3.6 Identification information on all records

If you have to ascertain the identity of an individual, as explained in section 4, in association with any of the records mentioned in section 3, you have to keep the individual's name with that record. You also have to keep the following with that record:

Identification documents

If you have to ascertain the identity of the individual using an identification document, the record has to include the type of document you used to ascertain the individual's identity, its reference number and its place of issue.

Identification of clients not physically present

If you do not use an identification document but use methods for a client who is not physically present (as described in subsection 4.6), you have to include whichever of the following, according to the methods used:

- If you use a cleared cheque to ascertain the individual's identity, the record has to include the name of the financial entity and the account number of the deposit account on which the cheque was drawn;
- If you confirm that the individual holds a deposit account with a financial entity, the record has to include the date on which you made the confirmation as well as the name of the financial entity where the account is held and the number of the account;
- If you use an identification product, the record has to include the name of the identification product, the name of the entity offering it, the search reference number and the date you used the product to ascertain the identity of the individual;
- If you consult a credit file, the record has to include the name of the entity keeping the credit file and the date you consulted it; and
- If you use an attestation signed by a commissioner of oaths in Canada or a guarantor in Canada, you have to keep the attestation.

4 Client Identity

4.1 When and how do you have to ascertain client identity?

As an agent of the Crown that sells or redeems money orders, you have client identification obligations. You have to take the following measures to ascertain the identity of individuals or to confirm the existence of entities (entities meaning: corporations, trusts, partnerships, funds, and unincorporated associations or organizations), subject to the general exceptions outlined in subsection 4.2.

Subsections 4.3 to 4.5 explain the need to ascertain the identity of an individual when an event triggers the requirement. In these events, you must ascertain the identity of an individual, unless an exception applies as explained below.

See section 3 for information about record keeping requirements that may be associated to the events triggering identification requirements.

4.2 General exceptions to client identification

In addition to the exceptions explained throughout the rest of section 4, the following general exceptions apply to client identification requirements.

Existing clients

Once you have ascertained the identity of an individual as explained in this guideline, you do not have to ascertain their identity again if you **recognize the individual** (visually or by voice) at the time of a future event that would otherwise

trigger the identification requirement. However, if you have any doubts about the identification information previously collected, you will have to ascertain the identity of that individual again.

Once you have confirmed the existence of a corporation and confirmed its name, address and the names of its directors (as explained in subsection 4.7), you are not required to confirm that same information in the future.

Once you have confirmed the existence of an entity other than a corporation (as explained in subsection 4.7), you are not required to confirm that same information in the future.

Certain types of transactions

You do not have to ascertain the identity of entities as described in subsection 4.7, nor do the requirements described in section 6 apply when you conduct a transaction with a public body or a very large corporation. The same is true regarding a subsidiary of either of those entities, if the financial statements of the subsidiary are consolidated with those of the public body or very large corporation.

For information about what is considered a public body or a very large corporation in this context, see subsection 3.1.

4.3 Client identity for large cash transactions

You have to ascertain the identity of any individual with whom you conduct a large cash transaction, at the time of the transaction, if you have to keep a large cash transaction record for it, as described in subsection 3.2.

See subsection 4.6 to find out how to identify an individual for this purpose.

4.4 Client identity for suspicious transactions

When you have to send a suspicious transaction report to FINTRAC, you have to take reasonable measures, before the transaction is reported, to ascertain the identity of the individual who conducted or attempted to conduct the transaction.

This does not apply in the following circumstances:

- if you had already ascertained the identity of the individual as required and you have no doubts about that previous identification information; or
- if you believe that doing so would inform the individual that you are submitting a suspicious transaction report.

In this context, reasonable measures to ascertain the identity of an individual include asking the individual for an identification document. They also include using either of the options available to identify individuals who are not physically

present. However, reasonable measures exclude any method that you believe would inform the individual that you are submitting a suspicious transaction report.

It is important to remember that all suspicious transactions and attempted transactions, including transactions that are normally exempt from client identification requirements, require you to take reasonable measures to ascertain your client's identity. See *Guideline 2: Suspicious Transactions* for more information.

4.5 Other client identity for individuals

Client information records

If you have to keep a client information record for an individual, you have to ascertain the identity of the individual. You have to do this within 30 days of creating the client information record.

See subsection 4.6 to find out how to ascertain the identity of an individual for this purpose.

If no client information record is kept

If you do not have to keep a client information record for an individual, you have to ascertain the identity of the individual if you issue or redeem money orders or other similar negotiable instruments for \$3,000 or more. In this case, you are required to ascertain the identity of the individual at the time of the transaction.

See subsection 4.6 to find out how to ascertain the identity of an individual for this purpose.

4.6 How to ascertain the identity of an individual

See subsection 3.6 for additional information that is required on certain records when you have to ascertain the identity of individuals.

To ascertain the identity of an individual, refer to the individual's birth certificate, driver's licence, passport, record of landing, permanent resident card or other similar document.

You can refer to an individual's provincial health card, but only if it is not prohibited by provincial or territorial legislation. For example, you cannot refer to an individual's provincial health card from Ontario, Manitoba, Nova Scotia or Prince Edward Island, since health cards cannot be used for this purpose in these provinces. As another example, in Quebec, you cannot request to see a client's health card, but you may accept it if the client wants to use it for identification purposes. If you have questions about the use of health cards for

identification, please contact the appropriate provincial issuer for more information.

For a document to be acceptable for identification purposes, it must have a unique identifier number. Also, the document must have been issued by a provincial, territorial or federal government. For example, a birth or baptismal certificate issued by a church would not be acceptable for this purpose. Also, an identification card issued by an employer for an employee (that is, an employee identification card) is not acceptable.

The document also has to be a valid one and cannot have expired. For example, an expired driver's licence would not be acceptable.

A social insurance number (SIN) card can be used to ascertain the identity of a client, but the SIN (that is, the number itself) is not to be provided to FINTRAC on any type of report. The Office of the Privacy Commissioner (<http://www.priv.gc.ca>) has produced a fact sheet concerning best practices for the use of SINs. Please consult it for more information on this topic.

Examples of other similar documents that can be used to ascertain the identity of a client include a certificate of Indian status or a provincial or territorial identification card issued by any of the following:

- the Insurance Corporation of British Columbia;
- Alberta Registries;
- Saskatchewan Government Insurance;
- the Department of Service Nova Scotia and Municipal Relations;
- the Department of Transportation and Public Works of the Province of Prince Edward Island;
- Service New Brunswick;
- the Department of Government Services and Lands of the Province of Newfoundland and Labrador;
- the Department of Transportation of the Northwest Territories; or
- the Department of Community Government and Transportation of the Territory of Nunavut.

Valid foreign identification, if equivalent to an acceptable type of Canadian identification document, would also be acceptable for the purposes explained in this guideline. For example, a valid foreign passport is acceptable.

When you refer to a document to ascertain the identity of an individual, it has to be an original, not a copy of the document. In cases where it is not possible for you to view the original yourself, you may choose to use an agent or mandatary to verify the original identification document on your behalf. Even if you use an agent or mandatary, you are responsible for making sure the identification requirements are met. If you do this, you should enter into a written agreement with the agent outlining what you expect the agent to do for you.

Use of an agent or mandatary

If you use an agent or mandatary for client identification, you have to enter into a written agreement or arrangement with the agent or mandatary outlining what you expect them to do for you. In addition, you have to obtain from the agent or mandatary the customer information that was obtained according to the agreement or arrangement.

Your agent or mandatary can ascertain the identity of your client for you using an identification document. In cases where your client is not physically present at the conducting of a transaction, your agent or mandatary can also use the options explained below.

Individual not physically present

If you have to ascertain the identity of an individual who is **not physically present** you will have to use a combination of **two** of the following methods. In each of the two methods you use, the individual's information has to be consistent with what you have in your records. The information also has to be consistent from one method to the other. For example, if each of the methods you use has the name, address and date of birth information about the individual, all of it has to agree with what you have in your records.

The methods below may not apply for all clients. For example, the methods would not be available to ascertain the identity of a client outside Canada who is conducting a transaction with you, but has no Canadian credit history, no access to a Canadian guarantor and no deposit account with a financial entity. In this case, ascertaining the identity of the client using an identification document may necessitate the use of an agent or mandatary, as explained above.

Identification product or credit file method

You can use either of the following methods but you cannot combine them:

- Refer to an independent and reliable identification product. It must be based on personal information as well as Canadian credit history about the individual of at least six months duration. This type of product can use a series of specific questions, based on an individual's credit file, to help you ascertain client identity.
- With the individual's permission, refer to a credit file. The credit file must have been in existence for at least six months.

Products for either of these methods are available commercially, such as those used for credit ratings.

Attestation method

Obtain an attestation that an original identification document for the individual has been seen by a commissioner of oaths or a guarantor. The attestation must be on a legible photocopy of the document and include the following information:

- the name, profession and address of the commissioner of oaths or the guarantor;
- the signature of the commissioner of oaths or the guarantor; and
- the type and number of the identifying document provided by the individual whose identity you must ascertain.

In this context, a guarantor has to be an individual engaged in one of the following professions in Canada:

- a dentist, a medical doctor or a chiropractor;
- a judge, a magistrate or a lawyer;
- a notary (in Quebec) or a notary public;
- an optometrist or a pharmacist;
- an accredited public accountant (APA), a chartered accountant (CA), a certified general accountant (CGA), a certified management accountant (CMA), a public accountant (PA) or a registered public accountant (RPA);
- a professional engineer (P. Eng., in a province other than Quebec) or engineer (Eng. in Quebec); or
- a veterinarian.

Cleared cheque or deposit account method

You can use either of the following methods, but you cannot combine them.

- Confirm that a cheque drawn on a deposit account that the individual has with a financial entity has cleared. This means a cheque that was written by the individual, cashed by the payee and cleared through the individual's account. It does not include pre-authorized payments as these are not cheques written by the individual.
- Confirm that the individual has a deposit account with a financial entity. You could do this by viewing an original bank statement.

For either method, the account has to be with a financial entity, as described in subsection 3.2.

The account cannot be one that is exempt from identification requirements for the financial entity, such as a registered retirement savings plan or a reverse mortgage. For more information about accounts that cannot be used for the cleared cheque or deposit account methods, see *Guideline 6G: Record Keeping and Client Identification for Financial Entities*.

4.7 Client identity for corporations or other entities

You have to confirm the existence of any corporation or other entity for which you have to keep a client information record, within 30 days of creating this record. In the case of a corporation, in addition to confirming its existence, you also have to determine the corporation's name, address and the names of its directors within 30 days of creating the client information record.

Corporations

To confirm the existence of a corporation as well as the corporation's name and address, refer to the following documents:

- the corporation's certificate of corporate status;
- a record that has to be filed annually under provincial securities legislation; or
- any other record that confirms the corporation's existence. Examples of these include such other records as the corporation's published annual report signed by an independent audit firm, or a letter or a notice of assessment for the corporation from a municipal, provincial, territorial or federal government.

You also have to confirm the names of the corporation's directors. To do this, you may need to see the list submitted at the time of their application for incorporation. In the case of a corporation that is a securities dealer, you do not need to ascertain the name of the corporation's directors. In this context, a securities dealer means an individual or entity authorized under provincial legislation to engage in the business of dealing in securities or any other financial instruments, or to provide portfolio management or investment advising services.

The record you use to confirm a corporation's existence can be paper or an electronic version. Although such information may be available verbally (such as by phone), it is not acceptable for these purposes, as you have to refer to a record. If the record is in paper format, you have to keep the record or a copy of it.

If the record is an electronic version, you have to keep a record of the corporation's registration number, the type and source of the record. An electronic version of a record has to be from a public source. For example, you can get information about a corporation's name and address and the names of its directors from a provincial or federal database such as the Corporations Canada database which is accessible from Industry Canada's website (<http://www.ic.gc.ca>). As another example, you may also get this type of information if you subscribe to a corporation searching and registration service.

Entities other than corporations

To confirm the existence of an entity other than a corporation, refer to a partnership agreement, articles of association or any other similar record that

confirms the entity's existence. The record you use to confirm the existence of an entity can be paper or an electronic version. Although such information may be available verbally (such as by phone), it is not acceptable for these purposes, as you have to refer to a record. If the record is in paper format, you have to keep the record or a copy of it.

If the record is an electronic version, you have to keep a record of the entity's registration number, the type and source of the record. An electronic version of a record has to be from a public source.

4.8 Keeping client identification information up to date

Your compliance regime has to include an assessment, in the course of your activities, of the risk of money laundering or terrorist financing. *Guideline 4: Implementation of a Compliance Regime* provides more information about risk assessment requirements. According to this assessment, you have to keep client identification information up to date as part of your ongoing monitoring obligations.

Measures to keep client identification information up to date include asking the client to provide information to confirm or update identification information. In the case of an individual client, this can also include confirming or updating the information by using the same options that are available to ascertain the identity of individuals who are not physically present.

In the case of clients that are entities, measures to keep client identification information up to date include consulting a paper or electronic record as explained in subsection 4.7, or obtaining information verbally to keep client identification information up to date.

The frequency with which client identification information is to be kept up to date will vary depending on your risk assessment of your client. As part of your ongoing monitoring obligations, you have to keep all client identification information up to date. For high-risk clients, you must update client identification information more frequently and perform more frequent monitoring, as well as adopt any other appropriate enhanced monitoring measures (see examples in section 5).

If you have used one of the exceptions found in 4.2 (General exceptions to client identification) where you were not required to ascertain the identity of a client and therefore, do not have any client information in your records, there will be no client information to update as part of your ongoing monitoring obligations as described in section 5 (Ongoing Monitoring of Business Relationship and Related Records), but your other ongoing monitoring obligations still apply.

5 Ongoing Monitoring of Business Relationship and Related Records

Business relationship

A business relationship is a relationship that you establish with a client to conduct financial transactions or provide services related to those transactions.

You enter into a business relationship when you conduct two or more transactions in which you have to:

- ascertain the identity of the individual (see section 4); or
- confirm the existence of a corporation or other entity (see sections 4).

If you use the exception to ascertaining the identity of a client where you recognize the individual (as described in 4.2 General exceptions to client identification) in the case of a second transaction that requires you ascertain the identity of a client, you have entered into a business relationship with that client nonetheless. This is because it is the requirement to ascertain identity that triggers the business relationship.

You should determine that a business relationship has been established as soon as reasonably practicable following the second transaction requiring that the client's identity be ascertained. As a best practice, this should be done within 30 calendar days.

For agents of the Crown that sell or redeem money orders, the business relationship only includes transactions and related activities for which you have to ascertain the identity of your client. However, when you have to send a suspicious transaction report, you must still take reasonable measures to ascertain the identity of the client even if the transactions in question do not normally require it. See section 4 for more information on these transactions and activities.

If you have a client who conducts two or more suspicious transactions, even if you are unable to ascertain the identity of the client, you have still entered a business relationship with that client. This is because suspicious transactions require you to take reasonable measures to ascertain the identity of the client (subject to the circumstances described in section 4.4), and so two or more of these transactions will trigger a business relationship. You must treat this business relationship as high-risk, and undertake more frequent ongoing monitoring and updating of client identification information, as well as any other appropriate enhanced measures (see examples under "Ongoing monitoring" below).

A business relationship is established when two transactions that require you to ascertain the identity of your client occur within a maximum of five years from

one another. If a period of five years passes from the last transaction that required you to ascertain the identity of your client, the business relationship with that client ceases.

Once the business relationship is established, you must also

- conduct ongoing monitoring of your business relationship with your client; and
- keep a record of the measures you take to monitor your business relationship and the information you obtain as a result. See section 5.1 for a description of what information you must keep for this record.

Ongoing monitoring

Ongoing monitoring means that you have to monitor your business relationship with a client on a periodic basis. Use your risk assessment of the client with whom you have a business relationship to determine how frequently you will monitor that business relationship. The risk assessment requires you to consider each one of your clients when assessing their risk for money-laundering and terrorist activities financing. However, an individual written assessment is not required for each client, so long as you can demonstrate that you put your client in the correct risk category, according to your policies and procedures, and risk assessment. You have to perform ongoing monitoring of each business relationship to:

- detect suspicious transactions that have to be reported;
- keep client identification and the purpose and intended nature of the business relationship up to date;
- reassess the level of risk associated with the client's transactions and activities; and
- determine whether the transactions or activities are consistent with the information previously obtained about the client, including the risk assessment of the client.

The above-listed requirements do not need to follow the same timeframe, so long as you monitor your high-risk clients more frequently and with more scrutiny than you do your low-risk clients.

In order to keep client information up to date, you may update the information you have on record every time the client conducts a transaction that requires you to ascertain their identity.

As an example, you may choose to reassess the level of risk associated with a client's transactions and activities, and to determine whether the transactions or activities are consistent with the information you have on your client, for your low-risk clientele, every two years, while performing the same monitoring of your high-risk clients on a more frequent basis. However, depending on the

circumstances of your operations, a different ongoing monitoring period for low-risk clients may be appropriate.

In the context of monitoring on a periodic basis, the frequency of your monitoring will vary depending on your risk assessment of your client. As part of your ongoing monitoring obligations, you have to monitor all of your business relationships, and you must monitor business relationships you consider high-risk more frequently, as well as update client identification information and adopt any other appropriate enhanced measures.

Here is a non-exhaustive list of enhanced measures you could take to mitigate the risk in cases of high-risk business relationships:

- Obtaining additional information on the client (e.g. occupation, volume of assets, information available through public databases, Internet, etc.).
- Obtaining information on the source of funds or source of wealth of the client.
- Obtaining information on the reasons for intended or conducted transactions.
- Obtaining the approval of senior management to enter into or maintain the business relationship.
- Identifying patterns of transactions that need further examination.
- Requiring the first payment to be carried out through an account in the client's name with a bank subject to similar client due diligence standards.
- Increased monitoring of transactions of higher-risk products, services and channels.
- Establishing more stringent thresholds for ascertaining identification.
- Gathering additional documents, data or information; or taking additional steps to verify the documents obtained.
- Establishing transaction limits.
- Increasing awareness of high-risk activities and transactions.
- Increasing internal controls of high-risk business relationships.
- Obtaining the approval of senior management at the transaction level for products and services that are new for that client.

If as a result of your ongoing monitoring you consider that the risk of a money laundering or a terrorist financing offence in a business relationship is high, your risk assessment in your compliance regime must treat that client as a high risk. In this case, you must conduct more frequent monitoring of your business relationship with that client, update that client's identification information more frequently, and adopt any other appropriate enhanced measures (see examples above).

5.1 Business relationship record

When you enter into a business relationship with a client, you have to keep a record of the purpose and intended nature of the business relationship. You also have to review this information on a periodic basis and keep it up to date. This is done to ensure that you continue to understand your client's activities over time

so that any changes can be measured to detect high-risk transactions and activities. This may lead you to increase the frequency of ongoing monitoring, update their client identification information more frequently, and adopt any other appropriate enhanced measures (see examples above).

The purpose and intended nature of the business relationship is information that should allow you to anticipate the transactions and activities of your client.

For clients with whom you have a business relationship on the basis that they have completed two transactions that required you to ascertain their identity, or in the case of entities, to confirm their existence; you must document the purpose and intended nature of the business relationship that best describes your dealings with that client.

As an example, the purpose and intended nature of a business relationship in your sector could be:

- Buying or cashing money orders

Guideline 4: Implementation of a Compliance Regime provides more information about risk assessment requirements.

6 Third Party Determination and Related Records

6.1 Third party determination

You have to make a third party determination when you have to keep any of the following records:

- **Large cash transaction record**
Whenever you have to keep a large cash transaction record (as described in subsection 3.2), you have to take reasonable measures to determine whether the individual who gives you the cash is acting on the instructions of a third party.
- **Client information record.**
Whenever you are required to keep a client information record as explained in subsection 3.3, you have to take reasonable measures to determine whether the client is acting on the instructions of a third party.

In this context, a third party is an individual or entity other than the individual who conducts the transaction. When you are determining whether a “third party” is involved, it is not about who “owns” the money, but rather about who gives instructions to deal with the money. To determine who the third party is, the point to remember is whether the individual in front of you is acting on someone else’s instructions. If so, that someone else is the third party.

In making a third party determination when employees are acting on behalf of their employers, they are considered to be acting on behalf of a third party.

Reasonable measures

What constitutes reasonable measures will vary in accordance with the context in which they occur, and therefore could differ from one situation to the next. However, reasonable measures would include retrieving the information already contained in your files or elsewhere within your business environment, or obtaining the information directly from the client.

If a suspicious transaction report is involved, you cannot tip off the client that you are submitting a report. In this case, reasonable measures may not involve obtaining information from the client if you feel this would tip them off that a suspicious transaction report is being submitted to FINTRAC.

6.2 Third party records

If you determine that there is in fact a third party, as explained above, you have to keep a record of the following information:

- the third party's name, address and principal business or occupation;
- if the third party is an individual, the third party's date of birth;
- the incorporation number and place of incorporation if the third party is a corporation; and
- in the case of a large cash transaction, the nature of the relationship between the third party and the individual who gives you the cash; or
- in the case of a client information record, the nature of the relationship between the third party and the client. For examples of third party relationships, see field 18 of Part G in the large cash transaction report.

For more information about recording business or occupation, see subsection 3.2 under the heading "Contents of a large cash transaction record."

If you are not able to determine that there is in fact a third party, but you have reasonable grounds to suspect that there are instructions of a third party involved, you have to keep a record to indicate the following:

- in the case of a large cash transaction, whether, according to the individual giving the cash, the transaction is being conducted on behalf of a third party; or
- in the case of a client information record, whether, according to the client, the transaction is being conducted on behalf of a third party.

This record must also indicate details of why you suspect the individual is acting on a third party's instructions.

7 How Should Records Be Kept?

You should maintain an effective record keeping system to enable FINTRAC to have access to the records in a timely fashion. Your records have to be kept in such a way that they can be provided to FINTRAC within 30 days of a request to examine them.

For the requirements explained in this guideline, you can keep records in a machine-readable or electronic form, as long as a paper copy can be readily produced from it. For example, if you have a document imaging system, you do not have to produce the original document for these purposes, as long as you can print the imaged one.

The record keeping requirements explained in this guideline are about each record to be kept. Your record keeping system can store the information required for any one record separately, as long as you are able to readily retrieve and put the information together for the record whenever necessary.

You are not required to keep a copy of the reports you make to FINTRAC (other than the suspicious transaction report as explained in subsection 3.5), but you may choose to do so. It is recommended that you keep the information that FINTRAC sends you in the acknowledgement message about each report processed. This provides the date and time the report was received along with its identification number.

Timeframe for keeping records

In the case of client information records and records to confirm the existence of an entity (including a corporation), these records have to be kept for five years from the day the last business transaction was conducted.

In the case of a copy of a suspicious transaction report, the record has to be kept for a period of at least five years following the date the report was made.

In the case of all other records, the records must be kept for a period of at least five years following the date they were created.

Employees, contractors or agents who keep records for you

Your employees who keep records (as described in section 3) for you are not required to keep those records after the end of their employment with you. The same is true for individuals in a contractual relationship with you, after the end of that contractual relationship. This means that you have to get and keep the records that were kept for you by any employee or contractor before the end of that individual's employment or contract with you.

8 Penalties for Non-Compliance

Failure to comply with your record keeping or client identification requirements can lead to criminal charges against you. Conviction of failure to retain records could lead to up to five years imprisonment, to a fine of \$500,000, or both. Alternatively, failure to keep records or ascertain the identity of clients can lead to an administrative monetary penalty. For more information on penalties, you can also consult the “Penalties for non-compliance” section of FINTRAC's website.

9 Comments?

These guidelines will be reviewed on a periodic basis. If you have any comments or suggestions to help improve them, please send your comments to the mailing address provided below, or by email to guidelines-lignesdirectrices@fintrac-canafe.gc.ca.

10 How to Contact FINTRAC

For further information on FINTRAC and its activities, reporting and other obligations, please go to FINTRAC's website (<http://www.fintrac-canafe.gc.ca>) or contact FINTRAC:

Financial Transactions and Reports Analysis Centre of Canada
234 Laurier Avenue West, 24th floor
Ottawa ON K1P 1H7
Canada

Toll-free: 1-866-346-8722