FATF

6TH FOLLOW-UP REPORT

Mutual Evaluation of Canada

February 2014

FINANCIAL ACTION TASK FORCE

The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CFT) standard.

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ACRONYMS

AML/CFT	Anti-Money Laundering / Countering the Financing of Terrorism
AMP	Administrative Monetary Penalties
CAR	Compliance Assessment Report
CBSA	Canada Border Services Agency
CDD	Customer Due Diligence
CRA	Canada Revenue Agency
CSIS	Canadian Security Intelligence Service
DNFBPs	Designated Non-Financial Businesses and Professions
FATF	Financial Action Task Force
FINTRAC	Financial Transactions and Reports Analysis Centre of Canada
FIU	Financial Intelligence Unit
FRFIs	Federally Regulated F*inancial Institutions*
FUR	Follow-up Report
LC	Largely compliant
MER	Mutual Evaluation Report
MSBs	Money Service Businesses
NC	Non-compliant
OSFI	Office of the Superintendent of Financial Institutions
PC	Partially compliant
PCMLTFA	Proceeds of Crime (Money Laundering) and Terrorist Financing Act
PCMLTFR	Proceeds of Crimes (Money Laundering) and Terrorist Financing Regulations
RCMP	Royal Canadian Mounted Police
STR	Suspicious Transaction Report

MUTUAL EVALUATION OF CANADA: 6TH FOLLOW-UP REPORT

Note by the Secretariat

I. INTRODUCTION

1. The third mutual evaluation report (MER) of Canada was adopted in February 2008[1].

2. Canada was placed in the regular follow-up process, and reported back to the FATF in February 2009, February 2011, October 2011, October 2012 and February 2013. [2]

3. Canada first applied for removal from the follow-up process in February 2009. The follow-up report then noted that Canada had made real progress in several areas to improve its compliance with the FATF Standards and had in particular reached an adequate level of compliance with Recommendations 23 and 26. However, the Plenary deemed the progress reported in relation to Recommendation 5 to be insufficient. As pointed out in the report, a number of deficiencies remained in relation to this Recommendation, including in key areas such as beneficial ownership, ongoing due diligence and actions to be taken with respect to higher and lower risk scenarios. The Plenary thus determined that all the criteria for the removal from the follow-up process were not met (See first follow-up report in Annex 1).

4. In June 2012, Canada committed to apply again for removal in February 2013, considering that a number of amendments to the Proceeds of Crimes (Money Laundering) and Terrorist Financing Regulations (PCMLTFR) then in preparation would address most remaining issues in relation to Recommendation 5 by that date.

5. The amendments to the PCMLTF Regulations were approved on 31 January 2013 by the federal Cabinet and became public on that date. They were formally published in the *Canada Gazette* on 13 February 2013[3] and came into force on 1 February 2014. Canada decided on this one-year transition period to allow the reporting entities reasonable time to adjust their systems, policies and practices to the new CDD measures.

6. The FATF *Process and Procedures* provides that a jurisdiction should have *"an effective AML/CFT system in force"* to exit follow-up. Because the 2013 amendments aimed at addressing the remaining Recommendation 5 deficiencies only came into force on 1 February 2014, the February 2013 5th follow-up report by Canada was an interim report. It contained an analysis of the amendments to the PCMLTF Regulations that were published on 31 January 2013, and their impact on Canada's compliance with Recommendation 5 once they are in force. Canada indicated that it would apply to move from regular follow-up to biennial updates in February 2014.

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1 www.fatf-gafi.org/countries/a-c/canada/documents/mutualevaluationofcanada.html.

2 First follow-up available in Annex I, other reports have not been published.

3 www.gazette.gc.ca/rp-pr/p2/2013/2013-02-13/pdf/g2-14704.pdf. A consolidated version of the amended PCMLTFR is available: http://laws-lois.justice.gc.ca/eng/regulations/SOR-2002-184/.

7. This report is drafted in accordance with the procedure for removal from the regular follow-up, as agreed by the FATF Plenary in October 2008 and subsequently amended[4]. It contains a detailed description and analysis of the actions taken by Canada in respect of the core and key Recommendations rated partially compliant (PC) or non-compliant (NC) in the mutual evaluation. The procedure requires that a country "*has taken sufficient action to be considered for removal from the process – To have taken sufficient action in the opinion of the Plenary, it is necessary that the country has an effective AML/CFT system in force, under which the country has implemented the core[5] and key[6] Recommendations at a level essentially equivalent to a Compliant (C) or Largely Compliant (LC), taking into consideration that there would be no re-rating*"[7]. Canada was rated PC or NC on the following Recommendations:

Core Recommendations – NC or PC ratings
R.5 (NC)
Key Recommendations – NC or PC ratings
R.23 (PC), R.26 (PC)
Other Recommendations – PC ratings
R.7, R.11, R.17, R.21, R.30, R.34
Other Recommendations – PC ratings
R.6, R.8, R.9, R.12, R.16, R.22, R.24, R.33, SRVI, SRVII

8. As prescribed by the Mutual Evaluation procedures, Canada provided the Secretariat with a full report on its progress. The Secretariat has drafted a detailed analysis of the progress made for Recommendations 5, 23 and 26, and has prepared a summary of actions taken on other recommendations (see section VI), but has not done a detailed analysis of them[8]. A draft report was provided to Canada for its review, and comments received. Comments from Canada have been taken into account in the final draft. During the process, Canada has provided the Secretariat with all information requested.

9. As a general note on all applications for removal from regular follow-up: the procedure is described as a *paper based desk review*, and by its nature is less detailed and thorough than a mutual evaluation report. The analysis focuses on the Recommendations that were rated PC/NC, which means that only a part of the AML/CFT system is reviewed. Such analysis essentially consists of looking into the main laws, regulations and other material to verify the technical compliance of domestic legislation with the FATF standards. In assessing whether sufficient progress had been made, effectiveness is taken into account to the extent possible in a paper based desk review and

4 Third Round of AML/CFT Evaluations Processes and Procedures, par. 41 www.fatf-gafi.org/media/fatf/documents/process%20and%20procedures.pdf.

5 The core Recommendations as defined in the FATF procedures are R.1, SR.II, R.5, R.10, R.13 and SR.IV.

6 The key Recommendations are R.3, R.4, R.26, R.23, R.35, R.36, R.40, SR.I, SR.III, and SR.V.

7 FATF Processes and Procedures par. 39 (c).

8 See Annex 2 for the presentation by Canada of measures taken to address deficiencies on non-core and non-key.

primarily through a consideration of data provided by the country. It is also important to note that these conclusions do not prejudge the results of future assessments, as they are based on information which was not verified through an on-site process and is not, in every case, as comprehensive as would exist during a mutual evaluation.

II. MAIN CONCLUSIONS AND RECOMMENDATIONS TO THE PLENARY

10. As highlighted by the 5th follow-up report, the amendments to the PCMLTF Regulations that came into force on 1 February 2014 constitute a significant improvement of Canada's level of compliance with Recommendation 5, in particular in most of the key areas that had been identified in the first follow-up report: the deficiencies identified in relation to beneficial ownership and ongoing due diligence have been substantially addressed, and substantial progress has been made in relation to enhanced measures. A number of minor or very minor issues (in relation to scope, numbered accounts, circumstances in which CDD is required, identification of the persons purporting to act on behalf of the customers, beneficial ownership and enhanced measures), and two issues of more significance (in relation to exemptions and failure to complete CDD) remain to be addressed. It was therefore concluded that, overall, the Canadian AML/CFT regime has reached a level of compliance essentially equivalent to an LC with Recommendation 5.

11. On Recommendations 23 and 26, the 2009 1st follow-up report concluded that Canada had made real progress, and taken positive action to remedy the most significant deficiencies, including on effectiveness. It was therefore considered that there had been sufficient progress to conclude that Canada had implemented Recommendations 23 and 26 at an adequate level of compliance. The 5th follow-up report concluded that Canada had made continuous progress and significant improvement could be noted with regard to the effectiveness of the adopted measures.

12. It is recommended to remove Canada from the regular follow-up process.

III. OVERVIEW OF CANADA'S PROGRESS

A. OVERVIEW OF THE MAIN CHANGES SINCE THE ADOPTION OF THE MER

13. In 2011, a 10-year evaluation of Canada's AML/CFT regime (the Regime) was released[9]. The evaluation covered the period 2000-2010, and made recommendations regarding the further improvement of the Regime including:

- the continuation of the Regime with at least the same level of resourcing
- the conduct of a public opinion survey to determine the level of public awareness of the ML/TF threat and the actions of the Regime
- the creation of an Interdepartmental Working Group to identify future steps for continuing to improve the Regime's compliance with international commitments, information sharing, concerns of reporting entities, data and statistics, and the Regime's management framework.

9 www.fin.gc.ca/treas/evaluations/amlatfr-rclcrpcfat-eng.asp.

14. These recommendations served as a basis for a five-year Parliamentary review of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA), which was published in 2013[10].

15. Regarding the adaptation of the legal framework, Canada took key measures in the fields of Customer Due Diligence (CDD), and freezing of assets of corrupt officials. More details are available in the next section.

16. Canada also took a series of measures in order to strengthen its Financial Intelligence Unit (FIU), the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). Priority was given to reinforce the compliance program of FINTRAC, with the provision of additional resources, and its private sector outreach program. A new range of administrative sanctions is now at FINTRAC's disposal. FINTRAC's ability to share financial intelligence with law enforcement authorities has also been expanded. Closer coordination has also been developed in relation to the supervisory activities of the Office of the Superintendent of Financial Institutions (OSFI), the prudential regulator of federal financial institutions.

17. Regarding Designated Non-Financial Businesses and Professions (DNFBPs), the application of the AML/CFT regime was expanded to additional businesses and professions, notably British Columbia Notaries and dealers in precious metals and stones. With respect to legal counsel and legal firms, client identification due diligence and record-keeping obligations were introduced in 2008. However, these provisions are currently inoperative as a result of a court ruling and related injunctions. The Supreme Court of Canada recently granted leave to the Government of Canada to appeal the ruling.

B. THE LEGAL AND REGULATORY FRAMEWORK

18. Since the adoption of the MER in 2008, Canada has completed key AML/CFT legislative steps:

- Amendments were made to the PCMLTFA and to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* (PCMLTFR) in 2008 shortly after Canada's MER. These amendments included measures in relation to the circumstances in which CDD has to take place[11].
- Further amendments to the PCMLTFR were made in 2013, aimed at addressing the remaining deficiencies in relation to Recommendation 5, on beneficial ownership, on the purpose and nature of the business relationship, on enhanced due diligence and ongoing due diligence, and on exemptions. Those amendments came into force on 1 February 2014, and are detailed in the next section.

19. The PCMLTF Administrative Monetary Penalties (AMP) Regulations[12] came into force in December 2008. The Regulations provide FINTRAC with the power to apply monetary penalties (civil penalties) to any financial institution and DNFBPs subject to the AML/CFT regime, for non-

10 www.parl.gc.ca/Content/SEN/Committee/411/banc/rep/rep10mar13-e.pdf.

11 See Annex 1, First follow-up report.

12 http://laws-lois.justice.gc.ca/eng/regulations/SOR-2007-292/index.html.

compliance with the PCMLTFA. 19. With regard to financial countermeasures, amendments creating Part 1.1 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)* were introduced through Budget 2010 to provide the Minister of Finance with the power to take targeted legally enforceable, graduated and proportionate financial countermeasures with respect to jurisdictions or foreign entities that lack sufficient or effective AML/CFT controls. These measures can be taken either on the basis of a call by an international organization, such as the FATF, or a unilateral decision based on domestic considerations. These measures could range from requiring reporting entities to enhance current customer identification and due diligence requirements under the PCMLTFA to restricting or prohibiting transactions with identified foreign jurisdictions or entities. The necessary legislative changes have received Royal Assent in 2010, and will be brought into force when accompanying regulations are completed.

20. Canada implemented a federal registration regime for money service businesses (MSBs) which has been in force since June 2008. Money services businesses have to register with FINTRAC.

21. The 2010 federal Budget[13] announced that tax crimes would be made a predicate offence for money laundering. The Criminal Code regulations were amended to reflect this change and have been in force since July 2010.

22. The Freezing Assets of Corrupt Foreign Officials Act (FACFOA)[14] was created and adopted in law on March 23, 2011 to allow the Canadian government to rapidly freeze the assets of politically exposed foreign persons (PEFPs) at the written request of a foreign state, where that state is experiencing political turmoil and freezing such assets is in the interest of international relations. Since its introduction, this legislation has been used to freeze the assets of, for example, certain Tunisian and Egyptian officials.

IV. DETAILED ANALYSIS OF PROGRESS MADE IN RELATION TO CORE RECOMMENDATION 5 *(RATED NC)*

23. The basis for the AML/CFT preventive legislation in relation to financial institutions and DNFBPs in Canada is the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA), which was amended in December 2006[15]. The Regulations that implement part of the Act and that are relevant to Recommendation 5 are the PCMLTF Regulations (PCMLTFR)[16].

24. Canada was found Non-Compliant in relation to Recommendation 5 in its MER, which also noted that a number of amendments to the PCMLTFA and the PCMLTFR were being prepared.

25. These amendments were analysed in Canada's first follow-up report, which concluded that they strengthened Canada's customer due diligence framework, notably by introducing measures in relation to the circumstances in which CDD has to take place (including in non face-to-face scenarios), beneficial ownership, customer identification for occasional transactions that are cross-border wire transfers, collecting information on the purpose and intended nature of the business

13 See Annex 5 in www.budget.gc.ca/2010/pdf/budget-planbudgetaire-eng.pdf.

14 http://laws-lois.justice.gc.ca/eng/regulations/SOR-2011-78/index.html.

15 http://laws-lois.justice.gc.ca/eng/acts/P-24.501/index.html.

16 http://laws-lois.justice.gc.ca/eng/regulations/SOR-2002-184/index.html.

relationship and measures to be taken in case of failure to complete CDD. Although Canada had strengthened its AML/CFT regime with the new regulatory requirements that entered into force in June 2008, the new provisions did not fully address the MER concerns, and some important deficiencies remained. This may be in part due to the fact that the regulations were passed very early in the mutual evaluation process, at which time the set of Recommendation 5 deficiencies in the MER were not known to Canada. There remained a significant set of deficiencies, including in several key areas: beneficial ownership; higher risk/enhanced CDD and ongoing due diligence.

26. On January 31, 2013, further amendments to the PCMLTFR, which were mainly aimed at addressing the remaining deficiencies in relation to Recommendation 5 (but also apply to DNFBPs), entered into Canadian law. These amendments came in force on 1 February 2014 and bring progress in relation to a number of deficiencies, including in the key areas identified in the first FUR:

- The circumstances in which CDD is required (cases where financial institutions have a suspicion of ML or TF);
- Beneficial ownership identification;
- Collecting information on the purpose and intended nature of the business relationship;
- Ongoing due diligence;
- Enhanced measures in higher risk scenarios;
- Exemptions (not allowed any more in cases of a suspicion of ML or TF)

27. The detailed analysis below assesses the impact this series of amendments have on Canada's level of compliance with Recommendation 5.

a) Scope - The requirement to conduct CDD does not extend to all financial institutions (notably financial leasing, factoring and finance companies)

28. In Canada's MER[17], the assessors noted that *"certain financial institutions that undertake financial activities, as defined by the FATF Recommendations are not currently covered by the AML/CFT regime. These sectors or activities[18] are as follows (excluding entities that are caught because they also engage in financial activities under the regime): financial leasing; factoring; finance companies (i.e. entities specialized in consumer lending, credit cards, equipment financing and small business loans that are not loan companies); providers of e-money; Internet payment providers[19]; and cheque cashiers[20] when only cashing cheques issued to denominated persons[21]."* The assessors

17 Mutual evaluation report of Canada, 2008, paragraph 631.

18 *"That came to the knowledge of the assessors."*

19 *"Internet payment and e-money providers are only subject to the Act if they also offer funds remittance or transmission services and, as such, would be considered money services businesses."*

20 *"Cheque cashing businesses that also offer money remittance services are included in the definition of MSBs under the PCMLTFA and are therefore subject to the requirements of the PCMLTFA."*

21 *"Credit card issuers are covered by the AML/CFT regime. The assessment team was advised that VISA, Mastercard and American Express are the only general purpose credit cards available in Canada. As a result of VISA and Mastercard internal rules, credit cards are only issued by regulated and supervised financial*

considered that the approach taken by Canada to create these exemptions was not in line with the FATF Methodology: only those activities for which there is a proven ML/TF risk are covered by the PCMLTFA, whereas under the FATF Methodology a list of financial activities and operations must be covered by the AML/CFT regime unless there is a proven low risk of ML of TF.

29. Some progress was noted in Canada's first follow-up report, notably the development of an AML/CFT risk assessment methodology and the application of this methodology to two sectors (factoring and leasing companies), which concluded that these sectors are low risk. The basis for excluding leasing companies raised a number of issues; however, given the lack of FATF guidance in this area and the uncertainties as to precisely what are the criteria or elements that justify an exclusion, it was considered very difficult in the framework of the follow-up process to come to a definitive conclusion as to whether the conclusions meet the "proven low risk" threshold set out in the standard. Canada's first follow-up report noted that a relatively minor set of other sectors (e.g. finance companies), remain outside the scope of the AML/CFT regime although they have not yet been subject to a proper risk assessment. The MER also noted that some segments of these sectors are included in the scope of the PCMLTFA since such financial services may be also carried out by entities already covered by the AML/CFT regime. Canada indicated that risk assessments of the other sectors that remained outside of the scope of the AML/CFT regime were planned.

30. Canada has informed that it is currently working on a broader risk assessment of these and other sectors. Specifically, on June 18, 2013, Canada published its Action Plan on Transparency of Corporations and Trusts in support of the G-8 countries' commitment to demonstrate leadership in improving their respective regimes to prevent the illegal use of corporations and trusts. Canada's G-8 Action Plan commits to developing a new money laundering and terrorist financing risk assessment framework and conducting a formal assessment of these risks domestically to better inform the development and implementation of effective policies and operational approaches to mitigate risks.

31. Canada has already begun working towards the commitments set out in the Action Plan. An interdepartmental Risk Assessment Working Group led by the Department of Finance has been established and the Terms of Reference were approved in spring 2013. In addition, the Department of Finance has initiated the development of an ML/TF threat assessment as an initial step towards a complete risk assessment.

32. **Conclusion**: some progress has been made since the adoption of the MER in relation to deficiency a) although, as noted above, a final conclusion could not be reached as to whether the conclusions regarding leasing companies meet the "proven low risk" threshold set out in the standard. As stressed in Canada's first FUR, the set of sectors that remain outside the scope of the AML/CFT regime and that have not yet been the subject of a proper risk assessment is not a major deficiency in the context of Canada.

institutions, both for PCMLTFA and prudential purposes. Finance companies that are not caught under the PCMLTFA can also issue general purpose credit cards (in addition to stored value cards) but do so through subsidiaries that are regulated for AML/CFT and prudential purposes."

b) Although numbered accounts are permissible and used, there is no direct requirement to maintain them in such a way that full compliance can be achieved with the FATF Recommendations

33. In its MER[22], Canada explained that although there was no explicit prohibition on opening anonymous accounts, basic CDD requirements on all new accounts holders since 1993 had in practice prevented the existence of anonymous accounts. However, in relation to numbered accounts, which are permissible in Canada, the assessors noted that *"there are no detailed rules or guidance on how [numbered] accounts should be managed by the financial institutions. The obligation for compliance officers to have access to CDD information is not clearly stated either."* It was thus recommended[23] that Canada should *"consider adopting detailed rules or guidance on the use of [numbered] accounts by financial institutions. Such rules should clearly set out the obligation for compliance officers to have access to CDD information"* so as to ensure compliance with the FATF Standards.

34. The first FUR concluded that this deficiency had been partially addressed through the following measures. First, a new section 9.2 of the PCMLTFA, which came into force in June 2008, clearly provides that no account can be opened if the financial institution cannot establish the identity of the client. Second, the OSFI B-8 Guidelines were revised in 2008[24], and the following provision was included: "*if FRFIs [*Federally Regulated F*inancial Institutions] provide services, such as account numbering or coding services, which effectively shield the identity of a client for business reasons (e.g., a corporate acquisition where the premature circulation of information could jeopardize the transaction), or where client identity is withheld for proprietary reasons, FRFIs must ensure that the client has been appropriately identified and the information is accessible by the Chief Anti-Money Laundering Officer."* The language of the OSFI Guidelines was strengthened in 2008, and its content is in line with what was recommended in Canada's MER. However these guidelines cannot be considered to be enforceable means, and it was noted in the first FUR that the deficiency concerning the access of compliance officers to CDD information was not addressed.

35. In preparing this follow-up report, Canada has not reported further progress with respect to deficiency b).

36. **Conclusion**: deficiency b) has been partially addressed. However, as noted in Canada's first FUR the remaining issue is *"relatively minor"*. Canada notes that this issue (no requirement in law or other enforceable means for financial institutions to ensure the access of the AML/CFT compliance officer to the CDD information collected in relation to numbered accounts) is in relation to an example from the 2004 Methodology, which is no longer explicitly part of the 2012 Standards.

22 Mutual evaluation report of Canada, 2008, paragraph 649.

23 Mutual evaluation report of Canada, 2008, paragraph 738.

24 www.osfi-bsif.gc.ca/Eng/Docs/b8.pdf

c) When CDD is required - there is no requirement to carry out CDD measures when there is a suspicion of ML or TF and when financial institutions have doubts about the veracity or adequacy of previously obtained CDD data

i. When there is a suspicion of ML or TF

37. As noted in Canada's first FUR, section 53.1 of the PCMLTFR, which came into force in June 2008, requires financial institutions to take reasonable measures to ascertain the identity of every client who conducts a transaction that is required to be reported to FINTRAC, i.e. when there is a suspicion of ML or TF, except in the following circumstances: (1) if the financial institution has already identified the individual as required; (2) if the financial institution believes that doing so would inform the individual that it is submitting a STR; or (3) the transaction being reported is an attempted transaction.

38. Section 53.1 constituted an improvement but did not fully address the deficiency: Canada requires financial institutions to take *reasonable measures* to conduct CDD in case of a suspicion of ML or TF, whereas under the FATF Standards taking reasonable measures is only applicable with respect to the obligation to verify the identity of the beneficial owners. However, it was noted in the first FUR that the language of FINTRAC Guideline 6[25], although not binding, clearly provides that financial institutions have to identify every client who conducts a suspicious transaction. Canada was thus invited to adopt similar direct language in the PCMLTFR. Canada has not reported any action in that regard but advises that the provision was drafted so as to not conflict with the restriction against tipping-off which is codified in the FATF Standards *("if the institution believes that performing the CDD process will tip-off the customer or potential customer, it may choose not to pursue that process.").*

39. Regarding the lack of requirement to conduct CDD in relation to suspicious *attempted* transaction, an amendment to section 53.1 of the PCMLTFR, which came into force on 1 February 2014, requires financial institutions to take reasonable measures to ascertain the identity of every natural person or entity who conducts *or attempts to conduct* a transaction that should be reported to FINTRAC. This amendment addresses the issue relating to attempted transactions.

ii. When financial institutions have doubts about the veracity or adequacy of previously obtained CDD data

40. As noted in Canada's first FUR, subsection 63(1.1) of the PCMLTFR, which came into force in June 2008, requires financial institutions to reconfirm the client's identity in situations where it has ascertained the client's identity but it has doubts about the information collected. This measure only applies to customers that are natural persons (and not to legal persons or arrangements). Despite this remaining issue, Canada's first FUR concluded that this element of deficiency c) had been substantially addressed.

41. **Conclusion**: significant progress has been achieved but deficiency c) has not been fully addressed. The amendments to Section 53.1 of the PCMLTFR have remedied one of the remaining issues that related to the obligation for financial institutions to conduct CDD when they have a

25 www.fintrac-canafe.gc.ca/publications/guide/guide6/6-eng.asp.

suspicion of ML or TF. The only remaining deficiency will be the requirement to take *reasonable measures* to conduct CDD in case of a suspicion of ML or TF, which is relatively minor.

d) When CDD is required - Customer identification for occasional transactions that are cross-border wire transfers takes place for transactions above CAD 3 000. This threshold is currently too high and no equivalent requirement is in place for domestic wire transfers.

42. Satisfactory progress was reported in Canada's first FUR in relation to this deficiency. The new paragraphs 59(1)(b) - for MSBs - and 54(1)(b) - for financial entities - of the PCMLTFR, which came into force in June 2008, reduced the threshold from CAD 3 000 to CAD 1 000 for the identification of the clients who conduct wire transfers. The record-keeping and client identification regulatory provisions apply to MSBs when they remit or transmit funds of CAD 1 000 or more, domestically or internationally. For financial entities, the provision applies to electronic funds transfers.

43. **Conclusion**: as noted in Canada's first FUR, deficiency d) has been addressed.

e) Required CDD measures - The current customer identification measures for natural persons are insufficient, especially in relation to non face to-face business relationships.

44. In Canada's MER[26], the main weakness noted in relation to customer identification measures was that, in the case of individuals not physically present, financial institutions, except MSBs, had to ascertain the identity of the individual by confirming that a cheque drawn by that individual on an account at a financial entity had been cleared, i.e. a cheque that was written by the individual, cashed by the payee and cleared through the individual's account. The assessors indicated that they were *"uncomfortable with the third party cleared cheque confirmation process as it was seen as a potential loophole for illegal use. As a sole means to confirm identity in non face-to-face situations, it is unreliable"*.

45. A number of positive measures have been taken to address this issue through amendments to section 64 of the PCMLTFR that came into force in June 2008. The third party cleared cheque confirmation process can still be used but needs to be combined with at least one other identification method (for instance referring to an independent and reliable identification product that is based on personal information in respect of the person and a Canadian credit history of the person of at least six month's duration).

46. **Conclusion**: as noted in Canada's first FUR, deficiency e) has been addressed.

f) Identification of persons acting on behalf of the customers - The requirement to identify up to three persons who are allowed to give instructions in respect of an account is too limitative

47. The FATF Standards require that, when conducting CDD measures in relation to legal persons or arrangements, financial institutions should verify that *any* person purporting to act on behalf of

[26] Mutual evaluation report of Canada, 2008, paragraph 667.

the customer is so authorised, and take reasonable measures to verify the identity of that person. Two issues were identified in the context of the mutual evaluation. First, there is no explicit obligation for financial institutions to verify that the person purporting to act on behalf of the customer is so authorized. Second, in accordance with the PCMLTFR,

- in the case of business accounts in relation to which more than three persons are authorised to act, financial entities (and securities dealers until June 2008) only have to ascertain the identity of *at least three* of these persons.
- where an entity was authorized to act as a co-trustee of a trust, trust companies only had to ascertain the identity of *up to three* persons authorized to give instructions with respect to the entity's activities as co-trustee.

48. In June 2008, the repeal of subsection 57 (2) from the PCMLTFR removed the possibility for securities dealers to identify at least three of the persons authorized to act in relation to a business account.

49. In preparing this report, Canada reported that paragraph 54(1)(a) and subparagraph 55(d)(ii) need to be understood in the context of the risk-based approach. Financial institutions are expected to adjust the number of persons the identity of whom they need to ascertain according to the risk, with, in any case, a minimum of three persons for financial entities and a maximum of three for trust companies. It is not certain whether the FATF Standards strictly require that financial institutions should identify and verify the identity of *every* person purporting to act on behalf of the customer and therefore whether the Canadian approach in relation to financial entities is acceptable. The fact that, in higher risk scenarios, trust companies would not be required to ascertain the identity of all the persons authorized to give instructions with respect to the entity's activities as co-trustee is clearly a deficiency, although it is minor.

50. Canada has not reported further progress with respect to deficiency f).

51. **Conclusion**: deficiency f) has been partially addressed. The remaining issue is minor.

g) Third party determination and identification of beneficial owners - except for IDA [Investment Dealers Association] supervised entities, financial institutions are neither required to understand the ownership and control structure of the customer nor obliged to determine who are the natural persons that ultimately own or control the customer

52. Some progress was noted in Canada's first FUR. In accordance with section 11.1 of the PCMLTFR, which came into force in June 2008, financial entities, securities dealers, life insurance brokers and companies and MSBs have to take *reasonable measures*, when confirming the existence of an entity, to obtain and, if obtained, to keep a record of:

- *for corporations*: the name and occupation of all directors of the corporation and the name, address and occupation of all persons who own or control, directly or indirectly, 25% or more of the shares of the company;

- *for entities other than corporations* ("entity" as defined under the PCMLTFA means a body corporate, a trust, a partnership, a fund or an unincorporated association or organisation): name, address and occupation of all persons who own or control, directly or indirectly, 25% or more of the entity.
- *for trusts*: section 55 of the PCMLTFR requires trust companies to identify and verify the identity of the settlers and co-trustees of trusts. Section 11 requires trust companies to identify the beneficiaries that are known at the time the trust company becomes a trustee for the trust. Trust companies are the only category of financial institutions allowed to act as trustees for a trust. As regards other financial institutions that provide accounts or business relationships to a customer who is a trustee of a trust, Canada relies on the general section 11.1 obligation (see second bullet point).

53. These measures were considered insufficient in the first FUR, which noted that the following important issues remained:

- The requirement to "take reasonable measures to obtain information on beneficial owners when confirming the existence of the entity" is weaker than the FATF Standards which require that financial institutions should "identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner". The lack of a requirement to verify the information collected, combined with the need to only take reasonable measures to identify, was considered to be a *"particularly important"* issue.
- In relation to customers that are trusts, although clear identification obligations apply to trust companies, other financial institutions were subject to the generic requirement under which a trust is defined to be a "entity". These financial institutions were then obliged to identify persons that own or control 25% or more of the entity, which could cover trustees (as the persons in control), but whether settlors were covered was not clear. Furthermore, a beneficiary does not "control" the trust, and it is not clear whether a beneficiary would "own" the trust. It was thus not certain that the new provisions fully covered the deficiency.
- No specific measures had been taken to address the fact that corporations can issue bearer shares.

54. The amendments to Section 11.1 of the PCMLTFR, which came into law on 31 January 2013 and into force on 1 February 2014, addressed a number of those issues.

55. Subsections 11.1 (1) and (2) provide that financial entities, securities dealers, life insurance companies and life insurance brokers or agents are required to *"obtain the following information:*

> *(1) (a) in the case of a corporation, the names of all directors of the corporation and the names and addresses of all persons who own or control, directly or indirectly, 25 per cent or more of the shares of the corporation;*

(b) in the case of a trust, the names and addresses of all trustees and all known beneficiaries and settlors of the trust;

(c) in the case of an entity other than a corporation or trust, the names and addresses of all persons who own or control, directly or indirectly, 25 per cent or more of the entity; and

(d) in all cases, information establishing the ownership, control and structure of the entity.

(2) Every person or entity that is subject to subsection (1) shall take reasonable measures to confirm the accuracy of the information obtained under that subsection."

56. First, these subsections create an obligation to identify the beneficial owner as well as to collect information establishing the ownership, control and structure of the entity, and to take reasonable measures to verify this information. Second, all financial institutions subject to this section will have to identify all trustees and known beneficiaries and settlors of the trust, and to take reasonable measures to verify this information.

57. Subsection 11.1(4) further provides that if financial institutions are *"not able"* to obtain the abovementioned information or confirm its accuracy, they have to *"take reasonable measures to ascertain the identity of the most senior managing officer of the entity"* and treat the entity as high risk and apply enhanced CDD measures. Subsection 11.1(4) is not in line with the 2003 Standards, in particular the requirements dealing with cases of failure to complete a part of the CDD measures. Consistent with the 2003 Standards, where financial institutions are unable to identify the beneficial owners or confirm their identity, they *"should not open the account, commence business relations or perform the transaction; or should terminate the business relationship; and should consider making a suspicious transactions report"*. However, in such situations, subsection 11.1(4) does not require financial institutions to take any of these measures. Despite this, the issues relating to failure to complete CDD are dealt with below – see deficiencies q) and r) – and subsection 11.1(4) is not considered to be an issue under deficiency g) for the purpose of this report.

58. It should be noted that Canada explains that subsection 11.1(4) is aimed at reflecting the multiple-step approach to the identification of the beneficial ownership of legal entities that was introduced in the 2012 Standards (paragraph 5(b)(i) of the Interpretive Note to Recommendation 10)[27]. This report does not assess the measures with respect to the 2012 Standards. However, a preliminary analysis, which does not prejudge the results of Canada's Fourth Round mutual evaluation, raises a number of doubts about whether the subsection would be in line with paragraph 5(b)(i) of the Interpretive Note to Recommendation 10:

[27] See paragraph 5(b)(i) of the Interpretive Note to Recommendation 10, *The FATF Recommendations*, 2012. Financial institutions should first identify the natural persons who ultimately have a controlling ownership interest in a legal person; second, to the extent that there is doubt as to whether the person(s) with the controlling ownership interest are the beneficial owner(s) or where no natural person exerts control through ownership interests, they should identify the natural persons (if any) exercising control of the legal person or arrangement through other means; third, where no natural person has been identified, financial institutions should identify and take reasonable measures to verify the identity of the relevant natural person who holds the position of senior managing official.

- it is not certain that the two-step Canadian approach followed in the amended section 11.1 covers all the elements of the three-step 2012 FATF Standards approach (in particular, that "other means" beneficial owners are captured by section 11.1);
- it is not clear whether the obligation to *take reasonable measures to ascertain the identity* of the most senior managing officer is in line with step 3 of the 2012 FATF Standards approach to establishing the beneficial ownership of legal persons.
- it is unclear how subsection 11.1(4) would apply to trusts.

59. Canada has not reported progress in relation to the third remaining issue identified in the first FUR, i.e. the fact that corporations can issue bearer shares, thus making it difficult to determine the beneficial owner. However, as noted in Canada's MER, "*it is likely that these shares have limited use in practice*."[28]

60. **Conclusion**: the amendments to section 11.1 of the PCMLTFR brought Canada into substantial compliance with the 2003 FATF standard on the identification of beneficial ownership.

h) Purpose & intended nature of the business relationship - there are currently no requirements (except for securities dealers) to obtain information on the purpose and intended nature of the business relationship.

61. Some progress was reported in the first FUR: paragraphs 14(c.1) and 23(a.1) of the PCMLTFR, which came into force in June 2008, require financial entities and securities dealers to keep records that set out the intended use of new accounts. However, the insurance and MSBs sectors were out of the scope of the requirement. Furthermore, this obligation was potentially more limited than what the FATF Standards require (information should be obtained on the purpose and intended nature of the *business relationship*, which is a broader notion than an account).

62. As part of the 2013 amendments to the PCMLTFR, a new section 52.1 requires that "Every person or entity that enters into a business relationship under these Regulations shall keep a record that sets out the purpose and intended nature of the business relationship". The amendments also introduce a definition of "Business relationship" in section 1 which covers any relationship of a financial institution with a client to "conduct financial transactions or provide services related to those transactions and, as the case may be, (a) if the client holds one or more accounts with that person or entity, all transactions and activities relating to those accounts; or (b) if the client does not hold an account, only those transactions and activities in respect of which any [financial institution] is required to ascertain the identity of a person or confirm the existence of an entity under these Regulations." These new provisions therefore address the two remaining issues as noted in Canada's first FUR in relation to deficiency h).

63. **Conclusion**: the amendments that create section 52.1 of the PCMLTFR and introduce a definition of business relationships in section 1 of the PCMLTFR, address deficiency h).

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28 Mutual evaluation report of Canada, 2008, paragraph 1396.

i) Ongoing Due Diligence - except for securities dealers, there are currently no requirements to conduct ongoing due diligence on the business relationship although the need to identify customers for large cash transactions and electronic fund transfers provide certain automatic trigger points.

j) Ongoing Due Diligence - except for securities dealers financial institutions are not required to ensure that documents, data and information collected under the CDD process is kept up-to-date and relevant.

64. As noted in the first FUR, Section 9.6 of the PCMLTFA, which came into force in June 2008, requires all businesses covered by the Act to (1) adopt a compliance program; (2) develop policies and procedures for assessing ML/TF risks; and (3) if some higher risks are identified following this risk assessment, take enhanced measures for (i) identifying clients, (ii) keeping records and (iii) monitoring financial transactions. Section 71.1 of the PCMLTFR, which also came into force in June 2008, specifies the nature of these enhanced measures ("prescribed special measures"), which include taking reasonable measures to keep client and beneficial ownership identification information up-to-date and taking reasonable measures to conduct ongoing monitoring for the purpose of detecting suspicious transactions. The first FUR concluded that these requirements were not in line with the FATF standard, which requires that ongoing due diligence should be conducted on all business relationships (not only in higher risk scenarios).

65. The amendments to the PCMLTFR that came into force on 1 February 2014 introduced sections 54.3 (financial entities), 56.3 (life insurance sector), 57.2 (securities dealers), 59.01 (MSBs) and 61.1 (departments or agents of Her Majesty in Right of Canada or of a Province that sell or redeem money orders), which require these financial institutions to *"(a) conduct ongoing monitoring of its business relationship with that person or entity; and (b) keep a record of the measures taken and the information obtained under paragraph (a)."* The amendments also define "business relationships" (see definition above) and "ongoing monitoring" (*"monitoring on a periodic basis based on the risk assessment undertaken in accordance with subsection 9.6(2) of the Act and subsection 71(1) of these Regulations, by a person or entity to which section 5 of the Act applies of their business relationship with a client for the purpose of (a) detecting any transactions that are required to be reported in accordance with section 7 of the Act; (b) keeping client identification information and the information referred to in section 11.1 and 52.1 up to date; (c) reassessing the level of risk associated with the client's transactions and activities; and (d) determining whether transactions or activities are consistent with the information obtained about their client, including the risk assessment of the client"*).

66. Sections 54.3, 56.3, 57.2, 59.01 and 61.1 thus require all financial institutions covered by the Canadian AML/CFT framework to conduct ongoing monitoring on their business relationships. Consistent with the definition of "ongoing monitoring", this obligation includes both conducting ongoing due diligence and keeping CDD information up-to-date.

67. **Conclusion**: deficiencies i) and j) were addressed by the amendments to the PCMLTFR.

k) ML/FT risks - enhanced due diligence - there is no requirement to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction.

68. As was noted in the first FUR, subsection 9.6(2) of the PCMLTFA, which came into force in June 2008, now requires financial institutions to develop and apply policies and procedures to assess the risk of a ML or TF activity financing offence, and subsection 9.6(3) requires them to take *"prescribed special measures for identifying clients, keeping records and monitoring financial transactions in respect of the activities that pose the high risk"*. Section 71.1 of the PCMLTFR, which also came into force in June 2008, specifies that the prescribed special measures are the development and application of written policies and procedures for (a) taking reasonable measures to keep client identification information and beneficial ownership information up to date; (b) taking reasonable measures to conduct ongoing monitoring for the purpose of detecting suspicious transactions; and (c) mitigating the risks identified. The first FUR thus concluded that measures (a) and (b) *"are not enhanced due diligence measures as foreseen in the FATF Recommendations but are, on the contrary, CDD measures that should be mandatory for all customers or transactions"*.

69. The amendments to the PCMLTFR that came into force on 1 February 2014 modify section 71.1 and the notion of "prescribed special measures". These measures are:

(a) *"taking enhanced measures based on the risk assessment undertaken in accordance with subsection 9.6(2) of the Act to ascertain the identity of any person or confirm the existence of any entity"*, in addition to the standard customer identification measures; and

(b) *"taking any other enhanced measure to mitigate the risks identified in accordance with subsection 9.6(3) of the Act, including, (i) keeping client identification information and the information referred to in section 11.1* [beneficial ownership information] *up to date, and (ii) in addition to the measures required in sections 54.3, 56.3, 57.2, 59.01, 59.11, 59.21, 59.31, 59.41, 59.51, 60.1 and 61.1* [ongoing monitoring requirements], *conducting ongoing monitoring of business relationships for the purpose of detecting transactions that are required to be reported to the Centre under section 7 of the Act* [suspicious transactions]*"*.

70. Under (a), prescribed special measures will have to include enhanced customer identification and verification measures.

71. However, the way (b) is worded is ambiguous, since the prescribed special measures should also cover *"any other enhanced measure to mitigate the risks"*, but these enhanced measures include in (i) and (ii) requirements that should apply to *any* business relationships (not only in high risk scenarios). Canada explains that *"it is a fundamental principle of legal interpretation that statutory provisions should not be interpreted in such a way that would lead to absurdity or internal inconsistency.* 'Absurdity' *includes situations where the wording in question contradicts the remainder of the provision"*. Canada adds that "*given that both the chapeau of s.71.1 and 71.1(b) specifically require reporting entities to implement enhanced measures, it would give an absurd result if "standard" measures were considered to be enhanced for the purposes of s.71.1"*. Therefore, for Canada, *"it would be clear to all regulators and courts in Canada, as well as stakeholders, that*

s.71.1(b)(i) and (ii) refer to enhanced measures, in accordance with the purpose of s.71.1." In order to remove any ambiguity in the nature of this part of the prescribed special measures, Canada is encouraged to clarify the meaning of (i) and (ii) e.g. through guidance.

72. **Conclusion**: the amendments to section 71.1 brought substantial progress in relation to deficiency k). Canada is encouraged to clarify the meaning of paragraph 71.1(b) of the Regulations, e.g. in guidance, so as to confirm that deficiency k) has been fully addressed.

l) ML/FT risks - reduced or simplified due diligence - the current exemptions mean that, rather than reduced or simplified CDD measures, no CDD apply, which is not in line with the FATF standards.

m) ML/FT risks - reduced or simplified due diligence - exemptions from CDD and third party determination bring in very far reaching exceptions that introduce potential gaps in the customer identification process (especially the exemptions apply to financial entities that operate in FATF countries based on presumption of conformity only).

73. The PCMLTFR provides for a number of exemptions from the client identification and record-keeping requirements in certain specific circumstances but does not establish a simplified or reduced CDD regime. These exemptions are mainly contained in sections 9 and 62 of the PCMLTFR. It should also be noted that sections 19 and 56 of the PCMLTFR create a form of exemption by requiring that life insurers only conduct CDD in relation to the purchase of an immediate or deferred annuity or a life insurance policy for which the client may pay CAD 10,000 or more over the duration of the annuity or policy.

74. The Glossary of the 2004 Methodology authorizes countries to exempt some financial institutions or activities from the application of some or all of the AML requirements in two situations:

- *"when a financial activity is carried out by a person or entity on an occasional or very limited basis (having regard to quantitative and absolute criteria) such that there is little risk of money laundering activity occurring"; or*
- *"in strictly limited and justified circumstances, and based on a proven low risk of money laundering, a country may decide not to apply some or all of the Forty Recommendations to some of the financial activities stated above".*

75. In the context of its mutual evaluation, Canada explained that the exemptions relate to low risk transactions, products or customers and were developed following extensive discussions between the Department of Finance, FINTRAC, the Royal Canadian Mounted Police (RCMP) and the reporting entities. However, the assessors indicated that no more information had been provided at the time of the on-site visit, which means that a low risk of ML had not been *"proven"* as required by the Methodology. It was therefore recommended in the MER that the transactions, products and customers exempted from the application of CDD measures should be subject to a simplified or reduced CDD regime.

76. In the first FUR, Canada explained that sections 9.6 of the PCMLTFA and 71.1 of the PCMLTFR (which both came into force in June 2008) on risk assessment and risk mitigation "overrule" the exemptions contained in the PCMLTFR, which results in a requirement for financial institutions to

apply enhanced CDD measures in cases of a higher ML/TF risk even in the situations covered by the exemptions. However, the first FUR concluded that the exemptions remain per se applicable as long as the account is not identified as high risk, which is not in line with the FATF Standards or the recommendation set out in the MER. Furthermore, the list of exemptions contained in section 9, and more importantly section 62, had been expanded following the mutual evaluation.

77. In preparing this report, Canada has indicated that the exemptions under section 62(2) of the PCMLTFR apply predominantly to highly regulated and limited products which can only be used by individuals located within Canada, or to accounts opened on behalf of domestic entities that are regulated under the PCMLTFA or other federal/provincial law. Canada has also mentioned that most of the exemptions to CDD requirements deal with registered financial products, which have tax implications for Canadians and are highly regulated. Client information is collected by the Canada Revenue Agency for tax purposes, and this is why Canada considers unnecessary for financial institutions to collect it or to be required to collect it under the PCMLTFA. However, as noted above, the FATF standard clearly provides that exemptions from CDD requirements need to be based on a "proven low risk" of ML/TF, a term that intentionally sets a high standard for the justification of exemptions. Canada indicates that it is currently working on a broader risk assessment of these and other sectors, that could provide the justification for the exemption.

78. The amendments to the PCMLTFR that came into force on 1 February 2014 introduce subsection 62(5), which provides that the exemptions contained in subsections 62(1) to (3) do not apply when the financial institution is required to take reasonable measures to ascertain the identity of the natural persons who conduct or attempt to conduct suspicious transactions (i.e. no exemption in cases of suspicious transactions). Canada explains that subsection 62(5) creates a general monitoring obligation which also applies to exempted transactions, and as such submits these to a form of simplified CDD regime. It is however unclear what in practice an obligation to monitor exempted transactions for the purpose of detecting suspicions of ML or TF would consist of and whether it can amount to a simplified CDD regime, which, under the FATF Standards, should comprise, although in a simplified form, the four standard CDD requirements as described in Recommendation 5.

79. **Conclusion**: section 9.6 of the PCMLTFA introduced some CDD obligations in relation to the transactions, products and customers subject to CDD and third party determination exemptions. Subsection 62(5) introduced by the 2013 amendments to the PCMLTFR creates further CDD obligations. However, the nature of these requirements is not in line with the Standards, and it should also be noted that Canada has created new exemptions since the adoption of the MER. Therefore, the amendments that came into force on 1 February 2014 are not sufficient to address deficiencies l) and m).

n) ML/FT risks - reduced or simplified due diligence - there is no explicit provisions that set out that CDD or third party determination exemptions are not acceptable where there is a suspicion of ML or FT or specific higher risk scenarios apply.

80. Subsections 62(1) to (3) of the PCMLTFR contain lists of types of transactions, products and customers in relation to which the CDD (and third party determination) obligations do not apply. The amendments to the PCMLTFR that entered into law on 31 January 2013 and came into force on

1 February 2014 introduce subsection 62(5) which provides that these exemptions do not apply when the financial institution is required to take reasonable measures to ascertain the identity of the natural persons who conduct or attempt to conduct suspicious transactions.

81. In relation to the other part of deficiency n) (i.e. there are no explicit provisions that set out that CDD or third party determination exemptions are not acceptable where specific higher risk scenarios apply), Canada explains that *"most of the exemptions deal with registered financial products, which have tax implications for Canadians and are highly regulated, or domestic entities that are regulated under the PCMLTFA or other federal/provincial law"* and therefore "*specific high risk scenarios (such as PEPs) are not applicable in this case"*.

82. **Conclusion**: Subsection 62(5) of the PCMLTFR, which came into force on 1 February 2014 will address deficiency n).

o) ML/FT risks - reduced or simplified due diligence - financial institutions, in certain circumstances, are given the permission to exempt from CDD requirements or third party determination obligations certain customers resident in another country. However, Canada has not carried out a systematic country risk analysis to ensure that third countries in which customers of Canadian financial institutions are resident are in compliance with and have effectively implemented the FATF Recommendations.

83. The FATF Standards (INR5, 2003 Recommendations) provide that where countries allow financial institutions to apply simplified CDD measures to customers from any other jurisdiction, they must be satisfied that the jurisdiction is in compliance with and has effectively implemented the FATF Recommendations. As noted in the MER and the first FUR, the exemptions listed in the PCMLTFR are not explicitly limited to situations where the customer resides in Canada, even though, as noted by Canada, a number of them would apply to *"highly regulated and limited products which can only be used by individuals located within Canada, or to accounts opened on behalf of domestic entities that are regulated under the PCMLTFA or other federal/provincial law"*.

84. Some exemptions explicitly apply to customers that operate in foreign countries:

- Paragraph 62(2)(m) provides that CDD requirements do not apply when *"there are reasonable grounds to believe that the account holder is a public body or a corporation that has minimum net assets of $75 million on its last audited balance sheet and whose shares are traded on a Canadian stock exchange or a stock exchange that is prescribed by section 3201 of the Income Tax Regulations and operates in a country that is a member of the Financial Action Task Force on Money Laundering.*
- Subsection 9(5) states that the obligation to identify the third party (and not to determine whether the customer is acting on behalf of a third party), does not apply to customers of securities dealers that are "*engaged in the business of dealing in securities only outside of Canada (...) and where (a) the account is in a country that is a member of the Financial Action Task Force; (b) the account is in a country that is not a member of the Task Force referred to in paragraph (a) but has implemented the recommendations of the Task*

> *Force relating to customer identification and, at the time that the account is opened, the securities dealer has obtained written assurance from the entity where the account is located that the country has implemented those recommendations; or (c) the account is in a country that is not a member of the Task Force referred to in paragraph (a) and has not implemented the recommendations of the Task Force relating to customer identification but, at the time that the account is opened, the securities dealer has ascertained the identity of all third parties relating to the account as described in paragraph 64(1)* [which includes identification requirements for customers in non face-to-face situations]".

85. Therefore, as noted in the MER, section 62(2)(m) (previously section 62(2)(b)) and section 9(5) rely on a presumption that countries in which customers that may be exempted from CDD measures operate have implemented the FATF Standards. However, Canada had not carried out a systematic country risk analysis to ensure that third countries in which customers of Canadian financial institutions are resident are in compliance with and have effectively implemented the FATF Recommendations.

86. No specific progress was reported in this area since the first FUR. However, as noted above, in view of the preparation of this follow-up report, Canada indicated that risk assessments are conducted through its Illicit Financing Advisory Committee which will inform Directive and Regulations issued under Part 1.1 of the PCMLTF Act. When in force, Part 1.1 will provide the Minister of Finance with the power to take targeted legally enforceable, graduated and proportionate financial countermeasures with respect to jurisdictions or foreign entities that lack sufficient or effective AML/CFT controls. These measures can be taken either on the basis of a call by an international organization, such as the FATF, or a unilateral decision based on domestic considerations, and could range from requiring reporting entities to enhance current CDD requirements under the PCMLTFA to restricting or prohibiting transactions with identified foreign jurisdictions or entities. In addition, guidance is provided through FINTRAC advisories and OSFI notices encouraging enhanced CDD with respect to clients and beneficiaries involved in transactions with high risk jurisdictions.

87. **Conclusion**: deficiency o) has been addressed, though the relevant legislation is not yet in force.

p) Timing of verification - the PCMLTF Regulations set out unreasonable verification timelines to be carried out by certain financial sectors and/or in relation to certain customers.

88. In Canada's MER[29], the assessors noted that the PCMLTFR established generally acceptable timelines for ascertaining customer identity, but that certain serious weaknesses remained in relation to the identity verification carried out by a number of financial sectors (in particular, securities and life insurance) and/or vis-à-vis certain types of customers (entities, including corporations).

[29] Mutual evaluation report of Canada, 2008, paragraph 708.

89. As noted in the first FUR, a number of amendments to sections 64, 65 and 66 of the PCMLTFR, which came into force in June 2008, reduced the timelines for verifying the identity of customers of life insurers (from 6 months to 30 days), customers of securities dealers (from 6 months to before any transaction other than an initial deposit is carried out on the account for natural persons and 30 days for entities); and customers of MSBs that are entities (from 6 months to 30 days). The conclusion was that the new timelines adequately address the deficiency identified in the MER.

90. **Conclusion**: deficiency p) has been adequately addressed.

q) Failure to satisfactorily complete CDD - financial institutions (except securities dealers in some circumstances) are not prevented from opening an account or commencing business relationship or performing a transaction and they are not required to make a suspicious transaction report.

91. Some progress in this area was reported in Canada's first FUR. A new section 9.2 of the PCMLTFA, which came into force in June 2008, prohibits reporting entities from opening an account for a client if it cannot ascertain the identity of the client in accordance with the prescribed measures. However, the first FUR concluded that this provision had only partially addressed deficiency q). In particular, it was noted that there is no obligation in law or regulation for financial institutions to consider making a suspicious transaction report in cases where the identity of the client cannot be established and properly verified. Canada explains that there is however such a requirement in FINTRAC guidance. Section 9.2 of the PCMLTFA only prohibits reporting entities from opening an account in such situations, which is more limited than the FATF requirement to also prohibit reporting entities from commencing a business relationship or performing a transaction.

92. Canada has not reported further progress. However, Canadian officials indicate that:

- It is not possible in Canada to include a legal obligation to *consider* doing something.
- *"The common law legal principle of a positive obligation applies. Specifically, this means that where law or regulation sets out a positive obligation on stakeholders to comply with a specific provision, failure to comply with this obligation means that stakeholders are in violation of the law. There is no need to specifically indicate in the law what happens if stakeholders cannot comply with the obligation, as it is well understood that it is not legal to go ahead with a transaction or account opening if the obligation in question is not fulfilled."*

93. However, other common law countries have introduced such obligations. Furthermore, section 9.2 of the PCMLTFR is an indication that Canada can introduce this type of requirement, although Canada notes that this is an exception which was aimed to address the FATF concerns.

94. **Conclusion**: deficiency q) has been partially addressed.

r) Failure to satisfactorily complete CDD - in situations where the financial institution has already commenced a business relationship but is unable to perform adequate CDD and establish beneficial ownership, there is no requirement to terminate the business relationship

95. Canada has not reported specific progress in this area. However, Canadian officials indicate that the two explanations given in relation to deficiency q) are also relevant with respect to deficiency r). The comments made above in relation to these explanations are reiterated.

96. **Conclusion**: deficiency r) has not been addressed.

RECOMMENDATION 5 – OVERALL CONCLUSION

97. In the year that followed the adoption of its MER, Canada took a number of positive steps to address some of the deficiencies identified in relation to Recommendation 5 through the adoption of new provisions both in the PCMLTFA and the PCMLTFR. However, as noted in the first FUR, a significant set of deficiencies had not been addressed. In particular, several remaining issues were noted in the following key areas: beneficial ownership (deficiency g); higher risk/enhanced CDD and lower risk/exemptions (deficiencies k to o); and ongoing due diligence (deficiencies i and j).

98. Since the first FUR, Canada has made a number of amendments to the PCMLTFR which aim at addressing most of the remaining issues that were noted in the first FUR. These amendments entered into law on 31 January 2013 and came into force on 1 February 2014. They significantly improve Canada's level of compliance with Recommendation 5. In particular, the remaining issues in relation to beneficial ownership and ongoing due diligence are addressed, the amendments also substantially remedy the weaknesses with respect to the enhanced CDD obligations and bring some progress in relation to the exemptions from the CDD obligations.

99. In total, the following issues remain to be addressed:

- six minor or very minor issues, in relation to deficiencies a (scope), b (numbered accounts), c (when CDD is required), f (identification of persons purporting to act on behalf of the customers), g (beneficial ownership) and h (enhanced measures);
- two issues of more significance, in relation to, respectively, deficiencies l, m and o (exemptions), and q and r (failure to complete CDD).

100. This means that Canada has reached a level of compliance essentially equivalent to an LC with Recommendation 5.

V. DETAILED ANALYSIS OF PROGRESS MADE IN RELATION TO KEY RECOMMENDATIONS 23 AND 26 (RATED PC)

101. Based on the first FUR, it was concluded that Canada had made real progress and had taken positive action to remedy the most significant deficiencies. It was thus considered that there had been sufficient progress to conclude that Canada had implemented Recommendations 23 and 26 at a level equivalent to a C or an LC. It was also recommended to continue monitoring progress, especially with regard to the effectiveness of the adopted measures.

Recommendation 23 – description and analysis

a) Exclusion from the AML/CFT regime of certain financial sectors (such as financial leasing, factoring, finance companies, etc.) without proper risk assessments.

102. See the analysis above in relation to Recommendation 5 a) (par. 25 and s.).

b) For the financial institutions subject to the PCMLTFA, there is a very unequal level of supervision of AML/CFT compliance, with certain categories of financial institution appearing to be insufficiently controlled (MSBs, certain credit unions/caisses populaires, life insurance intermediaries…). This is due to the limited staff resources of FINTRAC dedicated to on-site assessments compared to the high number of reporting entities, which has not always been compensated by the involvement of the primary prudential regulators in AML/CFT issues.

FINTRAC – AML/CFT supervisor for all reporting entities[30]:

103. Canada reports that the number of FINTRAC staff has increased in the compliance section from 49 to 87 staff (from the time of the on-site visit in 2007 to March 31, 2013). FINTRAC was re-structured in the fall of 2008 with employees from other sectors in FINTRAC moving to the compliance section.

Table 1. **Evolution of FINTRAC staff – Compliance and direct enforcement activities**

Fiscal Year (As of April 1st)	Full Time Equivalents in FINTRAC's Compliance Program	Full Time Equivalents in FINTRAC's Direct Enforcement Activities
2008-09	60	34
2009-10	56	34
2010-11	64	40
2011-12	79	52
2012-13	87	67

104. FINTRAC also received additional funding in 2010 (an additional CAD 8 million/USD 7.652 million in annual funding announced in Federal Budget 2010) and CAD 5 million (USD 4.782 million) of this on-going funding was specifically ear marked to enhance FINTRAC's compliance program.

105. *National Compliance Program[31]*. Canada indicates that its compliance program focus evolved from a guidance/outreach approach to a formal risk-based approach (RBA) Compliance

30 In order to assist it, FINTRAC has signed MOUs with certain regulators or supervisors to share information. In addition to this, some regulators have provisions under their own legislation or codes of conduct that impose similar requirements to, or which complement the key provisions in the PCMLTFA through separate enforcement powers (for example, OSFI and IDA) (Mutual evaluation report of Canada, 2008, paragraph 935).

31 Mutual evaluation report of Canada, 2008, paragraphs 1092 to 1106.

Enforcement Program. As the RBA has shifted towards greater enforcement, it has undergone an appreciable overhaul. This has resulted in a revamped risk based compliance program which began in 2010 and continues to be modernized. The analysis completed in determining sectors of high and low risk feed into determining the number of reporting entities in each sector that will have compliance examinations conducted by FINTRAC.

106. In terms of coverage, FINTRAC's financial conglomerates and large reporting entities strategies ensure that the key industry players with large market shares are examined regularly given the inherent risks that are associated with their size and respective business models, as well as the consequences of any potential non-compliance. A share of compliance enforcement activities is also directed at randomly selected reporting entities to maximize coverage, validate benchmarks, and promote compliance more generally.

107. A number of new tools are utilized by FINTRAC to determine sectors that pose a high risk of being abused for ML/TF, including Compliance Assessment Reports, desk reviews and IT tools:

108. *Use of Compliance Assessment Report*. Canada indicates that Compliance questionnaires have been replaced with a new enforcement tool, the Compliance Assessment Report (CAR). As part of their obligations to report on their compliance with the PCMLTFA, reporting entities must complete the CAR when requested to do so by FINTRAC.

109. Canada mentions that CARs allow FINTRAC not only to validate the existence of reporting entities but also to better profile reporting entities within a sector. Canada adds that CARs have helped expand the coverage, and more importantly, in a manner that is tailored and cost effective. Early results are showing that CARs help raise awareness and deter non-compliant behaviour. CAR results have also been leveraged to initiate desk and on-site exams.

110. Canada reports that in 2012-2013, 4, 008 CARs were issued across several sectors in order to help assess compliance regime obligations. These sectors were selected on the basis of risk considerations.

Table 2. **Compliance Assessment Reports Sent by FINTRAC – Break Down By Sector**

Sector	Activity Sector	2010/11	2011/12	2012/13	Total
Accountants	Accountants	n/a	1 480	n/a	**1 480**
Dealers in Precious Metals and Stones	Dealers in Precious Metals and Stones	n/a	1 500	2 000	**3 500**
Financial Entities	Banks	18	n/a	n/a	**18**
	Credit Unions / Caisses Populaires	n/a	n/a	302	**302**
	Trust & Loan Companies	11	8	48	**67**
Life Insurance	Life Insurance (including agents and brokers)	33	1 559	829	**2 421**
Real Estate	Real Estate	n/a	1 479	n/a	**1 479**
Money Service	Money Service Businesses	n/a	n/a	50	**50**
Securities	Securities Dealers	n/a	n/a	779	**779**
Total		**62**	**6 026**	**4 008**	**10 096**

111. Despite the addition of two new sectors in 2012-2013 (MSBs and securities), the total number of CARs has dropped from 6,026 to 4,008. This is partly due to an extensive coverage of the accounting and real estate sectors in 2011/12.

112. *Desk Examinations*. Canada indicates that FINTRAC has developed new approaches to conducting compliance examinations, including desk reviews, which were implemented in 2009. The requirement to provide information for a desk review is covered by the compliance measures under Section 63.1 of the PCMLTFA and failure to provide information for a desk review is subject to the Administrative Monetary Penalties (AMP) regime.

113. Canada informs that FINTRAC applies examination types (desk/onsite) commensurate with such factors as risk, complexity, and type of reporting entity. Canada reports that the desk examination initiative has allowed FINTRAC to optimize the use of its resources, tailored its compliance enforcement activities, and helped increase the total number of examinations conducted in a given fiscal year, while not decreasing the value of examinations and findings.

114. *New IT tools*. Canada reports that as of January 2012, IT systems have been put in place to support the examination program, CAR program, and the distribution of compliance workload.

115. *Compliance Research Laboratory*. Canada informs that FINTRAC has established a dedicated research environment used to develop and maintain a compliance risk model, which is used to direct the allocation of resources in the most efficient manner. Ongoing development focuses on further increasing the quality of incoming report data to support the intelligence function. This includes an enhancement of the validation rules for incoming reports (May 2014), and the implementation of a facility through which the agency can monitor large volumes of incoming reports and directly address issues with volumes, timing and data quality (August 2014).

116. *Major Reporters Team*. In July 2013, FINTRAC announced the creation of a major reporters team within its National Compliance Program. The team will be responsible for managing FINTRAC's relationship with the largest of the reporting entities in the banking sector. Given their economic footprint and the volume of transactions they facilitate, major reporters play a unique and important role in the detection, deterrence and prevention of money laundering and terrorist financing. For Canada, it represents an important milestone in FINTRAC's ongoing efforts to monitor and enhance compliance.

Table 3. **Overview of FINTRAC's compliane activities**

Compliance Activities by FINTRAC		Fiscal Year					
		2008/09	2009/10	2010/11	2011/12	2012/13	Total
Enforcement Activities	Money Services Business Registration Actions *	799	240	568	396	778	**2 781**
	Compliance Assessment Reports (CAR) Sent	n/a	n/a	62	6 026	4 008	**10 096**
	Examinations **	455	691	684	1 069	1 157	**4 056**

Compliance Activities by FINTRAC		Fiscal Year					
		2008/09	2009/10	2010/11	2011/12	2012/13	Total
	Administrative Monetary Penalties - Notices of Violations Issued ***	n/a	14	7	7	13	**41**
	Non-Compliance Disclosures	19	3	1	4	0	**27**
Other Key Compliance Activities	General Inquiries ****	6 445	3 728	4 365	6 763	5 993	**27 294**
	Policy Interpretations	n/a	n/a	258	450	245	**953**
	Reports Returned for Further Actions	2 115	2 283	1 537	48	630	**6 613**
	FINTRAC's Outreach Presentations	524	141	39	27	23	**754**
Total		**10 357**	**7 100**	**7 521**	**14 790**	**12 847**	**52 615**

* This includes initial registrations, registration renewals, registration denials, and registration revocations.
** This includes desk and on-site examinations conducted by FINTRAC.
*** FINTRAC has the authority to issue administrative monetary penalties since December 30, 2008.
**** This reflects only the volume of calls received by FINTRAC's Call Centre.

117. Canada reports that in 2012-13, FINTRAC completed 1,157 compliance examinations. This was a 69% increase from 684 examinations completed in 2010-11. This significant increase was due, in large part, to both the recruitment of additional resources to meet the Government of Canada Budget 2010 commitments and to the implementation of the new risk-based compliance strategy.

118. Canada also mentions that CARs, the newly introduced Compliance Assessment Reports (see paragraph 106), were not designed to be used for all sectors as they are not always the most appropriate method. For example, all casinos undergo an on-site examination on a regular cycle. Therefore, CARs have not been used for this sector. In 2012–2013, 4008 CARs were issued across several sectors in order to help assess compliance regime obligations.

Table 4. **Overview of FINTRAC's examinations**

Sector	Activity Sector	N° of reporting entities in Fiscal 2012/13 (primary population*)	FINTRAC Examinations**					
			2008/09	2009/10	2010/11	2011/12	2012/13	Total
Accountants	Accountants	3 829	21	48	20	0	25	114
BC Notaries	BC Notaries	289	0	0	0	0	16	16
Casinos	Casinos	39	12	12	12	5	10	51
Dealers in Precious Metals and Stones	Dealers in Precious Metals and Stones	642	0	0	0	10	166	176
Financial Entities	Banks***	80	0	1	1	6	2	10

Sector	Activity Sector	N° of reporting entities in Fiscal 2012/13 (primary population*)	FINTRAC Examinations**					
			2008/09	2009/10	2010/11	2011/12	2012/13	Total
	Credit Unions/ Caisses populaires	736	69	172	205	432	301	1,179
	Trust & Loan Companies***	75	3	5	4	9	3	24
Life Insurance***	Life Insurance (including agents and brokers)	89	28	70	52	5	13	168
Money Services Businesses	Money Services Businesses	788	220	210	200	426	222	1 278
Real Estate	Real Estate	20 784	62	90	70	40	270	532
Securities Dealers	Securities Dealers	3 829	40	83	120	136	129	508
Total		**31 180**	**455**	**691**	**684**	**1 069**	**1 157**	**4 056**

* The reporting entities' population can be separated into the primary and secondary reporting entities populations. The difference between the primary population and the secondary population lies in the fact that the Act is structured in such a way that there are instances where both an employer and an employee will be subject to the provisions of the Act; in such case, the employer is seen as the primary reporting entity and the employee as the secondary. These instances occur in the accountant, BC notary, dealers in precious metals and stones, life insurance, real estate and securities sectors.
** Does not include other compliance enforcement activities, such as CARs. The number of examinations conducted may include multiple examinations on the same reporting entity.
*** Does not include FRFIs assessed by OSFI.

119. Canada specifies that, as recommended in the MER, FINTRAC has launched a more intensive compliance review of the money services business (MSB) and credit unions/*caisses populaires* sectors:

- the number of examinations in the MSB sector was stable from 2008 to 2010 (an average of 210 examinations each year). Due to the evaluated risks, the number of examinations of the sector considerably increased in 2011/2012 when 426 examinations were conducted on MSBs and was brought back to 222 in 2012/2013 (this includes both desk and on-site examinations). FINTRAC also launched CARs to the MSB sector (50 in 2013).
- FINTRAC has also increased the examinations of the credit unions/*caisses populaires* sector (more than 4 times higher in 2012/2013, as compared to 2008/2009, with a peak in 2011/2012). Canada indicates that the number of on-site visits is proportional to the assessed risk in the credit union/*caisses populaires* sector.

120. As for the decrease in the number of examinations in the life insurance sector (from 28 in 2008/2009 to 5 in 2011/2012, and then 13 in 2012/2013), Canada explains that this is correlated to the level of risk of the sector. Canada adds that life insurance has nevertheless been subject to continuing appropriate supervisory activities including:

- examinations of key market players/companies, including Canada's top financial conglomerates' life insurance companies by OSFI;
- a number of "broker/intermediary" examinations by FINTRAC;
- CARs being issued to the entire sector, including agents, brokers/intermediaries, and companies. Table 2 shows that the number of CARs sent to life insurance providers reached 1,559 in 2011/2012 and 829 in 2012/2013, as compared to 33 in 2010/2011.

OSFI (Office of the Superintendent of Financial Institutions) – primary regulator of banks and other federally-regulated financial institutions (FRFIs):

121. OSFI is a member of the Basel Committee on Banking Supervision and the International Association of Insurance Supervisors, and applies their Core Principles of supervision throughout its supervisory activities, including AML/CFT supervision. As discussed more fully in the MER, OSFI has been conducting AML/CFT supervision in the FRFI sector since 2004.

122. Canada informs that since the MER on-site, OSFI's AML supervisory unit has been transferred to OSFI's Supervision Sector and its assessment program more integrated into OSFI's overall supervisory framework. For example, in 2011-12, OSFI conducted 17 on-site AML/CFT assessments Three of these assessments were conducted at conglomerate financial groups with multiple FRFIs and other financial entities in each group (OSFI's supervisory expectations include a requirement to apply findings across financial groups, as applicable). The other 14 assessments were: 9 banks; 7 trust companies; and two loan companies. From April 2012 to March 2013, OSFI conducted 13 on-site AML/CFT assessments. Three of these assessments were conducted at conglomerate financial groups with multiple FRFIs and other financial entities in each group. The other 10 assessments were: 6 banks and 4 trust companies.

123. The FRFI sector includes Canada's largest banks and life insurance companies, which have a dominant market share domestically. They also have major banking and life insurance subsidiaries and branches in the USA, the Caribbean, Latin America and Asia. OSFI's AML/CFT assessment program is directed at these and other FRFIs which OSFI considers to be at the highest risk of ML and TF, and includes an assessment planning cycle[32]. OSFI applies its AML/CFT supervision to foreign branches and subsidiaries using a risk- based approach. FRFIs are assessed more frequently

[32] All FRFIs subject to the PCMLTFA (i.e. banks, trust companies, loan companies and life insurance companies) have been risk-rated according to inherent risk exposures to ML and TF of business activities, location of business activities and business strategies and structures. This inherent risk rating is used to determine OSFI's AML/ATF assessment planning cycle. The methodology groups FRFIs into three risk categories as follows:

- Higher (A) inherent risk – assessed every 3 years (including all conglomerate banking groups)
- Medium (B) inherent risk – assessed every 4 years (including all conglomerate life insurance groups)
- Lower (C) inherent risk – assessed every 5 years

than the planned cycle, irrespective of risk rating, when, for instance, a FRFI's program is found to have major deficiencies and it is determined that a re-assessment may be warranted outside of the assessment planning cycle.

124. Under the MOU with FINTRAC, OSFI provides FINTRAC with a copy of its examination (findings) letters, as well as the responses to them by FRFIs, and also reports to FINTRAC on all follow-up work. OSFI consults FINTRAC on an on-going basis to ensure that any concerns FINTRAC has are factored in to the monitoring program applied to the FRFI.

125. There were 59 low to very low risk FRFIs which were assessed by FINTRAC during 2011-2012 using their compliance assessment reports process.

126. In 2010, FINTRAC announced it would commence direct compliance examinations of FRFIs supervised by OSFI. This program began in 2011 but was discontinued. Despite attempts to reduce any potential or perceived burden on entities, the results of this approach in 2012 were unsatisfactory, as they evidenced a duplication of supervisory and compliance efforts. In 2013, OSFI and FINTRAC signed a concurrent assessments/examination framework,. Under this approach, OSFI will continue to focus on risk management processes and controls needed to ensure compliance; and FINTRAC will focus on the quality, volume and timing of reports submitted by FRFIs as part of their PCMLTFA obligations

General structure of the AML/CFT supervisory regime

127. In considering Canada's compliance with Recommendation 23 (and subsequently with Recommendation 24), the MER questioned the choice made by Canada to very much concentrate the AML/CFT supervisory functions in FINTRAC, considering the high number of reporting entities to be covered in the context of a federal state and different financial sectors. However, aside from the concurrent examination approach between OSFI and FINTRAC, and a list of MOUs signed by FINTRAC and provincial regulators[33], no further information has been provided by Canada.

128. One suggestion in the MER was that FINTRAC should delegate formally its compliance examination authority[34] to its MOU partners and other primary regulators (essentially to leverage existing examination resources and avoid possible duplication of compliance inspections). This was considered but not undertaken due to the importance for Canada to ensure consistent application of the regulations and legislation by reporting entities, and ensure clear accountability by retaining FINTRAC as the lead responsible competent authority with appropriate and specific Administrative Monetary Penalties (AMPs) powers under the PCMLTFA.

129. The MOU between FINTRAC and OSFI enables the two agencies to achieve coordinated supervision of FRFIs. Current arrangements and the new concurrent assessment approach substantially increase efficiency and reduce the regulatory burden on those businesses with reporting obligations. FINTRAC currently has 18 Memoranda of Understandings with provincial

33 See Annex 1 to the Fifth follow-up report.

34 As permitted under Section 43(5) of the PCMLTFA.

regulators[35] which enable the sharing of their examination findings at agreed upon intervals. These results can influence the scope of subsequent FINTRAC examinations.

130. **Conclusion**: from the various elements provided by Canada, it can be concluded that this deficiency has been largely addressed. FINTRAC has strengthened its compliance staff in charge of supervising reporting entities, which is a positive step to improve the balance of supervision between all sectors. At the same time though, the scope of reporting entities under the responsibility of FINTRAC has expanded. FINTRAC should therefore ensure that its resources develop in relation to its specific needs. It has to be noted that the application of a risk-based compliance approach as well as the development of new and better suited compliance tools should also enable FINTRAC and sector supervisors to better target the institutions posing higher risks and requiring enhanced supervision and onsite-examinations.

131. However, risk assessments of each of the reporting sectors would be needed to get a comprehensive view on the nature and level of risks to which Canada is exposed, and to make sure that FINTRAC's compliance resources and activities are optimally applied to the different reporting sectors. This would in particular give a stronger basis to evaluate if, overall, the sectors and institutions presenting higher risks benefit from the required level of attention from FINTRAC, including through onsite examinations.

132. Canada informed the Secretariat that FINTRAC conducts risks assessments for each reporting sector and these exercises inform the compliance activities conducted. Canada adds that it is currently working on a broader risk assessment of these sectors. An interdepartmental Risk Assessment Working Group led by the Department of Finance has been established and the Terms of Reference were approved in Spring 2013. In addition, the Department of Finance has initiated the development of an ML/TF threat assessment as an initial step towards a complete risk assessment. The interdepartmental Risk Assessment Working Group has met 4 times to date and will be meeting on a regular basis until the project is completed. The results of this ML/TF risk assessment will further inform FINTRAC's risk-based compliance program, as well as inform all other public and private sector organizations contributing to Canada's AML/CFT regime.

133. On the basis of the information available, with particular regard to sectors identified in the MER as appearing insufficiently supervised:

- As a result of a risk evaluation of the money services business activities, the number of desk and on-site examinations doubled in 2011/2012.
- As far as credit unions/*caisses populaires* are concerned, progress has been made with a number of on-site examinations in 2011/2012 6 times higher than in 2008/2009. FINTRAC has conducted 878 examinations over 4 years for a reporting sector that includes 870 reporting entities. It better reflects the level of risk of the sector.
- Based on the overall level of risk of life insurance, the sector has been subject to other, more appropriate compliance activities than examinations,

[35] See Annex 1 to the Fifth follow-up report.

including the extensive issuance of CARs. In addition, key life insurance market participants were subject to examinations.

c) "Fit and proper" requirements are not comprehensive - at the time of the on-site visit, there was no specific obligation for FRFIs to implement screening procedures for persons who are hired, or appointed to the Board after the initial incorporation or authorisation procedures are concluded.

134. OSFI Guideline E-17 – *Background Checks on Directors and Senior Management of FREs*[36] came into effect in January 2009 and requires FRFIs supervised by OSFI to implement on-going fit and proper standards for directors and senior officers of FRFIs. E-17 sets out screening requirements including criminal background checks that must be done prior to appointment. The guidance also requires each FRFI to have policies for updating all fit and proper assessments of senior officers and directors at regular intervals (no longer than 5 years).

135. OSFI's authority to require FRFIs to conduct screening procedures for those who are hired, or appointed to the Board, after the initial incorporation or authorisation procedures are concluded, lies in its prudential mandate under federal financial sector legislation in Canada. All the OSFI AML assessments referred to above contained a module focussing on compliance with E-17, and remedial measures were required by OSFI in most cases, in order to ensure that FRFIs were implementing the measures contained in the guideline.

136. **Conclusion**: Canada has not taken any further action to ensure that market entry rules among the different provinces and sectors are compliant with FATF requirements[37]. The MER points out the lack of harmonisation of the requirements in terms of market entry among the federal and provincial levels and among the different provinces. This deficiency has not been addressed.

d) There is currently no registration regime for MSBs.

137. Canada implemented a federal registration regime for MSBs which has been in force since June 2008. Money services providers have to register with FINTRAC. The registration obligation applies to businesses engaged in foreign exchange dealing activities, remitting or transmitting funds by any means or through any person, entity or electronic funds transfer network; or issuing or redeeming money orders, traveller's cheques or other similar negotiable instruments (except for cheques payable to a named person or entity). It also applies to alternative money remittance systems (such as Hawala, Hundi or Chitti).

138. Applicants for registration have to provide identifying information as well as other specific business information (location of the business, organisational structure of the business, information about the compliance officer, about the agents etc) to FINTRAC. Any change to that information has to be notified to FINTRAC within 30 days and the registration has to be renewed every two years.

36 www.osfi-bsif.gc.ca/Eng/Docs/E17_final.pdf and Mutual evaluation report of Canada, 2008, paragraph 1076.

37 Mutual evaluation report of Canada, 2008, paragraph 1163.

Table 5. **Number of MSBs that have registered**

Year	2008/09	2009/10	2010/11	2011/12	2012/13
# of MSBs registered	803	954	955	890	788

Note. Canada informs that the variation in the number of registered MSBs from year to year is primarily attributable to market-related dynamics in a sector where entry and exit are relatively frequent.

139. Canada also mentions that FINTRAC has developed and published a pamphlet that explains the legal obligations of MSBs in eight languages (Arabic, Chinese, Farsi, Punjabi, Spanish and Vietnamese, as well as French and English) to better communicate with this important business sector.

140. **Conclusion**: This deficiency has been addressed.

Recommendation 23 – Overall conclusion

141. From the various elements provided by Canada, it seems that FINTRAC has strengthened its compliance staff in charge of supervising reporting entities, which is a positive step to better balance the level of supervision between all sectors falling under the remit of FINTRAC. At the same time though, the scope and number of reporting entities under the responsibility of FINTRAC has expanded in terms of sectors covered (to dealers in precious metal and stones, and BC notaries)[38]. FINTRAC should therefore ensure that its resources continue to be sufficient in relation to its specific needs.

142. It has to be noted that the application by FINTRAC of a risk-based compliance approach as well as the development of new and better suited compliance tools and the conclusion of an agreement with OSFI to improve supervisory coordination should also enable FINTRAC to better target institutions posing higher risks and requiring enhanced supervision and onsite-examinations.

143. Regarding the particular sectors identified in the MER as appearing insufficiently supervised: as a result of a risk evaluation of the money services business activities, the number of desk and on-site examinations doubled in 2011/2012. As far as credit unions/*caisses populaires* are concerned, progress has been made with a number of on-site examinations in 2012/2013 4 times higher than in 2008/2009. Based on the overall level of risk of life insurance, the sector has been subject to other, more appropriate compliance activities than examinations, including the extensive issuance of CARs.

144. The deficiency regarding the "fit and proper" requirement has not been addressed, as Canada has not taken any further action to ensure that market entry rules among the different provinces and sectors are compliant with FATF requirements.

145. Canada has implemented a federal registration regime of MSBs since June 2008.

146. This means that Canada has implemented Recommendation 23 at an adequate level of compliance.

[38] The comparison in terms of number of reporting entities between the situation at the time of the MER and 2011/2012 is difficult to make as it seems that the distinction between primary and secondary reporting institutions (see table 4) was not applied in 2007/2008.

Recommendation 26 – description and analysis

*a) FINTRAC has insufficient access to intelligence information from administrative and other authorities (especially from CRA [Canada Revenue Agency], CSIS [*Canadian Security Intelligence Service*] and CBSA [Canada Border Services Agency]).*

147. Canada indicates that in 2008, FINTRAC obtained access to the Canadian Police Information Centre (CPIC) database. CPIC is a national repository of police information that amounts to a shared resource within Canadian law enforcement. Currently, CPIC handles in excess of 120 million queries and stores 9.6 million records in its investigative data banks.

148. In 2009, FINTRAC took part in Canada's National Integrated Interagency Information (N-III) initiative, which focused on improving the access, collection, use and distribution of information among federal, provincial and municipal partners involved in public safety and security. The N-III initiative included the development of a Police Information Portal (PIP) that facilitates information sharing among police agencies across the country. It also introduced the Public Safety Portal (PSP)), which allows federal departments and agencies to query law enforcement databases in accordance with their legislated mandates. FINTRAC obtained access to national law enforcement databases under the N-III initiative in February 2010. FINTRAC analysts utilize the CPIC and the PSP through the identification of individuals, their criminal involvement/activities, known associates and to assist in identifying additional financial intelligence that is relevant to FINTRAC disclosure recipients. Canada informs that access to these databases allows analysts to search data from over 40 000 contributors from police agencies across Canada.

149. Canada states that FINTRAC connection to these new information sharing tools is a positive step to facilitate access to information used by law enforcement authorities such as the RCMP or the CBSA.

150. Canada adds that FINTRAC successfully negotiated access to additional law enforcement and security databases that will provide valuable new sources of information to further assist the FINTRAC's financial intelligence products in the detection, prevention and deterrence of money laundering and the financing of terrorist activities.

151. **Conclusion**: several positive steps have or are being taken, and the deficiency has been substantially addressed. FINTRAC's expanded connections with law enforcement authorities has broadened its access to intelligence information, especially in the field of law enforcement and national security. FINTRAC now has indirect access to the CSIS database through a querying process which allows FINTRAC to determine whether CSIS has information on individuals or entities that may pose a terrorist financing threat. The positive or negative results of such queries assist FINTRAC in reaching or not reaching their disclosure threshold. FINTRAC will also get access to similar information as the CBSA.

152. No information was provided regarding FINTRAC's direct or indirect access to the CRA database, as recommended in the MER.

b) FINTRAC is not allowed by the PCMLTFA to gather additional financial information from reporting entities.

153. Canada advises that the Canadian Constitutional framework does not permit FINTRAC to go back to reporting entities and ask for additional information on the STR they have filed. However, Canada considers that in most cases, the STR provides clear and comprehensive information, and requests for additional elements would not be applicable.

154. Canada indicates that within FINTRAC, a formal framework of information exchange is in place between the department responsible for compliance issues and the department in charge of analyzing information from reporting entities, called the analytical sector. Under this mechanism, the analytical sector provides awareness-raising information on compliance issues. Canada also informs that since June 2010, FINTRAC's analytical sector has issued Intelligence Notices to its compliance sector. These notices range from non-compliance issues involving data quality and missing information to suspicions of non-reporting by reporting entities. These notices can be submitted on any of the following types of reports that FINTRAC receives: Suspicious Transactions Reports (STRs), Large Cash Transaction Reports (CAD 10,000/USD 9,548 or more in cash in the course of a single transaction), Electronic Funds Transfers Reports (EFTRs), Terrorist Property Reports, and Casino Disbursements Reports (of CAD 10,000 or more whether paid in cash or not, in the course of a single transaction).

155. An Intelligence Notice can be issued for individual reports or a block of reports. Intelligence notices help inform the prioritization of Compliance Program activities.

156. Canada considers that this framework assists FINTRAC's compliance sector in improving the quality and completeness of reports received from reporting entities, and further strengthening the report database.

157. **Conclusion**: the information sharing mechanism put in place by FINTRAC seems to be a useful tool to enhance coordination which may help improve the quality and usefulness of information provided by reporting entities, which in turn could help limit further the need for additional information on STRs. However these measures are indirect and there is still no possibility for FINTRAC to collect additional financial information from the reporting entity. The deficiency has not been adequately addressed.

c) Effectiveness - the number of staff dedicated to the analysis of potential ML/FT cases is low especially in comparison with the amount of reports coming in, which may have an impact on the number of cases that FINTRAC generate.

158. The total number of employees at FINTRAC has increased significantly since the 2008 MER. FINTRAC counted 384 full-time employees in 2012/2013, as compared to 271 in 2007/2008. FINTRAC staff working on tactical analysis (responsible for developing cases and disclosures) amounted to 71 full-time employees as of September 2013, as compared to 36 at the time of the MER.

159. In 2012/2013, FINTRAC received 79 294 STRs, as compared to 50 354 in 2007/2008[39]. It made 919 disclosures in 2012/2013, as compared to 210 in 2007/2008[40]. A disclosure can contain multiple STRs, information from the several other reports FINTRAC receives, and information from the various databases and open source materials available to FINTRAC to undertake value-added analysis.

Table 6. **Number of STRs received each year by FINTRAC**

Year	Number of STRs received
2007-08	50 354
2008-09	67 740
2009-10	64 240
2010-11	58 722
2011-12	70 392
2012-13	79 294

Sources: FINTRAC Annual Reports 2012 and 2013

160. **Conclusion**: This deficiency has been largely addressed. FINTRAC's analytical capacities have been doubled, while in the same period, the number of STRs received by FINTRAC has gone up by 57% and the number of disclosures is more than 4 times higher in 2013 than in 2008. This shows that the substantial increase in staff number led to considerable progress in the Centre's quantitative contribution to investigations.

161. General conclusions on the number of cases generated by FINTRAC have to be drawn in relation not only to the number of disclosures made by FINTRAC but also to the use of STRs received by FINTRAC, the added value of FINTRAC's disclosures in investigations and the ML or TF convictions based on FINTRAC disclosures. Given the limited scope of this desk-based follow-up report, it is not possible to draw final conclusions regarding progress made by FINTRAC to generate cases.

162. In any event, Canada should ensure that its resources always meet its actual needs and that activities related to the analysis of potential ML/FT cases are in the hands of an adequately staffed agency.

d) Effectiveness - feedback from law enforcement authorities outlines the relatively limited added value of FINTRAC disclosures in law enforcement investigations.

163. Canada mentions that FINTRAC has used feedback from its disclosure feedback forms (DFF) to improve disclosures, and has strengthened relationships through continued outreach and regular

39 FINTRAC Annual Report 2013 www.fintrac-canafe.gc.ca/publications/ar/2013/1-eng.asp#s8.4 – The other reports included Electronic Funds Transfers Reports (EFTRs), Large Cash Transaction Reports (LCTRs), Cross-Border Currency Reports/Cross Border Seizure Reports.

40 FINTRAC Annual Report 2013 www.fintrac-canafe.gc.ca/publications/ar/2013/1-eng.asp#s8.4.

dialogue at all levels (from analysts to Director) with the RCMP, CRA, CBSA and other law enforcement or national security agencies across Canada. From 2008-2009 to 2012-2013, FINTRAC received 2106 disclosure feedback forms from domestic and international disclosure recipients and within this time period the response rate for disclosure feedback forms increased from 17% (2008-2009) to 32% (2012-2013). These have highlighted areas in which FINTRAC can take steps to strengthen its disclosure products.

164. Partners have for example indicated in the past that a detailed, narrative overview of the financial transactions in a case is very useful. Based on this feedback, FINTRAC indicates that it now provides a comprehensive narrative overview of the transactions and designated information with the majority of cases disclosed to law enforcement. Based on the feedback from partners, FINTRAC also includes a relationship chart of the parties to the transactions which disclosure recipients find very useful. FINTRAC also provides its partners with an enhanced disclosure package, containing multiple document formats.

165. Canada states that FINTRAC receives positive feedback from law enforcement and security partners on the usefulness, relevance and timeliness of case disclosures. Increasingly, law enforcement agencies are providing the Centre with information concerning their highest priority investigations. This enables FINTRAC to assist in cases that are of the highest priority to its investigative partners and to be of greater assistance to their work.

166. Canada indicates that a number of initiatives have been taken to improve FINTRAC's ability to produce high quality intelligence to be used in investigations and prosecutions. Examples of initiatives taken to specifically improve the quality of disclosures include:

- Legislative provisions in force since June 2008 allow disclosures to be enriched with a greater range of information on financial transactions. Additional reporting sectors (Dealers of Precious Metals and Stones, British Columbia Notaries) and report types (Casino Disbursement Reports) have increased the range of information disclosed to FINTRAC's partners;
- FINTRAC has developed additional augmented disclosure products that increase the focus and timeliness of disclosures to its partners, resulting in improved communication with disclosure recipients. FINTRAC has streamlined its disclosure process, primarily through changes to its case approval process[41];
- FINTRAC continues to conduct operational meetings and discussions with disclosure recipients to discuss investigative priorities, analytical processes,

[41] Previously, all disclosures were approved in a five-step process in the following order: Manager of Analysis, Legal Services, Assistant Director Financial Analysis and Disclosures and Deputy Director and final approval by the Disclosure Committee (usually meeting once a week). FINTRAC has now adopted a risk-based approach regarding the decision-making process involved for disclosures. Disclosures are approved by the Manager and Assistant Director, Financial Analysis and Disclosures in low-risk cases. Compulsory legal review of each case and final approval by Disclosure Committee is no longer mandatory, resulting in faster dissemination. If required, disclosures may still be forwarded to Legal Services for review and only when the disclosure is considered a high-risk, the Disclosure Committee will have final approval.

the development of indicators, and to provide assistance regarding the use of FINTRAC disclosures.

167. Canada underlines that FINTRAC ensures alignment with law enforcement and national security regime partners' priorities through participation in the Canadian Association of Chiefs of Police and its committees dealing with organized crime and national security, as well as the Canadian Integrated Response to Organized Crime committee. A highlight for FINTRAC in past years was the formal recognition by the Canadian Association of Chiefs of Police that FINTRAC's financial intelligence "*should be made an integral part of all organized crime investigations*." For Canada, this endorsement is indicative of the role that FINTRAC has played in these types of cases in recent years. It also reinforces the important role of financial intelligence in certain types of complex investigations.

168. *Disclosures to the RCMP* - Canada states that the RCMP has noted that initiatives undertaken by FINTRAC since the MER (including streamlined approval process and more direct ongoing dialogue with partners) have enhanced the value-added of FINTRAC's disclosures to the RCMP and others. Canada indicates that FINTRAC has disclosed useful intelligence and new leads on persons or businesses of interest to the RCMP. Regarding their partnership with FINTRAC, the RCMP states that: *"FINTRAC is considered a key partner and has provided valuable financial intelligence on an ongoing basis that contributed to terrorist financing investigations." FINTRAC through their disclosures identified new linkages/nexus between entities and/or individuals through financial transactions which surfaced new avenues of investigation. FINTRAC has always responded in a timely fashion to our priority Voluntary Information Records."* - RCMP Anti-Terrorist Financing Team, National Security Criminal Operations, Headquarters, Ottawa[42]

Table 7. **FINTRAC disclosures to the RCMP**

Year	Number of distinct disclosures	Number of disclosure packages* (includes disclosures sent to multiple RCMP recipients)
2008-2009	392	710
2009-2010	363	617
2010-2011	459	883
2011-2012	494	914
2012-2013	580	1,088
Total	2 288	4 212

*Note that the number of disclosure packages sent to the RCMP includes disclosures being sent to multiple individual recipients within the RCMP. Individual cases may therefore have been disclosed a number of times.

42 Quoted in FINTRAC's Annual Report 2012 www.fintrac-canafe.gc.ca/publications/ar/2012/1-eng.asp?a=5#s5.

Table 8. **FINTRAC disclosures to other domestic law enforcement and national security agencies**

Year	Municipal Police	Provincial Police	CRA	CSIS	CBSA
2008-2009	164	58	157	59	82
2009-2010	136	119	125	78	42
2010-2011	143	162	136	120	82
2011-2012	153	167	136	107	89
2012-2013	182	198	150	164	144
Total	**778**	**704**	**704**	**528**	**439**

169. *Disclosures to the CRA* - Canada states that based on the MER recommendations and after tax evasion was made a predicate offense in 2010/2011, FINTRAC has been able to build more cases for disclosure to the CRA. According to information from Canada, the CRA notes that the information provided in disclosures received since April 2008 is detailed, timely and very useful.

170. The majority of the disclosures received from FINTRAC were reviewed and assessed by the Special Enforcement Program (SEP), a group responsible for auditing those suspected of being involved in illegal activities. Until March 2013 compliance action on FINTRAC referrals was completed by the SEP. Due to organizational changes, the SEP has been discontinued and this work is now being completed by auditors within the Small and Medium Enterprises Directorate (SMED). The Criminal Investigations Program (CIP) continues to receive and analyze all FINTRAC disclosures for intelligence and potential criminal investigations before referring them to the SMED workload development area.

171. *Disclosures to the CSIS.* Canada indicates that CSIS has noted that the quality of the information and analysis contained in disclosures - 164 in 2012/2013 - reflects the growing number of reporting entities, case complexity, and FINTRAC's maturity as an organization.

172. *Disclosures to CBSA*. Canada quotes the CBSA expressing their satisfaction on FINTRAC disclosures (144 received in 2012/2013): "*As a result of the information provided, we were able to recommend to Citizenship and Immigration Canada that our subject be deemed inadmissible to Canada based on s. 37(1) of the Immigration and Refugee Protection Act. We have also indicated that the subjects who are permanent residents be scrutinized further should they apply for citizenship.*" – *CBSA*[43]

173. **Conclusion**: information and data provided by Canada reflect that coordinated measures have been taken by FINTRAC to enhance the overall quality of its disclosures and better support law enforcement and national security investigations: use of feedback from disclosure recipients, better tailored disclosure process, dialogue with law enforcement authorities about their expectations and alignment with their priorities, better use of financial intelligence etc. This has resulted in a general

[43] Quoted in FINTRAC Annual Report 2012 www.fintrac-canafe.gc.ca/publications/ar/2012/1-eng.asp?a=5#s5.

level of satisfaction expressed by some law enforcement and national security authorities about FINTRAC's contribution to their investigations. This deficiency has been substantially addressed.

e) Effectiveness - the timeliness of FINTRAC disclosures to law enforcement authorities was raised as an issue at the time of the on-site visit.

174. Canada indicates that FINTRAC has significantly improved the timeliness of disclosures: since the MER, the average case disclosure turnaround time has decreased by approximately 84%. FINTRAC's broad review and revision of its disclosure process has allowed for routine disclosures to be approved more quickly, provided access to new data sources, increased the number of analysts, and led to more effective information systems and adjustments made in response to feedback from partners.

175. FINTRAC has also developed disclosure feedback forms (DFFs)[44], which it sends with each disclosure. Recipients of FINTRAC's disclosures have indicated on the DFFs that the information provided was timely and useful. For example, the RCMP says that *"FINTRAC provided us with timely information. The information helped us identify the financial institutions and the bank accounts that were used by the subjects. This information will be used to obtain judicial authorizations".* - [Translation] – RCMP, "C" Division, POC [45]

176. **Conclusion**: based on the information provided by Canada, it seems that progress made with regard to the timeliness of FINTRAC disclosures to law enforcement authorities has been confirmed. This deficiency has been addressed.

f) Effectiveness - 80% of the disclosures made by FINTRAC result from voluntary information from law enforcement; only 20% result from STRs which raises serious concerns with respect to the capability of FINTRAC to generate ML/TF cases on the basis of STRs or other reports it receives from the private sector.

Table 9. **FINTRAC disclosures and the number of reports received since 2008/2009**

Years	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013
Number of disclosures	556	579	777	796	919
Number of reports received (all types of reports) *	24 264 077	24 826 336	19 266 541	18 529 956	19 746 005

*. STRs, LCTRs, EFTRs, Terrorist Property Reports, and Casino Disbursements Reports, see paragraph 153.

Variation in reporting volumes can be due to many factors, which, among others, include economic trends, market share of various reporting entities and the fact that two reporting entities changed their process with respect to EFT reporting.

44 See paragraph 163.

45 Quoted in FINTRAC Annual Report 2012 www.fintrac-canafe.gc.ca/publications/ar/2012/1-eng.asp?a=5#s5.

Table 10. **Number of STRs used in disclosures since 2008/2009**

	2008-09	2009-2010	2010-2011	2011-2012	2012-2013
STR	4 060	4 100	4 339	4 273	4 739

178. These figures show that the number of FINTRAC disclosures has significantly increased between 2009 and 2013 (+65%), but the number of STRs used has not evolved in the same proportions (+16%).

179. It should be noted that, in addition to STRs, FINTRAC receives many other types of reports which provide value added when conducting analysis and making disclosures.

Table 11. **Distribution of case originators per fiscal year**

Originator	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013
Proactive					
Open Source	3%	3%	3%	1%	2%
Report Profiling	5%	3%	0.4%	1%	0%
STR	13%	8%	8%	9%	8%
Total Proactive	**21%**	**14%**	**11%**	**12%**	**10%**
VIR (Voluntary Information Record)	**59%**	**63%**	**65%**	**64%**	**69%**
FIUQ (Foreign FIUs queries)	**20%**	**22%**	**24%**	**24%**	**21%**
Other	**0%**	**1%**	**0.3%**	**0%**	**0%**

Note: the total of each column will not always equal 100% due to the rounding of numbers.

180. In 2012/2013, 69% of the disclosures made by FINTRAC resulted from voluntary information provided by law enforcement authorities, and 8% from STRs. At the time of the MER, the proportions were respectively 80% and 14%. The proportion of VIRs (Voluntary Information Records) started decreasing after the MER which seemed to reflect a better balance between the different sources of cases, but it is now increasing again and represents more than two third of total disclosures. In addition, the proportion of proactive disclosures stemming from STRs has also gone down, and has decreased since the MER (from 14% to 8% in 2012/2013), while the proportion of proactive disclosures in total has also halved since 2008-09.

181. **Conclusion**: on the basis of the figures provided, it seems that further efforts have to be developed to ensure that initial progress made during the period 2008/2009 can be further enhanced. FINTRAC has reviewed its approach to STRs, and ensured that the processes and capabilities in place have and will continue to lead to an effective use of STRs on a continuous basis, resulting in more cases being generated from this category of reports. The deficiency has been partially addressed.

182. Canada advises that STRs, Electronic Funds Transfers Reports (EFTRs), Large Cash Transaction Reports (LCTRs), and other reports and information received by FINTRAC are an extremely valuable source of financial intelligence. A total of 407,835 of those reports were included in cases disclosed between 2007 and 2011. Of that number, 60% were EFTRs, followed by LCTRs at 36%, STRs at 33%, Cross-Border Currency Reports (CBCRs) at 0.6% and Casino Disbursement Reports (CDRs) at 0.5%. Interestingly, the percentage of cases containing at least one STR is similar to the percentage of cases including at least one EFTR or LCTR. This is significant since the volume of the STRs submitted to FINTRAC is much lower than that of EFTRs and LCTRs. STRs are particularly useful for providing additional information related to individual behaviour and transactional activity[46].

183. Approximately 88% of the total STRs submitted to FINTRAC between November 2001 and August 2010 were from three main business sectors: banks and trusts/loans, money services businesses (MSBs) and credit unions/*caisses populaires*[47]. Although high volumes of STR reporting does not necessarily correlate to high quality STRs, it could be useful to consider launching further initiatives to raise awareness of reporting entities with low reporting volumes, explain the importance and the benefits of their contribution to the process, and encourage them to fill STRs reports, as and when appropriate.

g) Effectiveness - so far, very few if any convictions for ML or TF have resulted from a FINTRAC disclosure which is an additional factor to consider when looking at FINTRAC's ability to produce intelligence to be used in criminal investigations and prosecutions.

184. As noted above (par 165 and s.), the RCMP and CSIS have informed that FINTRAC disclosures are making significant contributions to new and ongoing investigations for money laundering and terrorist financing, and these disclosures are increasing significantly. Law enforcement indicates that FINTRAC disclosures provide information that advance investigations. Canada reports that of the disclosures produced proactively by FINTRAC in 2012/2013, 84% were considered relevant to an investigation and 72% were considered useful.

185. Canada reports that the RCMP receives the most significant number of FINTRAC's case disclosures of financial intelligence and that FINTRAC intelligence contributes to AML/CFT investigations by the RCMP. Canada adds that it is now standard procedural practice for all RCMP investigative bodies in Canada to use FINTRAC intelligence[48]. In addition, Canada informs that civil forfeiture is another avenue used by federal, provincial and municipal police forces in Canada.

186. **Conclusion**: Based on information provided by Canada, it seems that FINTRAC intelligence, is used in cases of ML/TF investigation. However, and in the context of this desk-based review, it is not possible to check the degree and the extent to which FINTRAC intelligence is used by investigation

46 Trends in Canadian Suspicious Transaction Reporting, April 2011 www.fintrac-canafe.gc.ca/publications/typologies/2011-03-eng.asp#s2.

47 Trends in Canadian Suspicious Transaction Reporting, April 2011 www.fintrac-canafe.gc.ca/publications/typologies/2011-03-eng.asp#s2.

48 See Toronto Police Service in FINTRAC Annual Report, 2013 p. 17

agencies, and there is no information available as to ML or TF convictions resulting from a FINTRAC disclosure. The deficiency has been partially addressed.

Recommendation 26 – conclusion

187. Based on the information provided by Canada, it seems that FINTRAC has expanded its access to information from other national authorities, especially CSIS and CBSA. But there was no progress made regarding FINTRAC's ability to require additional information from reporting entities.

188. As far as effectiveness of FINTRAC is concerned, given the limited scope of this desk-based follow-up report, it is not possible to draw final conclusions regarding progress made by FINTRAC to generate cases. In any event, Canada should ensure that its resources always meet its actual needs and that activities related to the analysis of potential ML/FT cases are in the hands of a sufficiently staffed body.

189. FINTRAC has taken measures to enhance the overall quality of its disclosures and better support law enforcement investigations. Although satisfaction is expressed by some law enforcement authorities, it seems difficult to draw some general conclusions as to the extent to which FINTRAC's disclosures positively contributed to the success of the investigations. Further efforts will be needed to ensure that initial progress on the proportion of STRs used by FINTRAC to generate ML/FT cases will be sustained. It is hoped that over time positive progress will be reported on the level of ML/TF convictions resulting from a FINTRAC disclosure.

190. This means that Canada has implemented Recommendation 26 at an adequate level of compliance.

VI. SUMMARY OF KEY ACTIONS TAKEN BY CANADA TO ADDRESS THE DEFICIENCIES IN RELATION TO NON-CORE AND NON-KEY RECOMMENDATIONS RATED PC OR NC

191. The scope of the present 6th FUR report is limited to the progress made in relation to the core and key Recommendations that were rated as PC or NC in the MER, i.e. Recommendations 5, 23 and 26.

192. In the 2009 FUR, significant progress was acknowledged for Recommendations 6, 8, 12, 16, 17, 22, 24, 30, SR VI, and SR VII and more limited progress was noted for Recommendations 7, 9, 11, 21, 33, and 34.

193. In particular,

- requirements for financial institutions in relation to Politically Exposed Foreign Persons (PEFPs) were introduced in June 2008 through amendments to the PCMLTFA and PCMLTFR, and specified the enhanced customer identification and due diligence requirements for this category of clients;
- non face-to-face CDD measures were introduced by the PCMLTFR in June 2008;

- the amended PCMLTFA explicitly requires financial institutions to ensure that their subsidiaries and branches located in a country that is not a member of the FATF, develop and apply policies and procedures that are consistent with Canadian requirements for record keeping, verifying identity and maintaining a compliance regime when the local laws permit it;
- a federal registration regime for money service businesses (MSBs) has been in force since June 2008. Money services providers have to register with FINTRAC;
- new provisions to the PCMLFTA came into force in December 2008 and extended the scope of the AML/CFT regime:
    - British Columbia (BC) Notaries Public and notary corporations (hereafter referred to as BC Notaries) are subject to the PCMLTFA when they engage in any of the following activities on behalf of any person or entity: (a) receiving or paying funds, other than in respect of professional fees, disbursements, expenses or bail; or (b) giving instructions in respect of any activity referred to in paragraph (a);
    - Dealers in precious metals and stones (DPMS) are subject to the PCMLTFA if they engage in the purchase or sale of precious metals, precious stones or jewellery in an amount of $10,000 or more;
    - Credit union centrals have been brought under the PCMLTFR for all their activities;
- the PCMLTF Administrative Monetary Penalties (AMP) Regulations came into force in December 2008. The Regulations provide FINTRAC with the power to apply monetary penalties (civil penalties) to any financial institution and DNFBPs subject to the AML/CFT regime, for non-compliance with the PCMLTFA.

194. Since the 1st FUR, Canada has continued to take actions with a view to address the remaining deficiencies. However, in the context of this report, no further analysis has been conducted of measures taken to address the deficiencies in relation to other Recommendations rated PC (R.7, R.11, R.17, R.21,R.30, R.34), or NC (R.6, R.8, R.9, R.12, R.16, R.22, R.24, R.33, SRVI, SRVII). In October 2012, Canada provided updated information on initiatives taken to make progress on these Recommendations. A detailed description of those initiatives taken since the 2008 MER may be found in Annex 2.

195. Below is a short summary of the key measures taken by Canada.

Amendments to the PCMLTFR

196. While the amendments to the PCMLTFR which came into force on 1 February 2014 were largely aimed at addressing the remaining deficiencies in relation to Recommendation 5 and

customer due diligence requirements, Canada considers that these amendments will have positive implications for its compliance with a number of other non-core and key Recommendations. In particular, the regulations will positively impact Canada's compliance with Recommendations 6, 7, 8, 11, 12, 16, 21, 22, 33 and 34.

Scope of the AML/CFT regime

197. Canada reports that new provisions of the PCMLTFA came into force n July 2010 and extended the AML/CFT regime to credit union centrals. However TCSPs remain completely exempted from the AML/CFT framework as they were assessed as low risk[49].

198. With respect to legal counsel and legal firms[50], Canada advises that new Regulations imposing client identification due diligence and record-keeping obligations on legal counsel came into force on 30 December 2008. However, these provisions are currently inoperative as a result of a court ruling and related injunctions. In October 2013, the Supreme Court of Canada granted leave to appeal the ruling.

Sanctions regime

199. Canada reports that FINTRAC's criteria for public naming of reporting entities that have been subject to an administrative monetary penalty changed in June 2013. Under the new criteria, a person or entity subject to an administrative monetary penalty is named publicly if one of the following criteria is met: the person or entity has committed a very serious violation; or the base penalty amount is equal to or greater than CAD 250,000 (USD 233,987), before adjustments are made in consideration of the person or entity's compliance history and ability to pay; or repeat significant non-compliance on the part of the person or entity. Since 2009/2010, FINTRAC has issued 41 notices of violation, and made public on its website a list of 27 administrative monetary penalties, including 19 relating to money service businesses.

Resources of law enforcement and investigative authorities

200. Based on information provided by Canada, since 2008-2009 FINTRAC's resources has increased in the compliance section from 49 to 87 staff, and staff responsible for developing cases and disclosures amounted to 71 full-time employees in 2013, as compared to 36 in 2008[51]. FINTRAC also received additional funding in 2010 and part of this ongoing funding was specifically earmarked to enhanced FINTRAC's compliance programme.

201. Canada also states that:

- in July 2012, the RCMP Federal Policing adopted a new organisation model, to allow the Force to better align its resources to priorities and become more efficient and results-driven. Under this new model, the RCMP Federal

[49] Canada explains that the conclusion that the TSCP sector is low risk is made on the basis that the ML/TF risk is offset by tax laws that require all businesses to register and file company information to the CRA.

[50] Which include Quebec notaries.

[51] See table 1 and paragraphs 103 and 158.

Policing maintain specialized members to investigate money laundering and terrorist activity financing on operations undertaken in line with their National strategic priorities of Serious and Organized Crime, Financial Integrity and National Security;

- the Department of Justice's International Assistance Group regularly provides training to Canadian police forces and prosecutors in the area of mutual legal assistance (MLA), including a section devoted to MLA requests related to restraint and forfeiture of assets, either on behalf of foreign country regarding assets located in Canada, or on behalf of Canada regarding assets sought to be restrained/forfeited by a foreign state on Canada's behalf;
- since 2008, the Public Prosecution Service of Canada (PPSC) has undertaken training on ML and TF, including at the School for prosecutors where for one week in 2008, 2009, 2010, and 2011, lectures on different issues, including proceeds of crime and money laundering, were given to approximately 50 to 75 prosecutors. In September 2013, the PPSC's national and regional terrorism prosecutions co-ordinators (approximately 30) met for an intensive three day workshop to discuss legal and operational issues relating to the investigation and prosecution of terrorism offences in Canada. Finally, PPSC has an Integrated Proceeds of Crime e-mail network which allows for timely exchange of best practices and consideration of novel circumstances and recent jurisprudence on money laundering and terrorist financing.

G8 Action Plan on Transparency of Corporations and Trusts

202. In June 2013, the Government of Canada committed to a G-8 Action Plan on Transparency of Corporations and Trusts. Part of the Action Plan includes a commitment to consult publicly on the issue of corporate transparency, including with respect to bearer shares, nominee shareholders, the ability of competent authorities to access information on beneficial ownership, as well as the possibility of establishing a central registry for entities incorporated under the Canada Business Corporations Act (CBCA).[52]

[52] The action plan can be viewed here http://pm.gc.ca/eng/media.asp?id=5547.

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ANNEXES

Available upon request from the FATF Secretariat at contact@fatf-gafi.org

ANNEX 1 THIRD MUTUAL EVALUATION OF CANADA – 1ST FOLLOW-UP REPORT

ANNEX I – ANALYSIS OF MEASURES TAKEN TO ADDRESS DEFICIENCIES

ANNEX II – SET OF LAWS AND OTHER MATERIAL RECEIVED FROM CANADA

ANNEX 2 INFORMATION FROM CANADA ON MEASURES TAKEN SINCE THE 2008 MUTUAL EVALUATION REPORT WITH RESPECT TO NON-CORE AND NONKEY RECOMMENDATIONS RATED PC & NC