

FEDERATION OF LAW SOCIETIES OF CANADA

INFORMATION FOR CONSULTATION ON FEDERAL REGULATIONS FOR CLIENT IDENTIFICATION, VERIFICATION AND RECORD-KEEPING

Introduction

As part of its continuing initiative to combat money laundering and terrorist financing, the federal government has released new draft regulations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. These regulations are drafted to apply to the way members of the legal profession (and others) identify clients, verify their identity, and maintain client records. The regulations were published in Part 1 of the June 30, 2007 edition of the *Canada Gazette* for a 60-day comment period, to be followed by consultations. This is “pre-publication” of the regulations only. They are not yet in force.

The government’s objectives through these regulations are to continue the fight against money laundering and terrorist financing and to demonstrate to the global community that Canada’s anti-money laundering regime meets international standards in this area.

The Federation of Law Societies of Canada, the national coordinating body of Canada’s 14 law societies, through its Anti-Money Laundering Committee, has been in discussions with the Department of Finance on the subject of these new regulations for the past year. The Federation has made a submission to the Department of Finance with its comments on the regulations. The Department will continue its discussions with the Federation and other stakeholders on the draft regulations through the consultations that will follow the pre-publication.

These ongoing discussions are part of a dialogue about the Act that began a number of years ago between the Federation and the federal government. The primary concern for the legal profession at the outset was the threat to the independence of the bar arising from the requirement that lawyers throughout Canada and notaries in Quebec secretly

report confidential client information to the government with respect to suspicious transactions, and to report large cash transactions.

The Federation, with the Law Society of British Columbia, commenced a constitutional challenge to the Act and applied successfully for injunctive relief from the application of the reporting requirements to the legal profession pending the hearing of the challenge. The injunction continues to apply and covers any new regulations under the Act affecting members of the legal profession. Individual law societies then adopted the Federation's Model "No Cash" Rule and implemented it through by-laws or rules. The government subsequently decided to exempt "legal counsel" (i.e. lawyers and Quebec notaries) from the reporting requirements through an amendment to the Act. The Minister of Finance, in speaking to the amendment, acknowledged that the Model No Cash Rule was intended to deal with risks in the legal profession associated with cash placement and money laundering.

Independent of the government's current initiatives, the Federation has prepared and referred to law societies a second model rule, this one focused on client identification and verification requirements.

The government is committed to demonstrating that its anti-money laundering regime meets international standards by including the regulation of the legal profession. As a matter of appropriate regulation, law societies, in the public interest, must move proactively to reduce any risks that money laundering may raise within the legal profession in a manner that preserves and protects solicitor-client privilege and the independence of the bar. Law societies used this approach successfully through their adoption of the Model No Cash Rule. The second model rule will be an important addition to law societies' regulations.

Consultation Process

A review of the draft regulations indicates that there is a measure of overlap between the requirements in the model rule and the draft regulations. As the model rule is intended to set an appropriate and reasonable standard for regulation of the legal profession in this

area, the Federation's view is that the draft regulations may inform the content of the model rule, where appropriate and practicable.

As part of the process of formulating the model rule, the Federation needs the input of its member law societies on the regulations and the current version of the model rule, which was drafted prior to publication of the regulations. To ensure that the practical implications of regulation in this area are understood, the consultation process must also be informed by the views of members of the profession. The Federation anticipates that law societies will consult with their members and provide feedback to the Federation.

This document has been prepared for this consultation process. In addition to describing the requirements for members of the profession in the model rule and the regulations, it requests comments on appropriate regulation with respect to

- a) the application of a rule requiring client identification,
- b) the information to be obtained for client identification and
- c) record-keeping requirements respecting that information.

The input the Federation is seeking is not limited to these questions – comments, general or specific, on all aspects of the regulations are requested.

Input from law societies and the profession will help to inform the final draft of the model rule and assist the Federation in its discussions with the Department of Finance on the regulations.

Submissions should be sent to:

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Submissions must be received by October 26, 2007.

APPLICATION

Question 1: What circumstances should trigger client identification requirements?

Model Rule

As currently drafted, the model rule imposes client identification and verification requirements on a lawyer or notary in Quebec¹ when the lawyer or notary receives, pays or transfers funds, or purchases or sells securities, real property or business assets or entities on behalf of a client or gives instructions for such activities on behalf of a client. The model rule exempts funds received from a financial institution or public body, a peace officer, law enforcement agency or other agent of the Crown acting in his or her official capacity, funds paid pursuant to a court order, or to pay a fine or penalty and funds received for professional fees, disbursements, expenses or bail.

A Law Society of Upper Canada (“LSUC”) committee that has looked at the model rule suggested that the exemptions be more specific and include funds paid as a settlement in a court action or for the purpose of negotiating settlements or for restitution not included in a court order.

Question 1A: Should the exemptions be more specific as suggested by the LSUC committee?

Draft Regulations

The draft federal regulations would require a lawyer or a notaries to identify clients and record information about client identity when the lawyer or notary receives or pays funds, other than funds received or paid in respect of professional fees, disbursements, expenses or bail, on behalf of any person or organization, or give instructions on behalf of any person or organization in respect of receiving or paying funds.

¹ Throughout this document, the terms “notary” and “notaries” refers to those licensed as notaries in Quebec.

The draft regulations would exempt lawyers and notaries who perform these activities for their employers (e.g. in-house counsel) from these requirements.

CLIENT IDENTIFICATION REQUIREMENTS

Question 2: What information should lawyers and notaries be required to obtain to verify the identity of a client and what methods for verifying identity should be used?

Model Rule

The Federation's draft model rule requires lawyers and notaries to ascertain:

- a) the client's first and last name;
- b) the client's home or business address;
- c) the client's home or business telephone number;
- d) where the client is an individual, the client's occupation;
- e) where the client is an organization, the general nature of the type of business engaged in by the organization, where applicable;
- f) where the client is an organization, the individuals authorized to give instructions with respect to that organization; and
- g) where the client is acting for a third party beneficiary, necessary information about the beneficiary, such as that set out above.

The documents through which identity is ascertained in the model rule include government-issued identification, such as a driver's license, birth certificate, provincial health card or passport or any similar record for personal identification. For organizations, the model rule requires the incorporating document of the organization, or a confirmation from a government registry as to the existence and name of the organization, including the name of its directors and officers, or a copy of the organization's constating document(s).

Draft Regulations

Members of the legal profession who receive \$3000 or more from a client, except for funds received from a financial entity or public body, would have to identify clients in the following ways.

1. If the client is **a person**, the lawyer or notary would have to refer to a valid original of a birth certificate, driver's license, provincial health insurance card, passport or similar document at the time of the transaction.
2. If the person is not physically present, the lawyer or notary would have to identify the client at the time of the transaction through combinations of the following methods, the information from which must be consistent:
 - a) Referring to an independent and reliable identification product ("identification product") based on personal information in respect of the person and a Canadian credit history of the person of at least six month's duration,
 - b) Confirming the person's name, address and date of birth by referring to a credit file in Canada in respect of that person, after receiving the person's authorization, that has been in existence for at least six months;
 - c) Obtaining an attestation from a commissioner for oaths in Canada or guarantor in Canada (see **Appendix 1**);
 - d) Confirming that a cheque drawn by the person on a deposit account of a Canadian financial entity has been cleared, or
 - e) Confirming that the person has a deposit account with a Canadian financial entity.
3. The required combinations are:
 - identification product and attestation;
 - identification product and cleared cheque;
 - identification product and confirmation of deposit account;
 - credit file and attestation;
 - credit file and cleared cheque;

credit file and confirmation of deposit account;
attestation and cleared cheque; or
attestation and confirmation of deposit account.

4. An agent, such as another lawyer or any other reliable person, could provide the above information if the lawyer or notary has an agreement with the agent for such a purpose.

Question 2A: The draft model rule makes no distinction between in-person transactions and those in which the client is not present. The draft regulations prescribe particular methods for verifying the identity of a client with whom the lawyer or notary is not dealing in person. Are more detailed requirements necessary in such situations and if so, what should they be? Are the requirements in the draft regulations workable?

5. If the client is **a corporation**, a lawyer or notary would have to confirm its existence and ascertain its name and address and the names and addresses of its directors by referring to a certificate of corporate status, annual filing record under provincial securities legislation or other record that ascertains its existence as a corporation. The existence of the corporation would have to be confirmed within 30 days of the transaction.
6. For **an organization other than a corporation**, the lawyer or notary would have to confirm its existence by referring to a partnership agreement, articles of association or other record that confirms its existence. The existence of the organization would have to be confirmed within 30 days of the transaction.
7. At the time the existence of an organization is confirmed, the lawyer or notary would have to take reasonable measures* to obtain:
 - a) For corporations, the name and occupation of all directors and the name, address and occupation of all persons who own/control directly or indirectly 25% of the shares.

- b) For organizations other than corporations, the name, address and occupation of all persons who own/control directly or indirectly 25% or more of the organization.

* The draft regulations do not define “reasonable measures.” The Federation has been advised that guidance will be provided from FINTRAC² on the concept of “reasonable measures”.

Question 2B: Would a requirement to ascertain the names, addresses and occupations of directors and those owning or controlling 25% of the shares of a corporation or other organization pose any practical difficulties?

Question 2C: Is a 30-day period for confirming the existence of a corporation or other organization reasonable?

- 8. When confirming the existence of a not-for-profit organization a lawyer or notary would have to determine whether it is a registered charity or solicits charitable financial donations.

Question 2D: Would such a requirement present any practical difficulties?

- 9. Unless the lawyer or notary has doubts about the veracity of the previously obtained client information, he or she would not be required to re-identify existing clients, even if the client is engaging the lawyer or notary on another legal matter.

² FINTRAC is the Financial Transactions and Reports Analysis Centre of Canada and receives, analyzes, assesses and discloses financial intelligence on suspected money laundering, terrorist financing, and threats to the security of Canada.

10. Exemptions from the client identification requirements would include:

- a) instances where the organization 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 exchanged that is prescribed by section 3201 of the Income Tax Regulations and operates in a country that is a member of the FATF³; or
- b) instances where the organization is a subsidiary of a public body or a corporation referred to in b. and its financial statements are consolidated with the financial statements of that public body or corporation.

Question 2E: Are these exemptions appropriate? Are they sufficient?

RECORD KEEPING REQUIREMENTS

Question 3: What records relating to client identification should lawyers and notaries be required to maintain and for what period of time?

Model Rule

The Federation's model rule requires lawyers and notaries to keep a copy of the government-issued personal identification, such as a driver's license, birth certificate, provincial health card or passport. For organizations, the model rule requires confirmation from a government registry, if applicable, as to the existence and name of the organization, including the name of its directors and officers, or a copy of the organization's constating document(s). The documents are to be kept for the duration of the relationship with the client and for as long as is necessary to fulfill the requirements of the retainer, but in no event less than six years.

³ The Financial Action Task Force (FATF) is an inter-governmental body whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing.

Draft Regulations

Various records would be required to be kept for a period of five years, and most are required to include the client identification information described above. The various records are numbered for ease of reference.

1. A lawyer or notary would have to keep a **“receipt of funds record” (record #1)**, a defined term in the regulations, when he or she has received \$3000 or more. This record may already exist in part within the law office but it would have to include the following information:
 - a) name, address and birth date of the person providing the funds, if a person, the nature of the person’s principal business or occupation,
 - b) if an entity, the address and nature of the entity’s principal business, date of the transaction,
 - c) account number affected by the transaction, type of account, full name of the person or entity who holds the account, monetary currency of the transaction,
 - d) purpose and details of the transaction,
 - e) if cash, how the funds are received,
 - f) amount and currency of the funds received

2. If the client is a corporation, a lawyer or notary would also have to include with the receipt of funds record a copy of the part of the official corporate records that contains any provisions relating to the power to bind the corporation in respect of the transactions with the lawyer or notary.

3. The regulations indicate that the receipt of funds record is to contain the information specified if the information is not readily obtainable from other records that the lawyer or notary keeps under the regulations.

Question 3A: Is the information required for the receipt of funds record readily available in all cases? Would there, for example, be any impediments to obtaining the number of an affected account or the full name of the person holding the account?

Question 3B: Is the requirement to include a copy of the official corporate records relating to the power to bind the corporation to the transaction workable?

4. For personal identification, a lawyer or notary would have to keep **a record** of the following information or keep the required document, as the case may be (**record #2**):
 - a) for the birth certificate, driver's license, provincial health insurance card, passport or similar document, the type and reference number of the record and the place issued,
 - b) for the cleared cheque, the name of the financial entity and account number,
 - c) for confirmation of the deposit account, the name of the financial entity, number of the account and the date of the confirmation,
 - d) for the identification product, its name, the entity offering it, the search reference number and the date it was used to ascertain identity,
 - e) for the credit file, the name of the company and date consulted,
 - f) for the attestation, the attestation.

5. For corporate/organizational identity where the identifying document is in electronic form, a lawyer or notary would have to keep a record that sets out the corporation's registration number, the type of record referred to and the source of the electronic version of the record (a similar record is required for other organizations); where the above information has been ascertained by referring to a paper copy of a record, a lawyer or notary would have to keep the record or a copy of it (**record #3**).

6. At the time the existence of an organization is confirmed, if the lawyer or notary has obtained the information about direct or indirect ownership/control, he or she would have to record it OR where the lawyer or notary is unable to obtain the above information, he or she would have to keep a record of the reasons the information could not be obtained (**record #4**).

7. Where the entity is a not-for-profit organization a lawyer or notary would have to keep a record (**record #5**) of whether it is a registered charity or solicits charitable financial donations.

8. The records would have to be kept in a form that it can be provided to an authorized person within 30 days after a request is made to examine them under section 62 of the Act. Section 62⁴ gives FINTRAC authority to examine records of those who are subject to the regulations. The application of this section to the legal profession would create serious problems for the protection of solicitor and client privilege and confidentiality. As s. 62 effectively authorizes warrantless searches of the offices of lawyers and notaries, it does not comply with the stringent requirements established by the Supreme Court in *Lavallee, Rackel & Heintz v. Canada*. It is the view of the Federation that this provision is unconstitutional.

⁴ **62.** (1) An authorized person may, from time to time, examine the records and inquire into the business and affairs of any person or entity referred to in section 5 for the purpose of ensuring compliance with Part 1, and for that purpose may

(a) at any reasonable time, enter any premises, other than a dwelling-house, in which the authorized person believes, on reasonable grounds, that there are records relevant to ensuring compliance with Part 1;

(b) use or cause to be used any computer system or data processing system in the premises to examine any data contained in or available to the system;

(c) reproduce any record, or cause it to be reproduced from the data, in the form of a printout or other intelligible output and remove the printout or other output for examination or copying; and

(d) use or cause to be used any copying equipment in the premises to make copies of any record.

Assistance to Centre

(2) The owner or person in charge of premises referred to in subsection (1) and every person found there shall give the authorized person all reasonable assistance to enable them to carry out their responsibilities and shall furnish them with any information with respect to the administration of Part 1 or the regulations under it that they may reasonably require.

Question 3C: What other issues may be of concern with respect to the record keeping requirements?

COMPLIANCE MEASURES

Question 4: What type of compliance provisions, including review or audit requirements, should be applicable to the client identification regime?

Model Rule

The model rule does not include compliance provisions. It is intended to be basis for a law society regulation to which lawyers and notaries would be subject as members of a particular law society. Existing audit, review and investigation functions within each law society as well as consequences of breaches would apply.

Draft Regulations

The draft regulations would require lawyers, notaries or law firms to establish detailed compliance and review programs.

1. A lawyer, notary or law practice would have to implement its own program to ensure compliance with the regulations by
 - a) designating a person in the law practice - who where the program is being implemented by a person may that person (e.g. a sole practitioner) - who is to be responsible for the implementation of the program;
 - b) developing and applying written compliance policies and procedures that are approved by the law practice's managing partner, as the case may be, and are kept up to date;
 - c) assessing and documenting, in a manner that is appropriate for a law practice, the risk of money laundering or terrorist financing, taking into consideration
 - i. the clients and the business relationships of the law practice,

- ii. the services and service delivery methods of the law practice;
 - iii. the geographic location of the activities of the lawyer; and
 - iv. any other relevant factor;
 - d) if the law practice has employees, agents or other persons authorized to act on its behalf, developing and maintaining a written ongoing compliance training program for those employees, agents or persons;
 - e) instituting and documenting a review of the policies and procedures, the risk assessment and the training program for the purpose of testing their effectiveness, which review is required to be carried out every two years by an internal or external auditor of law practice, or by the law practice itself if it does not have such an auditor.
2. For the purposes of the compliance program, the law practice would have to report the following in written form to the managing partner, as the case may be, 30 days after the assessment described above:
- a) the findings of the review referred to in e above;
 - b) any updates to the policies and procedures made within the reporting period; and
 - c) the status of the implementation of those policies and procedures and their updates.
3. If a law practice considers the risk of money laundering or terrorist financing in the course of its activities to be high, the lawyer, notary or law practice would have to develop and apply written policies and procedures for taking reasonable measures to keep client identification information up to date mitigating the risks.

Question 4A: Do the proposed requirements for lawyers, notaries and law firms to develop internal compliance programs and perform risk assessments and audits raise concerns?

Attachments:

Appendix 1

Tab 1 Federation of Law Societies draft model rule on client identification and verification requirements

Tab 2 Consolidation of regulations applicable to the legal profession

ATTESTATION

- A. The commissioner of oaths in Canada or the guarantor in Canada must attest that he or she has seen one of the documents referred to in paragraph 2, page 4. The attestation must be produced on a legible photocopy of the document (if such use of the document is not prohibited by the applicable provincial law) and must include
1. the name, profession and address of the person providing the attestation;
 2. the signature of the person providing the attestation; and
 3. the type and number of the identifying document provided by the person.
- B. A guarantor is a person employed in one of the following professions in Canada:
1. dentist;
 2. medical doctor;
 3. chiropractor;
 4. judge;
 5. magistrate;
 6. lawyer;
 7. notary (in Quebec);
 8. notary public;
 9. optometrist;
 10. pharmacist;
 11. professional accountant (APA [Accredited Public Accountant], CA [Chartered Accountant], CGA [Certified General Accountant], CMA [Certified Management Accountant], PA [Public Accountant] or RPA [Registered Public Accountant]);
 12. professional engineer (P.Eng. [Professional Engineer, in a province other than Quebec] or Eng. [Engineer, in Quebec]); or
 13. veterinarian.

Model Rule/By-law on Client Identification and Verification Requirements – DRAFT 5

Règlement type sur les exigences d'identification et de vérification de l'identité des clients – ÉBAUCHE 5

Prepared by the Law Societies of Upper Canada and British Columbia for the Anti-Money Laundering Committee

Préparé par le Barreau du Haut-Canada et le Barreau de la Colombie-Britannique pour le Comité sur l'anti-blanchiment d'argent

Presented to Council
January 14, 2006

Présenté au Conseil
14 janvier 2006

The Model Rule

In this Rule/By-Law,

“financial institution” means

- a) an authorized foreign bank within the meaning of section 2 of the *Bank Act* in respect of its business in Canada or a bank to which the *Bank Act* applies,
- b) a cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial Act,
- c) an association that is regulated by the *Cooperative Credit Associations Act*,
- d) a company to which the *Trust and Loan Companies Act* applies,
- e) a trust company or loan company regulated by a provincial Act, or
- f) a department or agent of Her Majesty in right of Canada or of a province where the department or agent accepts deposit liabilities in the course of providing financial services to the public;

“funds” means cash, currency, securities and negotiable instruments or other financial instruments that indicate the person’s title or interest in them;

“organization” means a body corporate,

Le règlement type

Dans le présent règlement :

« institution financière » signifie :

- a) une banque étrangère autorisée au sens de l'article 2 de la *Loi sur les banques* à l'égard de ses activités au Canada ou une banque assujettie à la *Loi sur les banques*;
- b) une société coopérative de crédit ou une caisse populaire réglementée sous le régime d'une loi provinciale;
- c) une association réglementée sous le régime de la *Loi sur les associations coopératives de crédit*;
- d) une société assujettie à la *Loi sur les sociétés de fiducie et de prêt*,
- e) une société de fiducie ou une société de prêt réglementée sous le régime d'une loi provinciale; ou
- f) un ministère ou un mandataire de Sa Majesté du chef du Canada ou d'une province où le ministère ou le mandataire accepte des sommes en dépôt lorsqu'il fournit des services financiers au public;

« fonds » signifie les espèces, la monnaie, les titres et effets négociables ou autres instruments financiers qui indiquent le titre de la personne ou ses intérêts dans ceux-ci;

« organisme » signifie une personne morale, une

partnership, fund, trust, co-operative or an unincorporated association;

“public body” means

- a) a department or agent of Her Majesty in right of Canada or of a province,
- b) an incorporated city, town, village, metropolitan authority, township, district, county, rural municipality or other incorporated municipal body or an agent of any of them, or
- c) an organization that operates a public hospital and that is designated by the Minister of National Revenue as a hospital under the Excise Tax Act or an agent of the organization.

société de personnes, un fonds, une société de fiducie, une coopérative ou une association non constituée en personne morale;

« organisme public » signifie :

- a) un ministère ou mandataire de Sa Majesté du chef du Canada ou d’une province;
- b) une ville, un village, une autorité métropolitaine, un canton, un district, un comté ou une municipalité rurale constitué en personne morale, ou un autre organisme municipal constitué en personne morale, ou un mandataire de ceux-ci; ou
- c) un organisme qui exploite un hôpital public et qui est désigné comme administration hospitalière par le ministre du Revenu national aux termes de la Loi sur la taxe d’accise, ou tout mandataire de celui-ci.

1. A lawyer is subject to the client identification and verification requirements in this Rule/By-Law when the lawyer engages in, on behalf of a client, or gives instructions on behalf of a client to undertake the following activities:

- a) Receiving, paying or transferring funds other than funds;
 - i. received from a financial institution or public body,
 - ii. received from a peace officer, law enforcement agency or other agent of the Crown acting in his or her official capacity,
 - iii. paid pursuant to a court order, or to pay a fine or penalty, or
 - iv. received for professional fees,

1. Un juriste est assujéti aux exigences d’identification et de vérification de l’identité des clients en vertu du présent règlement lorsque le juriste se livre, pour le compte d’un client, aux activités suivantes, ou donne des directives pour le compte d’un client pour entreprendre les activités suivantes :

- a) la réception, le paiement, ou le virement de fonds autres que des fonds :
 - i. reçus d’une institution financière ou d’un organisme public;
 - ii. reçus d’un agent de la paix, d’un organisme chargé de l’application de la loi ou autre mandataire de la Couronne dans l’exercice officiel de ses fonctions;
 - iii. payés conformément à une ordonnance de la cour ou pour payer une amende ou une sanction; ou
 - iv. reçus pour des honoraires

disbursements, expenses or bail, as permitted in [Rule/By-Law XX], and

b) Purchasing or selling securities, real properties or business assets or entities.

2.(1) Subject to subrule (2), when a lawyer is engaged in the activities described in Rule/By-Law 1., including non-face to face transactions, the lawyer is required to:

a) Obtain all information required to provide the client with the services for which the lawyer is retained, which information shall include:

- i. the client's full name;
- ii. the client's business address and business telephone number;
- iii. if the client is an individual, the client's home address and home telephone number;
- iv. where the client is an organization, the organization's incorporation or business identification number and place of issue of its incorporation or business identification number, if applicable;
- v. where the client is acting for or representing a third party beneficiary or a principal, information about the beneficiary or principal as set out in (i) through (iv) above, as applicable;

and may include, but is not limited to,
vi. where the client is an individual, the client's occupation(s);

professionnels, débours, dépenses ou cautions, tel que permis par le [règlement XX];
et

b) l'achat ou la vente de titres, de biens-fonds ou de l'actif d'une entreprise ou d'entités;

2.(1) Sous réserve du paragraphe (2), lorsqu'un juriste se livre aux activités décrites aux paragraphes 1., incluant les transactions qui ne sont pas en face-à-face, le juriste doit :

a) obtenir tous les renseignements requis pour fournir au client les services pour lesquels le juriste est engagé, lesquels renseignements doivent inclure :

- i. le nom complet du client;
- ii. l'adresse et le numéro de téléphone d'entreprise du client;
- iii. si le client est un particulier, l'adresse et le numéro de téléphone du domicile du client;
- iv. si le client est un organisme, le numéro de constitution ou d'identification de l'entreprise de l'organisme et le lieu de délivrance du certificat de constitution ou du numéro d'identification de l'entreprise de l'organisme, le cas échéant;
- v. si le client agit pour ou représente un tiers bénéficiaire ou un mandant, les renseignements concernant le bénéficiaire ou le mandant, tels que prévus aux alinéas (i) à (iv) ci-dessus, selon le cas; et peuvent inclure, mais sans s'y limiter :
- vi. si le client est un particulier, le ou les emplois du client;

vii. where the client is an organization, the general nature of the type of business(es) engaged in by the client, where applicable, and the identity, position and contact information for individuals authorized to give instructions with respect to the organization.

vii. si le client est un organisme, la nature générale du type de commerce(s) exploité(s) par le client, le cas échéant, ainsi que l'identité, le poste et les coordonnées des personnes autorisées à donner des directives relatives à l'organisme.

b) Take reasonable steps to verify the identity of the client and, where appropriate, the third party beneficiary or principal, using what the lawyer reasonably considers to be reliable, independent source documents, data or information, which steps may include the following:

b) prendre toutes mesures raisonnables pour vérifier l'identité du client et, le cas échéant, l'identité du tiers bénéficiaire ou du mandant, en se servant de ce que le juriste peut raisonnablement considérer comme étant des documents, des données ou des informations de source fiable et indépendante, lesquelles mesures peuvent inclure :

i. where the client or third party beneficiary or principal is an individual, obtaining government-issued identification, such as a driver's license, birth certificate, provincial or territorial health card, passport or any similar record, and keep a photocopy of the record;

i. si le client ou le tiers bénéficiaire ou le mandant est un particulier, obtenir une pièce d'identité émise par le gouvernement, telle qu'un permis de conduire, un acte de naissance, une carte d'assurance maladie provinciale ou territoriale, un passeport ou autre document semblable, et conserver une photocopie du document;

ii. where the client or third party beneficiary or principal is an organization such as a corporation or society that is created pursuant to legislative authority, obtaining confirmation from a government registry as to the existence, name and address of the organization, including the names of its directors and officers, such as

ii. si le client ou le tiers bénéficiaire ou le mandant est un organisme, tel qu'une personne morale ou une société constituée conformément à une autorisation légale, obtenir dans un registre du gouvernement une confirmation de l'existence, du nom et de l'adresse de l'organisme, incluant le nom de ses administrateurs et de ses membres de la direction, telle que :

(A) the certificate of corporate status,
(B) a record that the organization is

(A) le certificat de constitution de l'organisme;
(B) un document que l'organisme est

required to file annually under applicable legislation, or
(C) any other similar record that ascertains its existence as an organization.

tenu de déposer annuellement aux termes de la loi; ou
(C) tout autre document semblable qui fait foi de son existence en tant qu'organisme;

iii. where the client or third party beneficiary or principal is an organization other than a corporation or society, such as a trust or partnership which is not registered in any government registry, obtaining a copy of the organization's constating document(s), such as

iii. si le client ou le tiers bénéficiaire ou le mandant est un organisme, autre qu'une personne morale ou une société, tel qu'une société de fiducie ou une société de personnes qui n'est enregistrée dans aucun registre du gouvernement, obtenir une copie de l'acte constitutif ou des actes constitutifs de l'organisme, tel que :

(A) a trust or partnership agreement,
(B) articles of association, or
(C) any other similar record that ascertains its existence as an organization.

(A) une convention de fiducie ou de société;
(B) un acte d'association; ou
(C) tout autre document semblable qui fait foi de son existence en tant qu'organisme.

c) Retain a record of the information obtained through paragraphs (a) and (b) for the duration of the lawyer and client relationship and for as long as is necessary for the purpose of providing service to the client, but in any event for a period of at least six years following completion of the work for which the lawyer was retained. This requirement applies to all required records.

c) conserver un dossier des renseignements obtenus en vertu des paragraphes a) et b) pendant toute la durée de la relation du juriste avec le client, et aussi longtemps que nécessaire pour fournir des services au client, mais quoi qu'il en soit, pour une période d'au moins six ans suivant l'achèvement du travail pour lequel le juriste a été engagé. Cette exigence s'applique à tous les documents requis.

2.(2) Where the client or third party beneficiary or principal referred to in subrule (1) is a financial institution, public company or public body, the lawyer is not required to comply with the requirements of subrule (1)(a)(iv) or (b).

2. (2) Lorsque le client ou tiers bénéficiaire ou le mandant prévu au paragraphe (1) est une institution financière, une société ouverte ou un organisme public, le juriste n'est pas tenu de respecter les exigences de l'alinéa (1)(a)(iv) ou (b).

3. If a lawyer engaged in the activities

3. Si, en obtenant les renseignements et en

described in Rule/By-Law 1., including non-face to face transactions, in the course of obtaining the information and taking the steps required in subrule 2(1)(a) and (b) reasonably suspects that he or she is or would be assisting a client in dishonesty, fraud, crime or illegal conduct, the lawyer must withdraw from representation of the client. The lawyer should record the results of his or her reasonable suspicions.

4. The requirements in Rule/By-Law 2.(1) (a) and (b) apply only to matters, including new matters for existing client, for which the lawyer is retained by a client after this Rule/By-Law is adopted and in force.

5. The requirements in Rule/By-Law 3 apply to:

- a) current matters for which a lawyer has been retained by a client before this rule is adopted and in force, and
- b) matters, including new matters for existing clients, for which a lawyer is retained by a client after this rule is adopted and in force.

prenant les mesures requises en vertu des paragraphes 2(1)(a) et (b), un juriste qui se livre aux activités décrites aux paragraphes 1., incluant les transactions qui ne sont pas en face-à-face, a des raisons valables de soupçonner qu'il contribue ou pourrait contribuer à un acte malhonnête, une fraude, un crime ou à la conduite illégale d'un client, le juriste doit cesser de représenter le client. Le juriste devrait consigner les résultats de ses soupçons fondés sur un registre.

4. Les exigences prévues aux paragraphes 2.(1) (a) et (b) s'appliquent uniquement aux dossiers, incluant des nouveaux dossiers afférents à un client existant, pour lesquels le juriste est engagé par le client après l'adoption et l'entrée en vigueur du présent règlement.

5. Les exigences prévues au paragraphe 3 s'appliquent aux :

- a) dossiers actuels pour lesquels un juriste a été engagé par un client avant l'adoption et l'entrée en vigueur du présent règlement; et
- b) dossiers, incluant des nouveaux dossiers afférents à des clients existants, pour lesquels le juriste est engagé par le client après l'adoption et l'entrée en vigueur du présent règlement.

FEDERATION OF LAW SOCIETIES OF CANADA

Consolidation of Provisions Applicable To The Legal Profession In Proposed Regulations
(Amendments to *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*)

Introductory Note:

New proposed Regulations affecting the legal profession have been prepared by the Department of Finance. These Regulations amend current Regulations, but must also be read with (as they incorporate) other recent amendments to the Regulations adopted by the government and which come into force in June 2008. This consolidation includes those regulations relevant to the legal profession and contains provisions from:

- the current *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*,
- amendments to those Regulations made by *Regulations Amending Certain Regulations Made Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (2007-1)* Registration SOR/2007-122 June 7, 2007 (published in Part II of the Canada Gazette, June 27, 2007), which generally come into force June 23, 2008, and
- further proposed amendments to those regulations made by *Regulations Amending Certain Regulations Made Under The Proceeds Of Crime (Money Laundering) And Terrorist Financing Act (2007-2)* pre-published in Part I of the Canada Gazette on June 30, 2007

As a matter of information, a web link is provided to a separate set of proposed Regulations, also pre-published on June 30, 2007, that includes new administrative penalties for breaches of the Act and regulations:

<http://canadagazette.gc.ca/part1/2007/20070630/html/regle5-e.html>

PROCEEDS OF CRIME (MONEY LAUNDERING) AND TERRORIST FINANCING REGULATIONS

INTERPRETATION

1. ...

(2) The following definitions apply in these Regulations.

"Act" means the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.
(*Loi*)

"cash" means coins referred to in section 7 of the *Currency Act*, notes issued by the Bank of Canada pursuant to the *Bank of Canada Act* that are intended for circulation in Canada or coins or bank notes of countries other than Canada. (*espèces*)

"financial entity" means an authorized foreign bank within the meaning of section 2 of the *Bank Act* in respect of its business in Canada or a bank to which that Act applies, a cooperative credit society, savings and credit union or *caisse populaire* that is regulated by a provincial Act, an association that is regulated by the *Cooperative Credit Associations Act*, a company to which the *Trust and Loan Companies Act* applies and a trust company or loan company regulated by a provincial Act. It includes a department or agent of Her Majesty in right of Canada or of a province where the department or agent is carrying out an activity referred to in section 45. (*entité financière*)

"funds" means cash, currency or securities, or negotiable instruments or other financial instruments, in any form, that indicate a person's or an entity's title or interest in them.
(*fonds*)

"legal firm" means an entity that is engaged in the business of providing legal services to the public (*cabinet juridique*)

"public body" means

(a) any department or agent of Her Majesty in right of Canada or of a province;

(b) an incorporated city, town, village, metropolitan authority, township, district, county, rural municipality or other incorporated municipal body or an agent of any of them; and

(c) an organization that operates a public hospital and that is designated by the Minister of National Revenue as a hospital authority under the *Excise Tax Act*, or any agent of such an organization. (*organisme public*)

"receipt of funds record" means, in respect of a transaction in which an amount of funds is received, a record that contains the following information:

(a) if the information is not readily obtainable from other records that the recipient keeps and retains under these Regulations, the name of the person or entity from whom the amount is in fact received and

- (i) where the amount is received from a person, their address and date of birth and the nature of their principal business or their occupation, and
 - (ii) where the amount is received from an entity, their address and the nature of their principal business;
- (b) the date of the transaction;
- (c) the number of any account that is affected by the transaction, and the type of that account, the full name of the person or entity that is the account holder and the currency in which the transaction is conducted;
- (d) the purpose and details of the transaction, including other persons or entities involved and the type and form of the transaction;
- (e) if the funds are received in cash, whether the cash is received by armoured car, in person, by mail or in any other way; and
- (f) the amount and currency of the funds received. (*relevé de réception de fonds*)

"securities dealer" means a person or entity that is authorized under provincial legislation to engage in the business of dealing in securities or any other financial instruments or to provide portfolio management or investment advising services. (*courtier en valeurs mobilières*)

"senior officer" , in respect of an entity, means, if applicable,

- (a) a director of the entity who is one of its full-time employees;
- (b) the entity's chief executive officer, chief operating officer, president, secretary, treasurer, controller, chief financial officer, chief accountant, chief auditor or chief actuary, or any person who performs any of those functions; or
- (c) any other officer who reports directly to the entity's board of directors, chief executive officer or chief operating officer. (*cadre dirigeant*)

"signature" includes an electronic signature. (*signature*)

TRANSACTIONS CONDUCTED BY EMPLOYEES OR AGENTS

6. (1) Where a person who is subject to the requirements of these Regulations is an employee of a person or entity referred to in any of paragraphs 5(a) to (l) of the Act⁵, it is the employer rather than the employee who is responsible for meeting those requirements.

(2) Where a person or entity who is subject to the requirements of these Regulations, other than a life insurance broker or agent, is an agent of or is authorized to act on behalf of another person or entity referred to in any of paragraphs 5(a) to (l) of the Act, it is that other person or entity rather than the agent or the authorized person or entity, as the case may be, that is responsible for meeting those requirements.

⁵ These paragraphs include lawyers and Quebec notaries, through the Regulations.

7. For the purposes of these Regulations, a person acting on behalf of their employer is considered to be acting on behalf of a third party except when the person is depositing cash into the employer's business account.

...

INFORMATION ON DIRECTORS OR PARTNERS OR ON PERSONS WHO OWN OR CONTROL 25 PER CENT OR MORE OF A CORPORATION OR OTHER ENTITY

11.1.(1) Every financial entity or securities dealer that is required to confirm the existence of an entity in accordance with these Regulations when it opens an account in respect of that entity, every life insurance company, life insurance broker or agent or legal counsel or legal firm that is required to confirm the existence of an entity in accordance with these Regulations and every money services business that is required to confirm the existence of an entity in accordance with these Regulations when it enters into an ongoing electronic funds transfer, fund remittance or foreign exchange service agreement with that entity, or a service agreement for the issuance or redemption of money orders, traveller's cheques or other similar negotiable instruments, shall, at the time the existence of the entity is confirmed, take reasonable measures to obtain and, if obtained, keep a record of

(a) where the confirmation is in respect of a corporation, 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 per cent or more of the shares of the corporation; and

(b) where the confirmation is in respect of an entity other than a corporation, the name, address and occupation of all persons who own or control, directly or indirectly, 25 per cent or more of the entity.

(2) Where the person or entity is not able to obtain the information referred to in subsection (1), the person or entity shall keep a record that indicates the reason why the information could not be obtained.

(3) Where the entity the existence of which is being confirmed by a person or entity under subsection (1) is a not-for-profit organization, the person or entity shall determine, and keep a record that sets out, whether that entity is

(a) a charity registered with the Canada Revenue Agency under the *Income Tax Act*; or

(b) an organization, other than one referred to in paragraph (a), that solicits charitable financial donations from the public.

...

LEGAL COUNSEL AND LEGAL FIRMS

33.3.(1) Subject to subsection (2), every legal counsel and every legal firm is subject to Part 1 of the Act when they engage in any of the following activities on behalf or any person or entity:

(a) receiving or paying funds, other than those received or paid in respect of professional fees, disbursements, expenses or bail, on behalf of any person or entity; or

(b) giving instructions in respect of any activity referred to in paragraph (a).

(2) Subsection (1) does not apply in respect of legal counsel when they engage in any of the activities referred to in that subsection on behalf of their employer.

33.4. Subject to subsection 62(2), every legal counsel and every legal firm shall, when engaging in an activity described in section 33.3, keep the following records:

(a) a receipt of funds record in respect of every amount of \$3,000 or more that they receive in the course of a single transaction, unless the amount is received from a financial entity or a public body; and

(b) where the receipt of funds record is in respect of a client that is a corporation, a copy of the part of the official corporate records that contains any provision relating to the power to bind the corporation in respect of transactions with the legal counsel or legal firm.

...

LEGAL COUNSEL AND LEGAL FIRMS

59.4. Subject to subsection 62(2) and section 63, every legal counsel and every legal firm shall, in respect of a transaction for which a record is required to be kept under subsection 33.4,

(a) in accordance with subsection 64(1), ascertain the identity of every person who conducts the transaction;

(b) in accordance with section 65, confirm the existence of and ascertain the name and address of every corporation on whose behalf the transaction is conducted and the names of the corporation's directors; and

(c) in accordance with section 66, confirm the existence of every entity, other than a corporation, on whose behalf the transaction is conducted.

...

EXCEPTIONS TO RECORD-KEEPING AND ASCERTAINING IDENTITY

62.(1) Section 54, 54.1, 54.2, 55, 57, 57.1 and 60 do not apply in respect of

(a) the opening of a business account in respect of which the financial entity, the securities dealer or the casino, as the case may be, has already ascertained the identity of at least three persons who are authorized to give instructions in respect of the account;

(b) the opening of an account for the sale of mutual funds where there are reasonable grounds to believe that identity has been ascertained in accordance with subsection 64(1) by a securities dealer in respect of

i. the sale of the mutual funds for which the account has been opened, or

ii. a transaction that is part of a series of transactions that includes that sale;
or

(c) a person who already has an account with the financial entity, the securities dealer or the casino, as the case may be.

(2) Sections 14, 14.1, 19, 23, 33.2 and 33.4, subsection 39.3(1) and sections 54, 54.2, 55, 56, 56.1, 57, 57.1 59.3, 59.4 and 59.5 do not apply in respect of

(a) the purchase of an exempt policy as defined in subsection 306(1) of the *Income Tax Regulations*, as it read on May 1, 1992;

(b) the purchase of a group life insurance policy that does not provide for a cash surrender value or a savings component;

(c) the purchase of an immediate or deferred annuity that is paid for entirely with funds that are directly transferred from a registered pension plan or from a pension plan that is required to be registered under the *Pension Benefits Standards Act, 1985*, or similar provincial legislation;

(d) the purchase of a registered annuity policy or a registered retirement income fund;

(e) the purchase of an immediate or deferred annuity that is paid for entirely with the proceeds of a group life insurance policy;

(f) a transaction that is part of a reverse mortgage or of a structured settlement;

(g) the opening of an account for the deposit and sale of shares from a corporate demutualization or the privatization of a Crown corporation;

(h) the opening of an account in the name of an affiliate of a financial entity, if that affiliate carries out activities that are similar to those of persons and entities referred to in paragraphs 5(a) and (g) of the Act;

(i) the opening of a registered plan account, including a locked in retirement plan account, a registered retirement savings plan account and a group registered retirement savings plan account;

(j) the opening of an account established pursuant to the escrow requirements of a Canadian securities regulator or Canadian stock exchange or any provincial legislation;

(k) the opening of an account where the account holder or settlor is a pension fund that is regulated by or under an Act of Parliament or of the legislature of a province;

(l) the opening of an account in the name of, or in respect of which instructions are authorized to be given by, a financial entity, a securities dealer or a life insurance company or by an investment fund that is regulated under provincial securities legislation;

(m) instances where the entity in respect of which a client information record is required to be kept 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;

(n) instances where the entity in respect of which a client information record is required to be kept is a subsidiary of a public body or a corporation referred to in paragraph (m) and its financial statements of the entity are consolidated with the financial statements of that public body or corporation; or

(o) The opening of an account that is opened solely in the course of providing customer accounting services to a securities dealer.

(3) In respect of a group plan account, other than a group plan account referred to in subsection (2), a financial entity, securities dealer, life insurance company or life insurance broker or agent is not required to ascertain the identity of, or keep a signature card in respect of, any individual member of the group plan or determine whether they are a politically exposed foreign person if

(a) the member's contributions are made by the sponsor of the plan or by means of payroll deductions; and

(b) the existence of the plan sponsor has been confirmed in accordance with section 65 or 66.

63.(1) Where a person has ascertained the identity of another person in accordance with section 64, the person is not required to subsequently ascertain that same identity again if they recognize that other person.

(1.1) Subsection (1) does not apply where the person has doubts about the information collected.

(2) Where a person has confirmed the existence of a corporation and ascertained its name and address and the names of its directors in accordance with section 65, the person is not required to subsequently confirm or ascertain that same information.

(3) Where a person has confirmed the existence of an entity other than a corporation in accordance with section 66, the person is not required to subsequently confirm that same information.

(4) Despite paragraphs 54(1)(d) and 54.1(1)(b), subsections 56(3), 57(3) and 59(2) and paragraphs 59.1(b), 59.2(1)(b), 60(e) and 61(c), the names of a corporation's directors need not be ascertained if the corporation is a securities dealer.

(5) A person or entity that has determined that a person is a politically exposed foreign person in accordance with section 54.2, 56.1 or 57.1 or subsection 59(5) is not required to subsequently determine if that same person is a politically exposed foreign person.

MEASURES FOR ASCERTAINING IDENTITY

64.(1) In the cases referred to in sections 53, 53.1, 54, 55, 56, 57, 59, 59.1, 59.2, 59.3, 59.4, 59.5, 60 and 61, the identity of a person shall be ascertained, at the time referred to in subsection (2) and in accordance with subsection (3),

(a) by referring to the person's birth certificate, driver's licence, provincial health insurance card (if such use of the card is not prohibited by the applicable provincial law), passport or other similar document; or

(b) if the person is not physically present when the account is opened, the credit card application is submitted, the trust is established, the client information record is created or the transaction is conducted,

(i) by obtaining the person's name, address and date of birth and

(A) confirming that one of the following entities has identified the person in accordance with paragraph (a), namely,

(I) an entity, referred to in any of paragraphs 5(a) to (g) of the Act, that is affiliated with the entity ascertaining the identity of the person,

(II) an entity that carries on activities outside Canada similar to the activities of a person or entity referred to in any of paragraphs 5(a) to (g) of the Act and that is affiliated with the entity ascertaining the identity of the person, or

(III) an entity that is a member of the same association — being a central cooperative credit society within the meaning of section 2 of the *Cooperative Credit Associations Act* — as the entity ascertaining the identity of the person, and

(B) verifying that the name, address and date of birth in the record kept by that affiliated entity or that entity that is a member of the

same association corresponds to the information provided in accordance with these Regulations by the person, or

(ii) subject to subsection (1.3), by using one of the following combinations of the identification methods set out in Part A of Schedule 7, namely,

(A) methods 1 and 3,

(B) methods 1 and 4,

(C) methods 1 and 5,

(D) methods 2 and 3,

(E) methods 2 and 4,

(F) methods 2 and 5,

(G) methods 3 and 4, or

(H) methods 3 and 5.

...

(1.2) For the purposes of paragraphs (1)(b)(i) and (1.1)(b)(i), an entity is affiliated with another entity if one of them is wholly-owned by the other or both are wholly-owned by the same entity.

(1.3) A combination of methods referred to in subparagraph (1)(b)(ii) or (1.1)(b)(ii) or (iii) shall not be relied on by a person or entity to ascertain the identity of a person unless

(a) the information obtained in respect of that person from each of the two applicable identification methods is determined by the person or entity to be consistent; and

(b) the information referred to in paragraph (a) is determined by the person or entity to be consistent with the information in respect of that person, if any, that is contained in a record kept by the person or entity under these Regulations.

(2) The identity shall be ascertained

(a) in the cases referred to in paragraphs 54(1)(a), subsection 57(1) and 60(a), before any transaction other than an initial deposit is carried out on an account;

(b) in the cases referred to in section 53, paragraph 54(1)(b), subsection 59(1) and paragraphs 59.3(a), 59.4(a), 59.5, 60(b) and 61(b), at the time of the transaction;

(b.1) in the cases referred to in paragraph 53.1, before the transaction is reported as required under section 7 of the Act;

(b.2) in the cases referred to in paragraphs 54.1(a), before any credit card is activated;

(c) in the cases referred to in paragraphs 55(a), (d) and (e), within 15 days after the trust company becomes the trustee;

(d) in the cases referred to in subsection 56(1) and paragraph 61(a), within 30 days after the client information record is created;

(e) in the case referred to in section 59.1(a) and 59.2(1)(a), at the time of the transaction; and

(f) in the cases referred to in subsection 62(3), at the time a contribution in respect of an individual member of the group plan is made to the plan, if
(i) the member's contribution is not made as described in paragraph 63(3)(a), or
(ii) the existence of the plan sponsor has not been confirmed in accordance with section 65 or 66. paragraphs 59.1(a) and 59.2(1)(a), at the time of the transaction.

(3) Unless otherwise specified in these Regulations, only original documents that are valid and have not expired may be referred to for the purpose of ascertaining identity in accordance with paragraph (1)(a) or (1.1)(a).

64.1.(1) A person or entity required to take measures to ascertain identity under paragraph 64(1) or (1.1) may rely on an agent or mandatary to take the measures described in paragraph 64(1)(a) or (1.1)(a), respectively, only if that person or entity has entered into an agreement or arrangement, in writing, with that agent or mandatary for the purposes of ascertaining identity.

(2) A person or entity that enters into an agreement or arrangement referred to in subsection (1) must obtain from the agent the customer information obtained by the agent or mandatary under that agreement or arrangement.

...

65.(1) The existence of a corporation shall be confirmed and its name and address and the names of its directors shall be ascertained as of the time referred to in subsection (2), by referring to its certificate of corporate status, a record that it is required to file annually under the applicable provincial securities legislation or any other record that

ascertains its existence as a corporation. The record may be in paper form or in an electronic version that is obtained from a source that is accessible to the public.

- (2) The information referred to in subsection (1) shall be ascertained,
- (a) in the case referred to in paragraphs 54(1)(d) and 60(e), before any transaction other than the initial deposit is carried out on the account;
 - (a.1) in the case referred to in paragraph 54.1(b), before any credit card is issued on the account;
 - (b) in the cases referred to in paragraphs 55(b) and (d), within 15 days after the trust company becomes the trustee;
 - (c) in the cases referred to in subsections 56(3) and 59(2) and paragraph 61(c), within 30 days after the client information record is created;
 - (d) in the case referred to in subsection 57(3), within 30 days after the opening of the account; and
 - (e) in the cases referred to in paragraphs 59.1(b), 59.2(1)(b), 59.3(b), 59.4(b) and 59.5(b), within 30 days after the transaction.

(3) Where the information has been ascertained by referring to an electronic version of a record, the person or entity required to ascertain the information shall keep a record that sets out the corporation's registration number, the type of record referred to and the source of the electronic version of the record.

(4) Where the information has been ascertained by referring to a paper copy of a record, the person or entity required to ascertain the information shall retain the record or a copy of it.

66.(1) The existence of an entity, other than a corporation, shall be confirmed as of the time referred to in subsection (2), by referring to a partnership agreement, articles of association or other similar record that ascertains its existence. The record may be in paper form or in an electronic version that is obtained from a source that is accessible to the public.

- (2) The existence of the entity shall be confirmed
- (a) in the case referred to in paragraphs 54(1)(e) and 60(f), before any transaction other than the initial deposit is carried out on the account;
 - (a.1) in the case referred to in paragraph 54.1(c), before any credit card is issued on the account;
 - (b) in the cases referred to in paragraphs 55(c) and (d), within 15 days after the trust company becomes the trustee;
 - (c) in the cases referred to in subsections 56(4) and 59(3) and paragraph 61(d), within 30 days after the client information record is created;

(d) in the case referred to in subsection 57(4), within 30 days after the account is opened; and

(e) in the case referred to in paragraph 59.1(c), 59.2(1)(c), 59.3(c), 59.4(c) and 59.5(c), within 30 days after the transaction.

(3) Where the existence of the entity has been confirmed by referring to an electronic version of a record, the person or entity required to confirm that information shall keep a record that sets out the registration number of the entity whose existence is being confirmed, the type of record referred to and the source of the electronic version of the record.

(4) Where the existence of the entity has been confirmed by referring to a paper copy of a record, the person or entity required to confirm that information shall retain the record or a copy of it.

...

67. Every person or entity that is required by these Regulations to ascertain the identity of a person in connection with a record that the person or entity has created and is required to keep under these Regulations, or a transaction that they have carried out and in respect of which they are required to keep a record under these Regulations or under section 12.1 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transactions Reporting Regulations*, shall set out on or in or include with that record the name of that person and

(a) if a birth certificate, driver's licence, provincial health insurance card (if such use of the card is not prohibited by the applicable provincial law), passport or any other similar record is relied on to ascertain the person's identity, the type and reference number of the record and the place where it was issued;

(b) if a confirmation of a cleared cheque from a financial entity is relied on to ascertain the person's identity, the name of the financial entity and the account number of the deposit account on which the cheque was drawn;

(c) if the person's identity is ascertained by confirming that they hold a deposit account with a financial entity, the name of the financial entity where the account is held and the number of the account and the date of the confirmation;

(d) if the person's identity is ascertained by relying on a previous confirmation of their identity by an entity that is affiliated with the entity ascertaining the identity of the person or an entity that is a member of the same association — being a central cooperative credit society as defined in section 2 of the *Cooperative Credit Associations Act* — as the entity ascertaining the identity of the person, the name of that entity and the type and reference number of the record that entity previously relied on to ascertain the person's identity;

- (e) if an identification product is used to ascertain the person's identity, the name of the identification product, the name of the entity offering the product, the search reference number and the date the product was used to ascertain their identity;
- (f) if the person's identity is ascertained by consulting a credit file kept by an entity in respect of the person, the name of the company and the date of the consultation;
- (g) if the person's identity is ascertained from an attestation signed by a commissioner of oaths in Canada or a guarantor in Canada, the attestation;
- (h) if the person's identity is ascertained by consulting an independent data source, the name of the data source, the date of the consultation and the information provided by the data source;
- (i) if the person's identity is ascertained by relying on a utility invoice issued in the person's name, the invoice or a legible photocopy or electronic image of the invoice;
- (j) if the person's identity is ascertained by relying on a photocopy or electronic image of a document provided by the person, that photocopy or electronic image; and
- (k) if the person's identity is ascertained by relying on a deposit account statement issued in the person's name by a financial entity, a legible photocopy or electronic image of the statement.

RETENTION OF RECORDS

68. Where any record is required to be kept under these Regulations, a copy of it may be kept

- (a) in a machine-readable form, if a paper copy can be readily produced from it; or
- (b) in an electronic form, if a paper copy can be readily produced from it and an electronic signature of the person who must sign the record in accordance with these Regulations is retained.

69.(1) Subject to subsection (2), every person or entity that is required to obtain, keep or create records under these Regulations shall retain those records for a period of at least five years following

- (a) in respect of signature cards, account operating agreements, client credit files and account application forms, the day of the closing of the account to which they relate;
- (b) in respect of client information records, certificates of corporate status, records that are required to be filed annually under the applicable provincial

securities legislation or other similar records that ascertain the existence of a corporation, and records that ascertain the existence of an entity, other than a corporation, including partnership agreements and articles of association, the day on which the last business transaction is conducted; and

(c) in respect of all other records, the day on which they were created.

(2) Where records that an individual keeps under these Regulations are the property of the individual's employer or a person or entity with which the individual is in a contractual relationship, the individual is not required to retain the records after the end of the individual's employment or contractual relationship.

70. Every record that is required to be kept under these Regulations shall be retained in such a way that it can be provided to an authorized person within 30 days after a request is made to examine it under section 62⁶ of the Act.

⁶ Section 62 of the Act, reproduced below, refers to an "authorized person" who is defined in the Act in reference to the Director of FINTRAC, as follows:

"authorized person" means a person who is authorized under subsection 45(2).

45. (1) The Director is the chief executive officer of the Centre, has supervision over and direction of its work and employees and may exercise any power and perform any duty or function of the Centre. The Director has the rank and all the powers of a deputy head of a department.

Directions to authorized persons

(2) The Director may authorize any person to act, under the Director's direction, for the purposes of sections 62 to 64.

62. (1) An authorized person may, from time to time, examine the records and inquire into the business and affairs of any person or entity referred to in section 5 for the purpose of ensuring compliance with Part 1, and for that purpose may

(a) at any reasonable time, enter any premises, other than a dwelling-house, in which the authorized person believes, on reasonable grounds, that there are records relevant to ensuring compliance with Part 1;

(b) use or cause to be used any computer system or data processing system in the premises to examine any data contained in or available to the system;

(c) reproduce any record, or cause it to be reproduced from the data, in the form of a printout or other intelligible output and remove the printout or other output for examination or copying; and

(d) use or cause to be used any copying equipment in the premises to make copies of any record.

Assistance to Centre

COMPLIANCE

71.(1) For the purpose of subsection 9.6(1)⁷ of the Act, a person or entity shall, as applicable, implement the compliance program referred to in that subsection by

- (a) appointing a person – who, where the compliance program is being implemented by a person, may be that person - who is to be responsible for the implementation of the program;
- (b) developing and applying written compliance policies and procedures that are that are kept up to date and, in the case of an entity, approved by a senior officer approved by a senior officer;
- (c) assessing and documenting, in a manner that is appropriate for the person or entity, the risk referred to in subsection 9.6(2) of the Act, taking into consideration
 - (i) the clients and business relationships of the person or entity;
 - (ii) the products and the delivery channels of the person or entity,
 - (iii) the geographic location of the activities of the person or entity, and
 - (iv) any other relevant factor;
- (d) if the person or entity has employees, agents or other persons authorized to act on their behalf, developing and maintaining a written ongoing compliance training program for those employees, agents or persons; and
- (e) instituting and documenting a review of the policies and procedures, the risk assessment and the training program for the purpose of testing their effectiveness, which review is required to be carried out every two years by

(2) The owner or person in charge of premises referred to in subsection (1) and every person found there shall give the authorized person all reasonable assistance to enable them to carry out their responsibilities and shall furnish them with any information with respect to the administration of Part 1 or the regulations under it that they may reasonably require.

⁷ 9.6 (1) Every person or entity referred to in section 5 shall establish and implement, in accordance with the regulations, a program intended to ensure their compliance with this Part.

(2) The program shall include the development and application of policies and procedures for the person or entity to assess, in the course of their activities, the risk of a money laundering offence or a terrorist activity financing offence.

(3) If the person or entity considers that the risk referred to in subsection (2) is high, the person or entity shall take prescribed special measures for identifying clients, keeping records and monitoring financial transactions in respect of the activities that pose the high risk.

an internal or external auditor of the person or entity, or by the person or entity itself if it does not have such an auditor.

(2) For the purposes of the compliance program referred to in subsection 9.6(1) of the Act, every person or entity shall report the following in written form to a senior officer within 30 days after the assessment:

- (a) the findings of the review referred to in paragraph (1)(e);
- (b) any updates to the policies and procedures made within the reporting period; and
- (c) the status of the implementation of those policies and procedures and their updates.

71.1 The prescribed special measures that are required to be taken by a person or entity referred to in subsection 9.6(1) of the Act for the purpose of subsection 9.6(3) of the Act are the development and application of written policies and procedures for

- (a) taking reasonable measures to keep client identification information and the information referred to in section 11.1 up to date;
- (b) taking reasonable measures to conduct ongoing monitoring for the purpose of detecting transactions that are required to be reported to the Centre under s. 7 of the Act; and
- (c) mitigating the risks identified in accordance with subsection 9.6(3) of the Act.

SCHEDULE 7
(Subparagraphs 64(1)(b)(ii) and (1.1)(b)(ii) and (iii))

NON-FACE-TO-FACE IDENTIFICATION METHODS

PART A

IDENTIFICATION METHODS FOR ALL
REPORTING ENTITIES

IDENTIFICATION PRODUCT METHOD

1. This method of ascertaining a person's identity consists of referring to an independent and reliable identification product based on personal information in respect of the person and a Canadian credit history of the person of at least six month's duration.

CREDIT FILE METHOD

2. This method of ascertaining a person's identity consists of confirming, after obtaining authorization from the person, their name, address and date of birth by referring to a credit file in respect of that person in Canada that has been in existence for at least six months.

ATTESTATION METHOD

3. (1) This method of ascertaining a person's identity consists of obtaining an attestation from a commissioner of oaths in Canada, or a guarantor in Canada, that they have seen one of the documents referred to in paragraph 64(1)(a) of these Regulations. The attestation must be produced on a legible photocopy of the document (if such use of the document is not prohibited by the applicable provincial law) and must include

- (a) the name, profession and address of the person providing the attestation;
- (b) the signature of the person providing the attestation; and
- (c) the type and number of the identifying document provided by the person.

(2) For the purpose of subsection (1), a guarantor is a person employed in one of the following professions in Canada:

- (a) dentist;
- (b) medical doctor;
- (c) chiropractor;
- (d) judge;
- (e) magistrate;
- (f) lawyer;
- (g) notary (in Quebec);
- (h) notary public;
- (i) optometrist;
- (j) pharmacist;
- (k) professional accountant (APA [Accredited Public Accountant], CA [Chartered Accountant], CGA [Certified General Accountant], CMA [Certified Management Accountant], PA [Public Accountant] or RPA [Registered Public Accountant]);
- (l) professional engineer (P.Eng. [Professional Engineer, in a province other than Quebec] or Eng. [Engineer, in Quebec]); or

(m) veterinarian.

CLEARED CHEQUE METHOD

4. This method of ascertaining a person's identity consists of confirming that a cheque drawn by the person on a deposit account of a financial entity, other than an account referred to in section 62 of these Regulations, has been cleared.

CONFIRMATION OF DEPOSIT ACCOUNT METHOD

5. This method of ascertaining a person's identity consists of confirming that the person has a deposit account with a financial entity, other than an account referred to in section 62 of these Regulations.

PART B

IDENTIFICATION METHODS FOR CREDIT CARD ACCOUNTS

1. This method of ascertaining a person's identity consists of referring to an independent and reliable identification product based on personal information in respect of the person and a Canadian credit history of the person of at least six month's duration.

CREDIT FILE METHOD

2. This method of ascertaining a person's identity consists of confirming, after obtaining authorization from the person, their name, address and date of birth by referring to a credit file in respect of that person in Canada that has been in existence for at least six months.

INDEPENDENT DATA SOURCE METHOD

3. This method of ascertaining a person's identity consists of consulting a reputable and independent database that is compiled from a director of a telecommunications entity or a federal, provincial or municipal voter's registry and that contains the names, addresses and telephone numbers of individuals in order to confirm the person's name, address and telephone number.

PART C

IDENTIFICATION METHODS FOR FIRST-TIME APPLICANTS FOR CREDIT CARD APPLICANTS WITHNO CREDIT HISTORY IN CANADA

INDEPENDENT DATA SOURCE METHOD

1. This method of ascertaining a person's identity consists of consulting a reputable and independent database that is compiled from a director of a telecommunications entity or a federal, provincial or municipal voter's registry and that contains the names, addresses and telephone numbers of individuals in order to confirm the person's name, address and telephone number.

UTILITY INVOICE METHOD

2. This method of ascertaining a person's identity consists of obtaining a utility service invoice that is issued by a Canadian utility provider in the name of the person and that includes their address.

PHOTOCOPY OF AN IDENTIFICATION DOCUMENT

3. This method of ascertaining a person's identity consists of obtaining a legible photocopy or electronic image of a document referred to in paragraph 64(1)(a) of these Regulations in respect of the person.

DEPOSIT ACCOUNT STATEMENT METHOD

4. This method of ascertaining a person's identity consists of obtaining a legible photocopy or electronic image of a deposit account statement issued by a financial entity in the name of the person.