

Guideline Impact Analysis Statement - Revised Guideline B-8: Deterring and Detecting Money Laundering and Terrorist Financing

1. Background

OSFI's Guideline B-8, Deterring and Detecting Money Laundering, was originally released in 1996 and was revised in April 2003 to reflect significant changes to Canadian legislation resulting from the introduction of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Act).

The Guideline highlights the need for federally regulated financial institutions (FRFIs) (except property and casualty insurance companies) to develop and operate anti-money laundering programs. This would reduce the susceptibility of FRFIs to being used by individuals or organizations in respect of money laundering, thereby reducing the risk of sustaining damage to their reputation, which is a key component to success in the financial services industry.

In addition to issuing the Guideline, OSFI has been assessing the anti-money laundering and terrorist financing activities (MLTFA) programs operated by FRFIs.

II. Problem Identification

Although most of OSFI's anti-MLTFA assessment program findings to date relate to matters that have been addressed by the current Guideline, the passage of time, combined with recent experience, has identified additional issues that should be addressed, including:

1. The use of introducers. FRFIs that use introducers (e.g. mortgage or deposit brokers, correspondent banks, lawyers, etc.) may not always obtain the requisite customer identification and verification information from these parties. As a result, a FRFI could inadvertently be dealing with parties who are conducting or facilitating money laundering or financing terrorist activities, thereby exposing itself to possible criminal sanction. The FRFI may also be exposed to increased risk of reputational damage, whether or not it was criminally responsible. FRFIs with weak systems for combating MLTFA may also face increased levels of regulatory scrutiny and, if warranted, intervention.
2. The need for OSFI and FRFIs to remain current with international standards. The Financial Action Task Force (FATF) issued a revised version of its Forty Recommendations in June 2003, which have increased customer due diligence standards applicable to FRFIs (especially for higher risk customers such as dealers in cash, precious metals or gems, and for corporate customers and complex corporate structures where determination of beneficial ownership may be difficult). Failure by OSFI to ensure that guidance remains up-to-date and meets international minimums could lead to the perception that the Canadian regulatory regime is not dealing with these issues effectively. Similarly, failure of FRFIs to adopt certain of the FATF recommendations can increase the potential for reputation risk associated with facilitating money laundering or terrorist financing activities.

III. Objectives

The objective of revising Guideline B-8 is to remind all FRFIs that:

1. Outsourcing, including the use of introducers, does not obviate the FRFI's full accountability for having customer identification and verification processes, and for obtaining customer records with respect to accounts opened through such sources.
2. Higher risk customers, including those that deal in cash, gems or other high-end items, may require additional due diligence and monitoring.
3. A substantial amount of international guidance is available, and in particular, that significant revisions have been made to the FATF's Forty Recommendations, which now also address anti-terrorist financing (ATF) issues.

Consequential objectives of this revision include updating the Guideline to further clarify that FRFIs are expected to develop and implement robust ATF policies and procedures.

IV. Identification and Assessment of Options

Option 1 - Revise Guideline E-8 to address the objectives in this Analysis Statement.

Under this option, Section II(a) of Guideline B-8 would be revised to more clearly identify different parts of a FRFI's operations that might give rise to MLTFA risks including certain products and services, types of customers, reliance on others (the use of introducers by FRFIs), and geography (dealings with off-shore clients). The Guideline would also be adjusted to more clearly indicate that FRFIs are expected to develop and implement ATF programs in concert with anti-money laundering programs, and to include an updated reference to the FATF's Revised Forty Recommendations.

OSFI will incur some costs related to revising Guideline B-8, including the consultative process, but on balance this option represents a more efficient means of communicating information than Option 3. Institutions will also face somewhat higher compliance costs, as more FRFIs will likely be required to revise their policies and procedures on a shorter time frame.

However, these costs are outweighed by the benefits. This option demonstrates that OSFI is proactively ensuring its guidance remains relevant and on a par with international standards. In addition, it would result in a more "level playing field", as **all** FRFIs would simultaneously be made aware of OSFI's new expectations and their new responsibilities with respect to their anti-MLTFA policies and procedures.

Option 2 - Status Quo - Do not revise Guideline B-8 or take other steps to achieve the objectives outlined in this Analysis Statement.

This option presents no incremental financial costs to either OSFI or FRFIs, and could be seen as limiting regulatory burden.

However, FRFIs that do not appropriately address the issues in the revised Guideline may be exposed to legal or regulatory sanction and increased reputational risks. OSFI may also be exposed to reputational risks if it were determined that a lack of regulatory vigilance contributed to FRFIs potentially facilitating inappropriate or illegal activities.

Option 3 - Leave Guideline B-8 unchanged but communicate additional information and expectations to individual FRFIs when anti-MLTFA assessments are conducted.

Under this option, the Guideline would remain unchanged, but OSFI would communicate, as part of its anti-MLTFA assessments, the additional information and expectations that would otherwise be included in a revised guideline.

For OSFI, this would be inefficient. Further, OSFI could be criticised for adopting the new higher international standards too slowly and applying them inconsistently. Some FRFIs would also face higher costs (versus status quo) but may benefit from a reduction in their potential exposure to legal and reputational risks. The biggest drawback of this option is that FRFIs would not be subject to consistent and transparent expectations.

V. Recommendation

The most appropriate method of disseminating additional information and expectations regarding anti-MLTFA systems is through targeted revisions to the current Guideline (i.e. Option 1).

VI. Consultations

As part of its anti-MLTFA assessment program, OSFI told various FRFIs that it would likely provide additional guidance in certain areas (i.e. those that have been addressed in the revisions to the Guideline). OSFI also made reference at various industry conferences to the fact that it would provide additional guidance in a number of areas. In general, feedback has been positive because FRFIs recognize their anti-MLTFA responsibilities and therefore welcome guidance that assists them in complying with these responsibilities.

In July 2004, OSFI posted on its Internet Web site a draft copy of the revised Guideline for comment. Several industry associations provided comments, a number of which were reflected in the final version of the Guideline, which was released in November 2004.