



Amber Scott <amber@outliercanada.com>

Fraud Related Transactions and Suspicious Transaction Report (STR) Obligations

1 message

Policy-Interpretation <Policy-Interpretation@fintrac-canafe.gc.ca>
To: "amber@outliercanada.com" <amber@outliercanada.com>

Thu, Dec 9, 2021 at 3:06 PM

Hello Amber Scott,

Thank you for contacting the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), Canada's independent agency responsible for the receipt, analysis, assessment and disclosure of information in order to assist in the detection, prevention and deterrence of money laundering and the financing of terrorist activities in Canada and abroad.

I am writing further to your email of September 15, 2021, regarding the requirement to report suspicious transactions to FINTRAC where the client is the victim of fraud. I apologize for the delay in responding.

As you are aware, pursuant to section 7 of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA), every person or entity referred to in section 5 shall, in accordance with the regulations, report to the Centre every financial transaction that occurs or that is attempted in the course of their activities and in respect of which there are reasonable grounds to suspect that

- (a) the transaction is related to the commission or the attempted commission of a money laundering offence; or
- (b) the transaction is related to the commission or the attempted commission of a terrorist activity financing

Thus, it is the reasonable grounds to suspect that a financial transaction is related to the commission or attempted commission of a money laundering offence or a terrorist activity financing offence that triggers the obligation to report an STR to FINTRAC. The STR could be solely based on the fraud factor. The PCMLTFA does not state whether subsequent or previous transactions are required for there to be suspicion of money laundering based on fraud. The threshold for reporting an STR is usually based on an assessment of the facts, context, and money laundering indicators surrounding a transaction. The same threshold applies when determining whether to report an STR based on fraud. The facts surrounding the suspicion will vary from case to case, so judgement will have to be exercised when reporting STRs that involve possible victims of fraud. An STR could be warranted in both scenarios presented. In scenario 2, an STR should be submitted if the reporting entity reached reasonable grounds to suspect that the transaction or attempted transaction is related to fraud.

In the case of a victim of fraud, it is possible that they are involved indirectly and it is not required that the victim have the intention, knowledge or belief that the transaction is related to the commission or attempted commission of a money laundering offence in order to be part of that narrative that describes the suspicious activity. Any transaction can be related because it forms part of the financial assessment of the suspicious transaction associated to the laundering of the proceeds of a fraud. An STR must include the narrative detailing the suspicion and therefore, where relevant to the suspicion, may include information regarding the victim as well as the perpetrator of the fraud.

I hope this will be of assistance.

Dawnette Williams

Compliance Sector | Secteur de la conformité

Financial Transactions and Reports Analysis Centre of Canada | Centre d'analyse des opérations et déclarations financières du Canada

Government of Canada | Gouvernement du Canada

The determination contained herein is provided to your organization on the understanding that it is based solely on the facts and information provided to FINTRAC and may be subject to change in the event additional information becomes available. | La détermination contenue dans la présente repose uniquement sur les faits et l'information fournis à CANAFE et pourrait être modifiée si des informations supplémentaires sont portées à notre connaissance.

From: Amber Scott <amber@outliercanada.com>

Sent: September 15, 2021 6:52 PM

To: guidelines-lignesdirectrices <guidelines-lignesdirectrices@fintrac-canafe.gc.ca>

Subject: Specific Scenarios of Fraud Related Transactions and Suspicious Transaction Report (STR) Obligations

Good afternoon,

We would like some additional clarity related to fraudulent transactions and when an STR would be required.

FINTRAC Policy Interpretation #10876 states that “For a transaction to qualify as a suspicious transaction, reportable under the PCMLTFA and its associated Regulations, you must have reasonable grounds to suspect that it is related to the commission or attempted commission of either an ML offence or a TF offence. An ML offence typically involves various acts committed with the intention to conceal or convert property or the proceeds of property (such as money) knowing or believing that these were derived from the commission of a designated offence, which could include drug trafficking, bribery, or fraud. It is, therefore, for the reporting entity to determine whether they have reasonable grounds to suspect that a transaction or attempted transaction is related to an ML/TF offence”.

The same Policy Interpretation further states that “if you receive confirmation of fraudulent transactions, and you have reasonable grounds to suspect that these transactions are related to an ML/TF offence, an STR must be submitted to FINTRAC. The STR could be solely based on the fraud factor, or it could also outline a series of other suspicious transaction indicators that may on their own seem insignificant, but together may raise higher suspicions”.

It is understood that context, facts and indicators are all relevant to an STR filing consideration. FINTRAC Policy Interpretation #10876 states that the STR could be solely based on the fraud factor but wouldn't there need to be either subsequent or previous transactions for any suspicion of money laundering to be relevant to the fraud in question? These seem to be unique scenarios since there is knowledge of fraud, and that allows for the “reasonable grounds to suspect” decision to be made with knowledge that would not be available in other cases where no knowledge of fraud is present. In effect, the knowledge of fraud would give a decision-maker knowledge of facts and context that would not be present otherwise.

FINTRAC's Operation Alert: Laundering of the Proceeds of Romance Fraud states that “In many cases, perpetrators attempt to have victims act, unknowingly, as money mules to move proceeds of crime to other victims, perpetrators and/or third parties. As a money mule, victims serve as intermediaries to distance the funds from the perpetrators and make transactions more difficult to track”. These types of transactions would implicate suspicion of money laundering given that ill-gotten funds are moving through accounts even though an individual may also be a victim of fraud.

Based on the above, we would like further clarity on specific fraud-related scenarios.

Scenario 1

A client reaches out to notify us that they sent virtual currency to another party who promised them a generous short-term return. The client never received the promised funds and believes they have been defrauded. We review the customer account activity and find anomalous activity including deposits prior to and after the client sent the virtual currency to the wallet provided by the fraudster. Our client is a victim of fraud but may also unknowingly be a money mule for the fraudster since their financial activity includes known money mule indicators. Based on strictly these facts, context and indicators, we have reached reasonable grounds to suspect money laundering or terrorist financing offences on our client based on the money mule-related activity. Given the above, we believe an STR would be warranted.

Could you please confirm our position? If the position taken here does not seem correct, please provide an underlying rationale.

Scenario 2

A client reaches out to notify us that they sent the virtual currency to another party who promised them a generous short-term return. The client never received the promised funds and believes they have been defrauded. We review the customer account activity and do not find any anomalous activity either prior to or after the client sent the virtual currency to the wallet provided by the fraudster. The client appears to have sent their own funds to the fraudster and there is no account activity corresponding to any irregular transactions including money mule indicators. Our client is simply a victim of fraud. Based on strictly these facts, context and indicators, we have not reached reasonable grounds to suspect any money laundering or terrorist financing offences on our client. There may be downstream suspicion related to the wallet where the fraudulently obtained funds were sent but we do not have any suspicion based solely on our client transactions which include the transmission of virtual currency to that other wallet. We do not have any information or suspicion related to the other wallet except for the knowledge that our client's virtual currency was sent to it.

Given the above, we believe no STR would be required. Could you please confirm our position? If the position taken here does not seem correct, please provide an underlying rationale.

If you have any questions or concerns, please let me know.

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Amber D. Scott, MBA, CIPP/C, CBP, FIS, CAMS

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