

Overview Report: Federal Regulation of Virtual Currencies

A. Scope of Overview Report

1. This overview report sets out a chronology of federal regulation of virtual currencies (“VCs”) and dealers in VCs in Canada in the context of anti-money laundering (“AML”) and anti-terrorist financing (“ATF”) efforts.
2. This overview report also sets out a chronology of the Financial Action Task Force (“FATF”) response to money laundering and terrorist financing risks posed by virtual currencies (or, to use FATF’s terminology, virtual assets).

B. February 2012 – FATF Publishes Recommendation 15

3. In February 2012, the FATF published Recommendation 15. Recommendation 15 addressed AML/ATF efforts with respect to new technologies, although it did not expressly mention virtual currencies. Recommendation 15 provides:

Countries and financial institutions should identify and assess the money laundering or terrorist financing risks that may arise in relation to (a) the development of new products and new business practices, including new delivery mechanisms, and (b) the use of new or developing technologies for both new and pre-existing products.¹

C. January 2012 – Statutorily Mandated Review of the PCMLTFA

4. In January 2012, the Standing Senate Committee on Banking, Trade and Commerce completed a statutorily mandated review of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*² (“PCMLTFA”). The committee’s subsequent report concluded that “changes [were] needed in response to global developments in money laundering and terrorist financing, advancements in technology and the need for public awareness about the regime.”³

¹ Financial Action Task Force, *International Standards on Combatting Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* (Paris: FATF, 2012 – 2019) online: <<http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>> [FATF Recommendations] at page 15.

² SC 2000, c 17.

³ Canada, Parliament, Senate, Standing Committee on Banking, Trade and Commerce, *Follow the Money: Is Canada Making Progress in Combatting Money Laundering and Terrorist Financing? Not Really*, 41st Parl, 1st Sess, No 10 (March 2013) at page v.

5. The committee recommended that:

The federal government review annually, and update as required, the definition of “monetary instruments” in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* in order to ensure that it reflects new payment methods and technological changes.⁴

D. March 2014 – Study of Cryptocurrency Risks in the Canadian Context

6. In March 2014, then-Minister of Finance James Flaherty asked the Standing Senate Committee on Banking, Trade and Commerce to undertake a study into the risks and opportunities surrounding cryptocurrency to assist in the development of government policy.⁵

E. June 2014 – PCMLTFA Amended to Include VCs and Regulation of VC Dealers

7. On June 19, 2014, Bill C-31, *Economic Action Plan 2014 Act No. 1*, received Royal Assent.⁶ The bill introduced amendments to the *PCMLTFA* requiring virtual currency dealers be regulated as money services businesses, including implementing a compliance program, registering and reporting to the Financial Transactions and Reports Analysis Centre of Canada (“**FINTRAC**”).⁷ The amendments were to take effect by regulation, and did not take immediate effect.

8. The amendments respecting virtual currencies were drafted in response to both FATF Recommendation 15 and the Standing Senate Committee on Banking, Trade and Commerce review of the *PCMLTFA* undertaken in 2012. In the 2014 Budget Speech, Minister Flaherty stated “pursuant to [the committee’s review], the Government will introduce legislative amendments and regulations to strengthen Canada’s [AML] and [ATF] regime and improve Canada’s compliance with international standards...”.⁸

9. The government stated that the amendments were not made in response to a specific money laundering or terrorist financing threat, but rather were introduced to

⁴ *Ibid* at page 20.

⁵ Canada, Parliament, Senate, Standing Committee on Banking, Trade and Commerce, *Digital Currency: You Can’t Flip this Coin!*, 41st Parl, 2nd Sess, No 12 (June 2015) [*Digital Currency: You Can’t Flip this Coin!*].

⁶ Bill C-31, *An Act to implement certain provision of the budget tabled in Parliament on February 11, 2014 and other measures*, 2nd Sess, 41st Parl, 2014 (assented to 19th June 2014) at Division 19.

⁷ *Ibid* at s. 256(2).

⁸ Canada, Parliament, Minister of Finance, *The Road to Balance: Creating Jobs and Opportunities*, 41st Parl, 2nd Sess (11 February 2014), online: <<https://www.documentcloud.org/documents/1017359-budget-2014-eng.html>> at page 133.

ensure that Canada would be prepared for future money laundering problems.⁹ The 2014 Economic Action Plan proposed that the PCMLTFA and its regulations would apply to businesses that deal in virtual currencies. In practical terms, this would mean that businesses dealing in virtual currencies would be deemed money services businesses (“**MSBs**”) and would be subject to registration, record-keeping, reporting, and verification (know your client) obligations. As noted above, these amendments were to come into force by regulation and did not take immediate effect.

F. June 2015 – New FATF Guidance on Virtual Currencies & Standing Senate Committee Report on Digital Currencies

10. FATF published its *Guidance for a Risk-Based Approach: Virtual Currencies* in June 2015.¹⁰ This report, which focused primarily on convertible virtual currencies (“**CVCs**”) and associated convertible virtual currency exchangers (“**CVCEs**”), emphasized the obligation of member states to create and implement effective regulations respecting VCs. It also encouraged member-states to implement a risk-based approach with respect to CVCs. The risk-based approach involves assessing high risk CVCs and identifying “points of intersection that provide gateways to the regulated financial system”.¹¹ The *Guidance* recommended that member states take into consideration the regulation of financial institutions (“**FIs**”) that do not exchange CVCs, but do store and transmit them.¹²

11. Also in June 2015, the Standing Senate Committee on Banking, Trade and Commerce released its study of the “risks, threats and advantages” of digital currencies.¹³ The committee issued 8 recommendations¹⁴, including that digital currency exchanges be made subject to the same requirements as money services businesses.¹⁵ The Committee urged that cryptocurrencies be monitored as technology continued to develop, that Canada had to be prepared to do that monitoring through FINTRAC and, finally, that “this technology requires a light regulatory touch – almost a hands off approach. In other words, not necessarily regulation, but regulation as necessary”.¹⁶

G. September 2016 – FATF Canadian Mutual Evaluation Report

⁹ Max Paris, “Budget 2014: Bitcoin, charities face scrutiny to prevent money laundering” (2014) *CBC*, online: <<https://www.cbc.ca/news/politics/budget-2014-bitcoin-charities-face-scrutiny-to-prevent-money-laundering-1.2530744>>.

¹⁰ Financial Action Task Force, *Guidance for Risk-Based Approach: Virtual Currencies* (Paris: FATF, 2015), online: <<https://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-RBA-Virtual-Currencies.pdf>>.

¹¹ *Ibid* at page 6.

¹² *Ibid*.

¹³ *Digital Currency: You Can't Flip this Coin!*, *supra* note 5 at page 10.

¹⁴ See Appendix A to this Overview Report.

¹⁵ *Digital Currency: You Can't Flip this Coin!*, *supra* note 5 at page 9.

¹⁶ *Digital Currency: You Can't Flip this Coin!*, *supra* note 5 at page 8.

12. FATF published its mutual evaluation report (“**MER**”) of Canada in September 2016. The MER concluded, in agreement with Canada’s own assessment, that Canada’s cryptocurrency industry was highly vulnerable to money laundering.¹⁷ The MER also noted that virtual currencies, specifically CVCs, had a higher risk of vulnerability to money laundering schemes, “due to the increased anonymity they can provide...ease of access and high degree of transferability.”¹⁸

13. FATF concluded that Canada was non-compliant with Recommendation 15 (New Technologies). Specifically, FATF noted that there was no explicit statutory or regulatory requirement for reporting entities to assess the risk of new products and business practices, nor for new technologies (which term encompasses virtual currencies).¹⁹ While FATF acknowledged that FINTRAC guidance expressed an expectation that reporting entities reassess their risk if changes arise due to new products, business practices, or technologies, it noted the absence of an explicit requirement that a risk assessment happen take place before the launch or use of such products, practices or technologies.²⁰

H. March 2017 – Further Amendments to the *PCMLTFA*

14. Canada made further amendments to the *PCMLTFA* in March 2017 to apply MSB rules (including registration, record-keeping, and verification) to foreign entities providing services to Canadians.²¹ As with the previous amendments, the amendments were to come into force by regulation, which did not occur until June 1, 2020. On coming into force, the amendments would impose obligations on virtual currency dealers that were located outside of Canada but providing services directed at persons or entities in Canada.

I. June 2018 – Draft Regulations for the *PCMLTFA*

15. In June 2018, the Department of Finance released draft regulations intended to bring into force *PCMLTFA* amendments expanding Canada’s AML/ATF scheme to dealers in VCs.

¹⁷ Financial Action Task Force, *Anti-money laundering and counter-terrorist financing measures- Canada* (2016) Financial Action Task Force and Asia/Pacific Group on Money Laundering, online: <<https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Canada-2016.pdf>>, at page 16. Note that the amendments to incorporate virtual assets within the purview of the *PCMLTFA* did not take effect until after the FATF mutual evaluation report process had concluded.

¹⁸ *Ibid* at page 16.

¹⁹ *Ibid* at page 150.

²⁰ *Ibid* at page 150.

²¹ Bill C-44, *An Act to implement certain provisions of the budget tabled in Parliament on March 22, 2017 and other measures*, 1st Sess, 42nd Parl, 2017 (assented to June 22 2017).

16. The 2018 draft regulations were intended, *inter alia*, to bring persons and entities dealing in virtual currencies within the scope of the *PCMLTFA* by deeming them MSBs. As such, they would be required to implement a full compliance program and register with FINTRAC. Further, any reporting entity receiving \$10,000 or more in virtual currency would have record keeping and reporting obligations.²²

17. The proposed regulations also introduced a definition of “virtual currency”:

(a) a digital currency that is not a fiat currency and that can be readily exchanged for funds or for another virtual currency that can be readily exchanged for funds;

or

(b) information that enables a person or entity to have access to a digital currency referred to in paragraph (a).²³

18. The 2014 *PCMLTFA* amendments proposed to regulate foreign MSBs dealing in virtual currency. The 2018 proposed regulations operationalized this amendment by implementing a registration requirement for MSBs offering services to Canadians. The 2018 proposed amendments also gave FINTRAC the authority to impose fines and revoke registrations of non-compliant foreign MSBs.²⁴ Finally, the 2018 Draft Amendments imposed an obligation on reporting entities to perform risk assessments prior to the launch and use of new technologies.²⁵

19. Publication of the 2018 draft regulation was delayed pending public consultation, a House of Commons review of the *PCMLTFA*, as well as a FATF initiative to update international guidance on virtual assets.

J. October 2018 – Updates to FATF Recommendations

20. In October 2018, in response to government and the private sector requests for greater clarity about which virtual asset activities the FATF standards apply to, the FATF amended Recommendation 15. These amendments sought to clarify the application of the FATF Standards to virtual assets activities and virtual asset service providers (“**VASPS**”).²⁶ In addition to the amendment to Recommendation 15, the FATF amended its Glossary, by adding two new defined terms: “virtual assets” (“VAs”) and “virtual asset service providers” (“VASPs”). FATF defined the term “virtual assets” as:

²² Canada Gazette, Part I, Volume 152, Number 23: Regulations Amending Certain regulations Made Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act

²³ Canada Gazette, Part I, Volume 152, Number 23: Regulations Amending Certain regulations Made Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, 2018 s. 1(7)

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ Financial Action Task Force, “Regulation of virtual assets” (2018), FATF, online: <<https://www.fatf-gafi.org/publications/fatfrecommendations/documents/regulation-virtual-assets.html>> [FATF 2018 Update].

A digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes. Virtual assets do not include digital representations of fiat currencies, securities and other financial assets.²⁷

The newly added term “virtual asset service provider” was defined as:

Any natural or legal person who is not covered elsewhere under the Recommendations, and as a business conducts one or more of the following activities or operations for or on behalf of another natural or legal person:

- i. exchange between virtual assets and fiat currencies;
- ii. exchange between one or more forms of virtual assets;
- iii. transfer of virtual assets;
- iv. safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets; and
- v. participation in and provision of financial services related to an issuer’s offer and/or sale of a virtual asset²⁸

21. The amendments emphasized that member states must ensure that VAs and VASPs are incorporated into AML/ATF regulatory schemes. VASPs should be registered and subject to compliance monitoring, including with respect to customer due diligence and suspicious transaction reporting requirements. FATF clarified that its recommendations did not require stability or consumer protection safeguards to be implemented, and noted “[a]t this time, virtual asset service providers in most jurisdictions are not regulated for the purposes of financial stability or for investor and consumer protection”.²⁹ FATF also highlighted that these changes to the Recommendations would be clarified at a later date.³⁰

K. November 2018 – Five-Year Review of the *PCMLTFA*

²⁷ FATF Recommendations, *supra* note 1 at page 126.

²⁸ *Ibid* at page 127.

²⁹ Financial Action Task Force, “Regulation of virtual assets” (2018), FATF, online: <<https://www.fatf-gafi.org/publications/fatfrecommendations/documents/regulation-virtual-assets.html>>.

³⁰ *Ibid*.

22. In November 2018, the House of Commons Standing Committee on Finance released its report on Canada's AML/ATF framework, in accordance with the statutory requirement to review the *PCMLTFA* every five years.³¹ The report set out 32 recommendations in relation to Canada's AML regulatory scheme. Of those 32, the most relevant to VAs and VASPs are:

Recommendation 25: That the Government of Canada regulate crypto-exchanges at the point that fiat currency is converted so as to establish these exchanges as money service businesses (MSB).

Recommendation 26: That the Government of Canada establish a regulatory regime for crypto-wallets so as to ensure that proper identification is required, and that true ownership of wallets is known to the exchanges and law enforcement bodies if needed.

- Ensure that bitcoin purchases of real estate and cash cards are properly tracked and subjected to AML regulation;
- Law enforcement bodies must be able to properly identify and track illegal crypto-wallet hacking and failures to report capital gains.

Recommendation 27: That the Government of Canada establish a license for crypto-exchanges in line with Canadian law which includes an anti-money laundering program and look to the State of New York's program as a model for best practices.³²

L. June 2019 – FATF Clarification of Member State Obligations in relation to VAs and VASPs

23. The FATF clarified member state obligations with respect to VA regulation in June 2019 by adopting an Interpretive Note to Recommendation 15.

24. The Interpretive Note to Recommendation 15 ("**INR. 15**") explains that members are required to identify, assess and understand money laundering and terrorist financing risks associated with VAs and VASPs. Those risks ought to be mitigated by requiring VASPs to be licensed or registered, and by subjecting them to monitoring by a competent authority with recourse to a range of disciplinary and financial sanctions

³¹ Canada, House of Commons, Standing Committee on Finance, *Confronting Money Laundering and Terrorist Financing: Moving Canada Forward*, 42nd Parl, 1st Sess (November 2018).

³² *Ibid* at page 64.

25. INR. 15 further requires countries to ensure that VASPs, like other entities subject to AML/CFT regulation, assess and mitigate their money laundering and terrorist financing risks and implement the full range of AML/CFT preventive measures under the FATF Recommendations, including customer due diligence, record-keeping, suspicious transaction reporting, and screening all transactions for compliance with targeted financial sanctions.³³

26. Specifically, INR. 15 clarified that all value-based terms in the Recommendations (meaning the following terms: ““property”, “proceeds”, “funds”, “funds or other assets” and other “corresponding value””³⁴) include VAs. Therefore, all relevant measures under the Recommendations should be applied to VA and VASP activities in every member country.³⁵ With respect to registration, VASPs must be registered in the place they were created, and national authorities should attempt to identify VA activities that are operating without licenses.³⁶ Finally, INR. 15 outlined that there should be “a range of effective, proportionate and dissuasive sanctions” to deal with non-compliant VASPs, and that those sanctions should also apply to VASP directors and senior management.³⁷

27. The FATF at the same time released an updated version of its 2015 report, *Guidance for a Risk-Based Approach: Virtual Assets and Virtual Asset Service Providers*.³⁸ This guidance articulated risk indicators that should be considered in the context of VA and VASP activities, and offered further guidance as to which of those activities would fall under the FATF Recommendations in light of the INR.15.³⁹ It also outlined obligations, registration requirements and supervision requirements applicable to VASPs, clarified the application of recommendations to member countries, and concluded with examples of what regulation might look like.⁴⁰

28. With respect to the obligations, the 2019 *Guidance* examined each of the FATF Recommendations in order to clarify how they apply to VAs and VASPs. Under Recommendation 1 and 2, member states are guided to assess and take action to mitigate ML/TF risks, as well as encourage national coordination of ML/TF policies

³³ Financial Action Task Force, “Public Statement on Virtual Assets and Related Providers” (2019), FATF, online: <<https://www.fatf-gafi.org/publications/fatfrecommendations/documents/public-statement-virtual-assets.html>> [FATF Public Statement].

³⁴ *Ibid* at page 20.

³⁵ *Ibid* at page 21.

³⁶ *Ibid* at page 5.

³⁷ Financial Action Task Force, *Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers*, (Paris: FATF, 2019), online: <<http://www.fatf-gafi.org/media/fatf/documents/recommendations/RBA-VA-VASPs.pdf>> [FATF Guidance] at page 55 and 56.

³⁸ *Ibid*.

³⁹ *Ibid* at page 4.

⁴⁰ *Ibid* at page 5.

where VAs and VASPs are concerned.⁴¹ Recommendations 3 – 8, 30, 33, 35 and 38 all address value-based terms. When applied to VAs and VASPs, these Recommendations together outline that member state regulations around terms such as property, proceeds, funds, other assets and any corresponding values should be interpreted to include VAs and VASPs.⁴²

29. In the context of licensing or registration, under the FATF Recommendations, member states must require the registration of VASPs by a designated authority.⁴³ The FATF also emphasized that member states were under the obligation to take action in identifying unregistered VASPs or entities carrying out VA activities.⁴⁴

30. Recommendations 26 and 27, as applied to VAs and VASPs impose a compliance monitoring requirement.⁴⁵ The FATF also clarified in this *Guidance* that self-regulating bodies are not competent as VASP monitoring bodies.⁴⁶ Recommendations 9 – 12 deal with preventative measures such as record-keeping, due diligence requirements, and suspicious transaction reporting that extends, through application of the Interpretive Note to Recommendation 15, to VAs and VASPs.⁴⁷

31. Finally, the *Guidance* highlighted that the INR. 15 extends the application of the enforcement and international cooperation Recommendations to the regulation of VAs and VASPs. This means AML regulatory schemes must ensure quick and easy access to reports and records by law enforcement, and that member states must be able and ready to cooperate with each other VA-related criminal activities that cross borders.⁴⁸ FATF also released a Public Statement on Virtual Assets and Related Providers, stating an expectation of swift implementation of virtual asset regulation by member states.⁴⁹

M. July 2019 – Proposed PCMLTFA Regulations

32. On June 25, 2019, the regulations amending the PCMLTFA regulations were registered by the Governor in Council.⁵⁰ In July 2019, the regulations were published in Canada Gazette, Part II.

⁴¹ *Ibid* at page 19.

⁴² *Ibid* at page 21.

⁴³ *Ibid* at page 22.

⁴⁴ *Ibid* at page 23.

⁴⁵ *Ibid*.

⁴⁶ *Ibid* at page 5.

⁴⁷ *Ibid* at pages 24 to 32.

⁴⁸ *Ibid* at pages 32 and 33.

⁴⁹ FATF Public Statement, *supra* note 33.

The legislative amendments pertaining to virtual currency dealers made in the 2014 legislative amendments also came into force on June 1, 2020. Those legislative amendments require virtual currency dealers to register as money services businesses and comply with other legislative obligations, such as suspicious transaction reporting and implementing a compliance program. The remaining regulatory obligations will come into force on June 1, 2021.

33. In the Regulatory Impact Analysis Statement, the Department of Finance said, with respect to virtual currencies:

The evolving financial services landscape is further influenced by virtual currencies, especially decentralized digital payment systems, like Bitcoin, that operate outside the traditional financial system. A virtual currency is a medium of exchange that allows for value to be held and exchanged in an electronic, non-physical manner; is not a fiat currency (i.e. the official currency of a country); has the intended purpose of being exchanged for real and virtual goods and services; and allows peer-to-peer transfers.

Virtual currencies can be “centralized,” in that they are issued and controlled by a single company or entity, or “decentralized,” in that there is no central authority that creates or manages them (e.g. Bitcoin). Rather, these tasks are managed collectively by the network of some virtual currency users.

In addition, virtual currencies can be “convertible” or “non-convertible,” depending on whether they can be exchanged for funds. Convertible virtual currencies are vulnerable to abuse for money laundering and terrorist activity financing purposes because they allow greater levels of anonymity, or in some cases complete anonymity, when compared to traditional non-cash payment methods. Virtual currencies can be accessed globally via online or mobile systems. They allow for the rapid transfer of funds within or across borders, oftentimes without any intermediary; are generally characterized by non-face-to-face customer relationships; and can circumvent the physical “brick and mortar” financial system entirely. Due to these characteristics, virtual currencies are increasingly being used to facilitate fraud and cybercrime, and to purchase illicit goods and services on the dark Web.⁵¹

34. These regulations would bring into force both the 2014 and the 2017 amendments to the PCMLTFA with some exceptions, discussed above. The regulations address recommendations from the November 2018 House of Commons review of the PCMLTFA.

⁵⁰ *Regulations Amending Certain Regulations Made Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, SOR/2019-240 [2019 Final Regulations].*

⁵¹ *Ibid.*

35. The definition of “virtual currency” was amended to align more closely with language from the FATF Recommendations: i.e. “a digital representation of value that can be used for payment or investment purposes that is not a fiat currency and that can be readily exchanged for funds or for another virtual currency that can be readily exchanged for funds” or “a private key of a cryptographic system that enables a person or entity to have access to [such] digital representation of value.”⁵² This language excludes non-custodial wallets and other related software from the regulations.⁵³

36. The definition of “Funds” was expanded to include “a private key of a cryptographic system that enables a person or entity to have access to a fiat currency other than cash”.⁵⁴

37. As of June 1, 2021, dealers in virtual currencies are required to engage in customer identification and verification in various circumstances, including when remitting \$1,000 or more at the request of a customer, conducting a foreign exchange transaction of \$1,000 or more, entering into an ongoing service agreement with a customer, and when conducting a large cash transaction. Dealers in virtual currencies must also take efforts to identify individuals who attempt to undertake a suspicious transaction.

38. As of June 1, 2021, dealers in virtual currencies are also required to report electronic fund transfers of \$10,000 or more, large cash (fiat) transactions, and suspicious transactions.

39. An additional obligation to report large virtual currency transactions (the receipt of virtual currency valued at \$10,000 CAD or more within the same 24 hour period) will come into effect on June 1, 2021.

40. Other changes include the streamlining of reporting and record-keeping requirements for MSBs that deal in VCs. For example, deadlines for filing suspicious transaction reports have been relaxed from three days to “as soon as practicable” after measures are taken to determine reasonable grounds of suspicion.⁵⁵ Additionally, requirements for transaction records have been amended to be more manageable.⁵⁶ For example, large virtual currency transaction records were previously required to

⁵² *Ibid* at s 1(4)(b).

⁵³ Lori Stein, Evan Thomas & Maha Ansari, “Anti-money laundering rules for cryptocurrency dealers finalized by Canadian government” (2019) Osler, online: <<https://www.osler.com/en/resources/regulations/2019/anti-money-laundering-rules-for-cryptocurrency-dealers-finalized-by-canadian-government>> [Stein, Thomas & Ansari AML Rules].

⁵⁴ 2019 Final Regulations, *supra* note 50 at s 1(2)(b).

⁵⁵ 2019 Final Regulations, *supra* note 50 at s 2.

⁵⁶ Stein, Thomas & Ansari AML Rules, *supra* note 54.

include “every known detail [identifying] the receipt”. Such records are now required to include “every transaction identifier, including the sending and receiving addresses”.⁵⁷

41. Further, foreign MSBs are required to register with FINTRAC in order to continue offering services in Canada or to Canadian clients. Registration imposes generally similar requirements on foreign MSBs as domestic MSBs, and allows FINTRAC to issue Administrative Monetary Penalties against foreign MSBs that are non-compliant.⁵⁸

N. February 2020 – Further Proposed Amendments to the PCMLTFA

42. On 15 February 2020, the Department of Finance published further proposed amendments to the PCMLTFA Regulations, to take effect 1 June 2020. These amendments proposed changes to MSBs, VCs and virtual currency transfers, in light of FATF’s finalized guidance in this area.

43. The amendments introduced the “travel rule” as outlined by the finalized June 2019 FATF recommendations on record-keeping obligations.⁵⁹ The travel rule has historically been required of financial institutions (“FIs”) and, in the context of VCs, makes mandatory the transfer of identifying information when FIs transfer money to each other on a customer’s behalf.⁶⁰

44. The travel rule requires dealers in virtual currencies to “obtain, hold and transmit required originator and beneficiary information” immediately whenever transactions involving VCs occur:⁶¹

124.1 (1) A financial entity, money services business or foreign money services business that is required to keep a record under these Regulations in respect of a virtual currency transfer shall

(a) include, with the transfer, the name, address and, if any, the account number or other reference number of both the person or entity who requested the transfer and the beneficiary; and

⁵⁷ *Ibid.*; 2019 Final Regulations, *supra* note 50 at s 19.

⁵⁸ 2019 Final Regulations, *supra* note 50 at s 82.

⁵⁹ Government of Canada, “Regulatory Impact Analysis Statement” (2020) Government of Canada, online: <http://gazette.gc.ca/rp-pr/p1/2020/2020-02-15/html/reg1-eng.html>.

⁶⁰ *Ibid.*

⁶¹ FATF Guidance, *supra* note 37 at page 5.

(b) take reasonable measures to ensure that any transfer received includes the information referred to in paragraph (a).⁶²

These entities are also required to develop risk-based policies around the suspension or rejection of virtual currency transfers when the required information is not received with the transfer.⁶³

O. June 2020 – Regulations Operationalizing *PCMLTFA* Amendments Come Into Force

45. On June 1, 2020, amendments to the *PCMLTFA* addressing VCs and dealers in virtual currencies came into force. This operationalized the changes to the *PCMLTFA* made in 2014 and 2017. The legislative requirements now include implementing a compliance program, registering with FINTRAC, conducting client due diligence and suspicious transaction and terrorist property reporting obligations for domestic and foreign MSBs which deal with virtual assets.⁶⁴ The travel rule proposed in the February 2020 regulatory amendments will come into force with all other regulatory requirements on June 1, 2021.⁶⁵

P. July 2020: FATF 12 Month Review of the Revised FATF Standards on Virtual Assets and Virtual Asset Service Providers

46. In July 2020, FAFT published its 12 month review of the revised FATF Standards on Virtual Assets and Virtual Asset Service Providers.⁶⁶ The review found that 35 of 54 reporting jurisdictions had implemented the revised standards. The FATF noted the need for all FATF members to implement the revised Standards in order to make them effective, and also noted that members had called for further guidance from FATF on how to implement the revised standards.⁶⁷ Recognizing the early stages of the implementation of the Revised Standards, FATF committed to publishing a further review another 12 months later, in July 2021.

⁶² *Regulations Amending the Regulations Amending Certain Regulations Made Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, 2019* (2020), Canadian Gazette Part 1(154), Number 7.

⁶³ *Ibid.*

⁶⁴ 2019 Final Regulations, *supra* note 50.

⁶⁵ *Regulations Amending the Regulations Amending Certain Regulations Made Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SOR/2020-112 at s 21.

⁶⁶ Financial Action Task Force, *12-month Review of Revised FATF Standards – Virtual Assets and VASPs* (Paris: FATF, 2019), online: <<http://www.fatf-gafi.org/publications/fatfrecommendations/documents/12-month-review-virtual-assets-vasps.html>>.

⁶⁷ *Ibid* at page 2.