
APPENDIX E – CROSS-BORDER FUNDS TRANSFER REPORTING IN CANADA AND AUSTRALIA

Systems for the collection, storage, processing, analysis, and dissemination of cross-border electronic funds transfers are in place. Both the Australian and Canadian governments, through their financial intelligence units, have imposed cross-border electronic funds transfer reporting requirements on their financial services industries. What follows is a discussion of the similarities, and differences between the American recordkeeping requirement and the Australian, and Canadian reporting regimes.

Canada

The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) is Canada's financial intelligence unit. The Centre was created to detect and deter money laundering by providing critical information to support the investigation or prosecution of money laundering offences. In December 2001, FINTRAC's mandate expanded to include the detection and deterrence of terrorist financing. FINTRAC collects reports from Canadian financial institutions and others related to, among other things, suspicious transactions, large currency transactions, and cross border movement of currency and monetary instruments valued at \$10,000 (CAN) or more. In addition, FINTRAC collects reports related to any cross-border electronic funds transfer in an amount of \$10,000 (CAN) or more.

FINTRAC analyzes the reports it collects for unusual patterns of transactions that resemble money laundering or terrorist financing activity. Subsequently, FINTRAC checks other databases to which it has access, including databases maintained for law enforcement and national security purposes, as well as public and commercial databases. When FINTRAC concludes that it has reasonable grounds to suspect that information in its possession "would be relevant to investigating or prosecuting a money laundering offence or a terrorist activity financing offence," it discloses designated information, as defined in Canadian law, to the appropriate police force or to the Canadian Security Intelligence Service (CSIS).

FINTRAC first required the reporting of cross-border electronic funds transfers ("EFT" reporting) in June 2002. Initially, FINTRAC required only reports of international funds transfers made using certain SWIFT messages. Effective March 31, 2003, FINTRAC expanded the international EFT reporting requirement to cover all forms of international EFT regardless of system or

message format (See below for the specific legal requirements in Canada). FINTRAC receives almost all of its international EFT reports electronically; FINTRAC's regulations permit for paper filing where the reporting institution can certify that they lack the capability to file electronically, but FINTRAC officials noted that this rarely happens.

To facilitate the electronic filing of these reports, FINTRAC established a "batch file transfer format" that informs financial institutions of the appropriate report content and form. In turn, reporting institutions must implement their own systems for converting the institutions' non-SWIFT data to the proper format prior to submission. For non-SWIFT EFTs FINTRAC has also developed an online form that is generally used by smaller institutions. For both SWIFT and non-SWIFT messages, FINTRAC has established minimum mandatory data fields (17 fields for outgoing SWIFT messages; 8 fields for incoming SWIFT messages; 11 fields for both outgoing and incoming non-SWIFT messages) that must be included in the report (again, FINTRAC dictates the format of the batch submission, but distinguishes between mandatory fields and those fields).⁵⁹

More than 300,000 entities and persons are potentially subject to the EFT reporting requirement in Canada, but many do not conduct business that reaches the thresholds in the law and thus, need not report. In addition, not all types of regulated institutions are currently required to report. However, the Department of Finance has issued a public consultation paper recommending that Parliament amend existing law to require all regulated entities to report cross-border EFTs. As noted above, FINTRAC permits reporting institutions to report by batch file and by single report through either a web-based interface or client software distributed by FINTRAC. Currently 56 entities report via the batch process, with the others using the online reporting mechanism.

- In total, FINTRAC receives approximately 590,000 international EFT transaction records per month.
- In '03-04, FINTRAC received 2.7 million SWIFT EFT reports and 3.9 million non-SWIFT EFT Reports
- In '04-'05, FINTRAC received 3 million SWIFT EFT reports and 4.1 million non-SWIFT EFT Reports
- 60% of all the FINTRAC reports are submitted by banks
- FINTRAC's international EFT data store contains approximately 15.6 million records

⁵⁹ See http://www.fintrac.gc.ca/publications/guide/Guide8/81_e.asp

Australia

The Australian Transaction Reports and Analysis Centre (AUSTRAC) is the financial intelligence unit of the Australian government. The Centre was created to detect and deter money laundering by providing critical information to support the investigation or prosecution of money laundering offences and oversee compliance with the reporting requirements of the *Financial Transaction Reports Act 1988 (FTR Act)*. Under the FTR Act, AUSTRAC collects reports from Australian financial institutions related to, among other things, suspicious transactions, large currency transactions, and cross border currency transactions. AUSTRAC also issues guidelines and circulars to those entities that report to it, called “cash dealers,” about their obligations under the FTR Act and Financial Transactions Reports Regulations. In addition, AUSTRAC collects reports related to any cross-border electronic funds transfer in any amount.

AUSTRAC first required the reporting of cross-border electronic funds transfers (“IFTI” reporting) in 1992.⁶⁰ Generally, AUSTRAC requires the institutions “who are senders of IFTIs transmitted out of Australia; or who are receivers of IFTIs transmitted into Australia” submit reports of those transactions.

AUSTRAC accepts IFTI reports in one of two formats. First, AUSTRAC accepts reports containing properly formatted SWIFT instruction messages from those institutions that use the SWIFT system. Second, AUSTRAC established a batch file transfer format and requires the reporting institutions to implement their own systems for converting the institutions’ non-SWIFT data to the proper format prior to submission. For both SWIFT and non-SWIFT messages, AUSTRAC has established minimum mandatory data fields that must be included in the report.

AUSTRAC permits reporting institutions to report by batch file and by single report through a web-based interface operated by AUSTRAC. This interface enables institutions to upload prepared files automatically, provides an interface for the manual upload of prepared batch files, and provides a form for extremely low volume reporting institutions to submit their data. In addition, AUSTRAC developed and distributes to financial institutions a Microsoft Excel macro that will convert certain electronic records to the prescribed data format for upload to the AUSTRAC systems. AUSTRAC officials told us that the largest four institutions in Australia account for approximately 80% of the IFTI reporting, while a second tier of approximately 20 institutions account for the majority of the remaining reports.

60 The IFTI reporting provisions are set out in section 3 and sections 17B to 17F of the FTR Act. The prescribed details in relation to IFTIs are contained in Regulation 11AA of the *Financial Transaction Reports Regulations 1990* (FTR Regulations); see also AUSTRAC Information Circular No. 2, available at <http://www.austrac.gov.au/text/guidelines/circulars/pdfs/AIC%2002%20-%20International%20Funds%20Transfer%20Instructions.pdf>.

In total, AUSTRAC receives approximately 9 to 10 million IFTI records per year.

- In '03-'04, AUSTRAC received approximately 4 million inbound and approximately 4.5 million outbound IFTI reports
- In '04-'05, AUSTRAC received 4.2 million inbound IFTI reports and approximately 5.5 million outbound IFTI reports
- The most recent figures reveal that in the course of a year, approximately 78% of the IFTI reports are in SWIFT format and 22% in non-SWIFT format
- AUSTRAC's data store contains approximately 70 million records dating from 1995 to present; 55 million of those are IFTI reports

Applicable United States Regulations

Under the funds transfer rule (31 C.F.R. § 103.33), for each payment order that it receives, a financial institution operating in the United States must obtain and retain the following information on funds transfers of \$3,000 or more:⁶¹ (a) name and address of the originator; (b) the amount of the funds transfer; (c) the date of the request; (d) any payment instructions received from the originator with the payment order; (e) the identity of the beneficiary's bank; (f) and as much information pertaining to the beneficiary as is received, such as name and address, account number, and any other identifying information. Intermediary and beneficiary banks receiving a payment order are required to keep an original or a copy of the payment order. An originator bank is required to verify the identity of the person placing a payment order if the customer places the order in person and if the person is not already a customer. Similarly, if a beneficiary bank delivers the proceeds to the beneficiary in person, the beneficiary bank is required to verify the identity of that person if not already a customer.

In addition, a bank must retain a copy of the identifying items that it received with the payment order, such as the name, address, and account number of the beneficiary. The Funds Transfer Rule contains an important provision known as the "Travel Rule," which requires the payment message, when it is sent to a receiving financial institution, to include the following information:

- the name and address of the originator;
- the amount of the transfer;

61 The U.S. Department of the Treasury is reviewing the current threshold, particularly in light of international standards. See Interpretive Note to FATF Special Recommendation VII (requiring countries to mandate that cross-border wire transfers contain accurate and meaningful originator information. Countries may adopt a de minimus threshold of no higher than USD or EUR 1,000. Countries are expected to be in compliance with the Special Recommendation by December 2006.); See 71 Fed.Reg. 35564 (June 21, 2006).

- the execution date of the transfer;
- any payment instructions received;
- the name and address of the beneficiary (if available);
- the account number of the beneficiary (if available);
- any other specific identifiers of the beneficiary (if available); and
- the beneficiary's financial institution.

An originator's financial institution operating in the United States also must include in the payment message as many of the identifying items as it receives with the payment message, such as the name, address, and account number of the beneficiary. This information must be included in, or "travel" with, every subsequent payment message.

Comparison of Funds Transfer Reporting and Recordkeeping

| | Canada | Australia | U.S. Recordkeeping |
|--|--|--|---|
| Collecting since | 2002 | 1992 | n/a |
| Value Threshold | \$10,000 CAN | N/A | \$3,000 USD |
| Types of Reporting Institutions | Depository Institutions Money Transmitters Currency Exchangers | Depository Institutions Money Transmitters | Depository Institutions Nonbank financial institutions |
| Specific Institutions Required to Report | All institutions, including correspondents | First In/Last Out | All institutions, including correspondents |
| No. of Regulated Institutions | ~14,000* | 315 | >200,000 |
| No. Reporting EFTs | Unknown | 212 | n/a |
| Reporting Form/Manner | SWIFT MT-103 Online Form Prepared Report | SWIFT MT-103 Online Form Prepared Report | n/a |
| Annual Volume | 7.1 million | 9-10 million | 350-500 million (est'd) |
| % SWIFT/non-SWIFT | 42% SWIFT 58% non-SWIFT | 78% SWIFT 22% non-SWIFT | 67% SWIFT 33% non-SWIFT** |
| Primary Filers/% of Total | Unknown | 4/80% | n/a |
| LE access to the data | None – by referral from FINTRAC only | Direct Query Access | Direct Query Access |

* Statistics on Payment and Settlement Systems in Selected Countries, Figures for 2004, Bank for International Settlements, March 2006, pp. 16-17.

**Estimated.

The primary differences between Canada's, Australia's, and the United States' reporting frameworks are that the U.S. does not currently require reporting of funds transfer information, and that the number of regulated financial institutions and the volume of cross-border funds transfers is greater in the U.S. than in Canada or Australia. This latter difference suggests that the burden on FinCEN related to the collection, storage, processing, analysis, and dissemination of cross-border funds transfer reports is substantially higher than on FINTRAC and AUSTRAC.

Funds Reporting Requirements in Canada and Australia

Canada

Legal Source

Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations - November 06, 2003

http://www.fintrac.gc.ca/reg/ConsolReg_031106-2_e.asp

Definition of Transfers to be Reported

“electronic funds transfer,” means the transmission - through any electronic, magnetic, or optical device, telephone instrument, or computer - of instructions for the transfer of funds, other than the transfer of funds within Canada. In the case of SWIFT messages, only SWIFT MT 100 and SWIFT MT 103 messages are included. (télévirement)

“Interpretation” 1(2) http://www.fintrac.gc.ca/reg/ConsolReg_031106-2_e.asp

“Interpretation” 1(2) http://www.fintrac.gc.ca/reg/ConsolReg_031106-2_e.asp

“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) Persons or Entities Engaged in the Business of Foreign Exchange Dealing

“Money services business” means a person or entity that is engaged in the business of remitting funds or transmitting funds by any means or through any person, entity or electronic funds transfer network, or of issuing or redeeming money orders, traveller's cheques or other similar negotiable instruments. It includes a financial entity when it carries out one of those activities with a

person or entity that is not an account holder. (entreprise de transfert de fonds ou de vente de titres négociables)

U.S. Equivalent Financial Institutions – Banks and Money Services Businesses

Reporting Requirement

http://www.fintrac.gc.ca/reg/ConsolReg_031106-2_e.asp

“Financial Entities” – Section 12(b) and 12(c) of Proceeds of Crime Act

“Persons or Entities Engaged in the Business of Foreign Exchange Dealing”
– Section 24(b) and 24(c) of Proceeds of Crime Act

“Money Services Businesses” – Section 28(b) and 28(c) of Proceeds of Crime Act

The text of the reporting requirement for the above three entities is substantively similar to each other, as follows:

12. (1) Subject to subsection (5), section 50 and subsection 52(1), every financial entity shall report the following transactions and information to the Centre:

The sending out of Canada, at the request of a client, of an electronic funds transfer of \$10,000 or more in the course of a single transaction, together with the information referred to in Schedule 2 or 5, as the case may be; and

The receipt from outside Canada of an electronic funds transfer, sent at the request of a client, of \$10,000 or more in the course of a single transaction, together with the information referred to in Schedule 3 or 6, as the case may be.

(2) For greater certainty, paragraph (1)(b) does not apply when the financial entity sends an electronic funds transfer to a person or entity in Canada, even if the final recipient is outside Canada.

(3) Paragraph (1)(b) applies in respect of a financial entity that orders a person or entity to which subsection (1), 24(1) or 28(1) applies to send an electronic funds transfer out of Canada, at the request of a client, unless it provides that person or entity with the name and address of that client. (SOR/2003-358, subs.5(1))

(4) For greater certainty, paragraph (1)(c) does not apply when the financial entity receives an electronic funds transfer from a person or entity in Canada, even if the initial sender is outside Canada.

Exceptions to General Requirement

Transfers made by a financial institution on its own behalf are exempt. See sections 12, 24, and 28, which restrict reporting to transactions made “at the request of a client.”

http://www.fintrac.gc.ca/reg/ConsolReg_031106-2_e.asp

Reporting Threshold

\$10,000 Canadian

Australia

Legal Source

Financial Transaction Reports Act 1988 – as of 6 February 2004

<http://scaleplus.law.gov.au/html/pasteact/0/59/top.htm>

Definition of Transfers to be Reported

International funds transfer instruction means an instruction for a transfer of funds that is transmitted into or out of Australia electronically or by telegraph, but does not include an instruction of a prescribed kind. (ED – see exceptions, below)

“Interpretation” Sec. 3 <http://scaleplus.law.gov.au/html/pasteact/0/59/0/PA000070.htm>

Financial Institutions subject to Reporting Requirement

“Interpretation” Sec. 3 <http://scaleplu.law.gov.au/html/pasteact/0/59/0/PA000070.htm>

All “*cash dealers*” including:

- (a) A financial institution;
- (b) A body corporate that is, or, if it had been incorporated in Australia, would be, a financial corporation within the meaning of paragraph 51(xx) of the Constitution;
- (c) An insurer or an insurance intermediary;
- (d) A financial services licensee (as defined by section 761A of the Corporations Act 2001) whose licence covers either or both of the following:
 - (i) Dealing in securities (as defined by subsection 92(1) of the Corporations Act 2001);
 - (ii) Dealing in derivatives (as defined by section 761A of the Corporations Act 2001);
- (f) A Registrar or Deputy Registrar of a Registry established under section 14 of the Commonwealth Inscribed Stock Act 1911;
- (g) A trustee or manager of a unit trust;
- (h) A person who carries on a business of issuing, selling or redeeming travellers cheques, money orders or similar instruments;

- (j) A person who is a bullion seller.
- (k) A person (other than a financial institution or a real estate agent acting in the ordinary course of real estate business) who carries on a business of:
 - (i) collecting currency, and holding currency collected, on behalf of other persons; or
 - (ia) exchanging one currency for another, or converting currency into prescribed commercial instruments, on behalf of other persons; or
 - (ib) remitting or transferring currency or prescribed commercial instruments, or making electronic funds transfers, into or out of Australia on behalf of other persons or arranging for such remittance or transfer; or
 - (ii) preparing pay-rolls on behalf of other persons in whole or in part from currency collected; or
 - (iii) delivering currency (including payrolls);
- (l) A person (other than a financial institution or a real estate agent acting in the ordinary course of real estate business) who carries on a business in Australia of:
 - (i) on behalf of other persons, arranging for funds to be made available outside Australia to those persons or others; or
 - (ii) on behalf of persons outside Australia, making funds available, or arranging for funds to be made available, in Australia to those persons or others;
- (m) A person who carries on a business of operating a gambling house or casino; and
- (n) A bookmaker, including a totalisator agency board and any other person who operates a totalisator betting service.

“Financial institution” means (from (a), above):

an Authorized Deposit-taking Institution (ADI):

A body corporate that is an ADI for the purposes of the Banking Act 1959;

The Reserve Bank of Australia; or

A person who carries on State banking within the meaning of paragraph 51(xiii) of the Constitution.

Or (from (b), above), a co-operative housing society.

U.S. Equivalent Financial Institutions – Banks, Securities Brokers/Dealers, Futures Commission Merchants, Money Services Businesses, Casinos

Reporting Requirement

FTR Act - Section 17B - Reports of international funds transfer instructions
<http://scaleplus.law.gov.au/html/pasteact/0/59/0/PA000300.htm>

(1) If:

A cash dealer in Australia is:

- (i) the sender of an international funds transfer instruction transmitted out of Australia; or
 - (ii) the recipient of an international funds transfer instruction transmitted into Australia;
- and

at least one of the following applies:

- (i) the cash dealer is acting on behalf of, or at the request of, another person who is not an ADI;
- (ii) the cash dealer is not an ADI;

the dealer must, before the reporting time, prepare a report of the instruction.

(2) The report must be in the approved form and include the prescribed details.

(3) Subject to subsection (4), the report must be sent to the Director in the approved way and form before the reporting time.

(4) The Director may, by notice in the Gazette, declare that subsection (3) does not apply in relation to a cash dealer in relation to a report or a class of report. (ED - i.e. AUSTRAC can declare certain transactions exempt; they have declared several categories – see below).

(5) If, because of the operation of subsection (4), subsection (3) does not apply in relation to a report, the cash dealer must retain the report for 7 years.

(6) For the purposes of this section, if a cash dealer transmits an instruction on behalf of, or at the request of, another person, the cash dealer is taken to be the sender of the instruction.

(7) For the purposes of this section, if a person, not being a cash dealer, transmits an instruction on behalf of, or at the request of, a cash dealer, the cash dealer is taken to be the sender of the instruction.

(8) In this section:

reporting time, in relation to an instruction, means:

- (a) if the instruction is transmitted into Australia—14 days after the day that the transmission is received or such later time as is specified in the regulations;

(b) if the instruction is transmitted out of Australia—14 days after the day that the instruction is transmitted or such later time as is specified in the regulations.

Exceptions to General Requirement

Transfers conducted by a bank on its own behalf are exempted. All other financial institutions (“cash dealers”) must report transfers that they conduct on their own behalf. See section 17B(1)(b) requirements.

<http://scaleplus.law.gov.au/html/pasteact/0/59/0/PA000300.htm>

In addition, AUSTRAC Information Circular #2 sets forth the following exceptions to the general reporting requirement:

<http://www.austrac.gov.au/text/guidelines/circulars/infocirc2.html>

IFTIs which only involve ADIs (ED – i.e. banks) acting solely on their own behalf, such as where there is a transfer of funds to effect ADI-to-ADI settlements, need not be reported. The exclusion of an ADI’s own transactions and ADI-to-ADI settlements is provided as those ADIs are caught by stringent regulatory and supervisory requirements of the Banking Act 1959. The legislation does, however, provide for the Director of AUSTRAC to allow exclusion of transactions of other cash dealers, which are similar to those types of transactions which have specifically been excluded for ADIs. The Director of AUSTRAC has granted exemptions to some cash dealers, on a case by case basis, in the following terms:

1. Transactions conducted by a cash dealer on its own behalf, i.e. transactions where the cash dealer is not acting on behalf of, or at the request of another person, where:

1a) The cash dealer has authority from the Reserve Bank of Australia to deal in foreign exchange; and/or

1b) The cash dealer has applied to the Reserve Bank of Australia to be considered for Bank ‘branch’ status.

2. Telex transactions transmitted or received by the cash dealer which cannot be reported to AUSTRAC in an electronic format, where:

After excluding reports covered by all other declarations of the Director in respect of that cash dealer, the cash dealer would still be required to report 10,000 or more IFTI telex transactions per year and those telexes are not capable of being reported in an electronic format but will be capable of being reported electronically to AUSTRAC within 5 years of the first exemption date.

3. Other classes of reports for which the cash dealer seeks exemption.

The Director has considered for declaration in the Government Gazette, classes of reports in addition to those referred to in 1 and 2 above. The cash dealer is required to retain those exempted reports for a period of seven (7) years.

Reporting Threshold

No Threshold – institutions must report all cross-border funds transfers