

OBSOLETE Policy Interpretations				
Date Answered	Activity Sector	Questions	Answer in French	Answer in English
26/04/2010	Trust and/or loan company	How does FINTRAC view trust beneficiaries in relation to the beneficial ownership requirements "in case of a trust" in 11.1(1)(b) of the Regulations?		<p>The beneficiary of a trust does not control the trust (by definition, if a beneficiary controls a trust, it is no longer a trust), and the beneficiary does not "own" a trust (the property that the settlor has put in the trust is the property of the trust, and is controlled by the trustee). For example, there are many case were the property of the trust does not go to the beneficiary at the end of trust (i.e. pursuant to the trust, the interest on the million dollars of the trust goes to me - the beneficiary - for as long as I live, and on my death the million goes to the settlor's cat Muffins - I don't control or own the trust or the property of the trust - and neither does Muffin, at least until I kick the bucket).</p> <p>If the trustee controls the trust at 25% or more then he should be listed as the beneficial owners as per subsection 11.1(1)(b) of the entity. The beneficiaries would be captured under s. 11 for the trust in vivos, but they do not own or control the trust.</p>
11/03/2010	Credit Union	A Credit Union is asking whether or not they have to report an international EFT such as the example provided in an attached document?		<p>The Centre is not in a position to answer – insufficient information provided by the Credit Union in regards to the flow of money, the person giving the instructions, the beneficiary and if it is an international EFT or not.</p>
28/04/2010	Credit Union	According to section 82 of the financial institutions act (BC) two members or more act on behalf of the unincorporated associations to open accounts and make deposits. Central 1 states that it is the members that are the account holders and not the associations. Why beneficial ownership is required for an account opened on behalf of an association by sponsoring members?		<p>It depends on whether the account holder is the entity (i.e. the association) or the members, and that is a question of fact.</p> <p>Members are account holders: If the CU opened the account and indicated the members are the account holders, then the CU would identify the members, make a third party determination and indicate the entity's information as the third party (i.e. the unincorporated association here). In this case, no beneficial ownership needs to be determined.</p> <p>However, although it is up to the CU to determine how they open and manage their accounts - a word of caution that this may not be the most prudent way of going... the account should be opened for the entity (but again up to the CU to determine the risks).</p>

				<p>Entity is the account holder: If however, the account holder is the entity, confirm the existence of the entity - signatures cards signed by the members, etc., then 1/3 party determination made, however, no third party in this case (unless there is a person or persons or another entity that gives the instructions in regards to that account). And the CU will have to determine the beneficial ownership i.e. who controls the entity under section 11.1 of our regulations.</p> <p>In other words, beneficial ownership at account opening is a requirement when a financial entity is required to confirm the existence of an entity when it opens an account in respect of that entity. If the financial entity opens the account but the entity is not the "account holder", then there are no beneficial ownership requirement under section 11.1.</p>
22/12/2009	Credit Union	<p>For record keeping obligations, in the guideline, it states it is only subject to the requirements when it offers financial services to anyone other than a financial entity that is a member of its credit union central.</p> <p>However, if considered a RE would it not have a reporting obligation for its EFT activities?</p>		<p>If EFTs are initiated by clients of the Credit Unions (even if processed by the Central) then it would be up to the Credit Union to report (not the Central).</p>
28/10/2010	Caisse Populaire	<p>Voici un résumé du projet d'ouverture de folio par AccèsD, qui est actuellement en évaluation chez l'entité déclarante. La personne intéressée veut s'assurer de sa faisabilité (en lien avec la LRPCFAT) avant de faire des recommandations à l'équipe projet.</p> <p>En résumé, le projet évalue deux méthodes d'ouverture de folio par AccèsD (à noter que seules des personnes qui sont déjà membres à la caisse populaire pourraient ouvrir un folio par AccèsD).</p> <p>Première possibilité - Ouvrir un nouveau folio par AccèsD dans une entité déclarante où la personne est déjà membre</p>	<p>Malgré que dans ce cas le client (membre) bénéficie de l'exception contenue au paragraphe 62(1)(c) pour mesures d'identification, il demeure quant même qu'effectivement une mise à jour des informations devrait être faite et si comme c'est un nouveau compte alors selon 14(c)(1) un document qui indique l'utilisation prévue du compte, ainsi que faire une détermination quant aux tiers (pas PEFP car fait partie de l'exception 62(1)(c)).</p>	

		<ul style="list-style-type: none"> • La caisse populaire devrait déjà posséder toutes les informations requises par la Loi à propos de ce membre (signature, pièce d'identité, etc.). De plus, le service AccèsD confirme que c'est le membre qui fait la demande (code d'utilisateur et mot de passe). <p>* La caisse populaire est consciente qu'elle doit s'assurer que le dossier de ce membre est complet avant de pouvoir ouvrir le nouveau folio (ce point s'applique surtout aux membres dont le premier folio a été ouvert il y a quelques années).</p> <p>Est-ce qu'il des exigences légales qui pourraient empêcher d'ouvrir un nouveau folio sans que le membre se présente physiquement à au comptoir de la caisse populaire ?</p>		
15/06/2009	Credit Union	Does simply asking the entity who "owns or controls... etc" without cross checking with a document enough to constitute "reasonable measures"? I think simply asking the question is sufficient. Please advise.		Yes asking the question would be sufficient.
10/06/2009	Trust and/or loan company	Is a "trust" an entity (other than a corporation)? if so does beneficial ownership apply to it? if so who are the beneficial ownership?		Yes, the fiducie falls within the definition of an entity (section 2 of our Act). Therefore, the reporting entity would have to take reasonable measures to confirm the names and addresses of all trustees and all known beneficiaries and settlors of the trust.
1/05/2009	Legal Counsel Real Estate	Could you please confirm in writing, when a Real estate developer receives funds from a lawyer, he is not required to record a receipt of funds?		There are no receipt of funds obligation for the RED when the RED receives funds from a lawyer. The rationale behind this policy interpretation is: 1) The sale transaction has already taken place earlier, thus the transfer of funds from the lawyer to the RED is not longer "in relation" to a sale transaction and 2) We have indicated in the past that when there are two reporting entities involved, we want to avoid duplication of reporting and record keeping. The lawyer is already covered (in principle) and would have the obligation to keep a receipt of funds record, not the RED.
22/01/2010	Caisse Populaire Credit	We review many accounts for entities other than a corporation. Often, these are association accounts, from large to small.		Beneficial ownership determination: Although there is no record keeping obligation to indicate that either the

	Union	<p>PI has said in the past that the beneficial owner is a matter of fact in these cases. In short, who makes the decisions?</p> <p>We reviewed several files recently where the RE only checked off "administrators (directors)" on the form and left the check box "25 percent or more" empty for entities other than corporations. This said, as we know, the notion of recording administrators for beneficial owners only apply to corporations.</p> <p>What, if any, evidence must the Reporting Entities show in terms of having at least taking the reasonable measures to determine the beneficial owner?</p>		<p>question or a determination was made in regards to beneficial ownership when the result is negative - there should be a process in place in the reporting entities' policies and procedures and in their training to first line staff to the effect that reasonable measures are to be taken to make that determination.</p>
08/01/2010	Bank	<p>Where a financial entity acts as the clearing bank for its indirect clearer bank clients and, consequently, accepts cash deposits from the underlying corporate or personal clients of the indirect clearer bank into the deposit account of the indirect clearer bank, it is the direct clearer bank, and not the indirect clearer bank, that has the regulatory obligation to submit large cash transaction reports (LCTRs) to FINTRAC for any qualifying cash transactions. It is not the obligation of the indirect clearer bank to report LCTRs to FINTRAC in this case and the indirect clearer bank is not required to obtain copies of submitted LCTRs in fulfillment of any LCTR obligation.</p> <p>We would like to receive confirmation on the above noted regulatory interpretation.</p>		<p>Firstly, the direct or indirect clearer relationship does not affect our policy interpretation, or the reporting entities' legislative obligations.</p> <p>A financial entity that receives a large cash amount of \$10,000 or more from a client has the following obligations:</p> <ol style="list-style-type: none"> 1) under subsection 12(1), the financial entity must report the receipt from a client of amount in cash of \$10,000 and 2) under subsection 13, the financial entity must keep a large cash transaction record in respect of that amount (unless the cash is received from another financial entity or a public body). <p>Because the bank is receiving the large cash from a client, it must report LCTR and must keep a record.</p>
24/11/2008	Unknown	<p>What are the main components that we are looking at in agency agreements (identification for non-face to face transactions) - for our</p>		<p>The agreement should also indicate the purpose, plus what is expected of the agents .. for example ...</p>

		<p>purposes?</p> <ul style="list-style-type: none"> - parties - date - viewing recording sending identification 		<p>_____ hereby appoints _____ as their agent / mandatary for the purposes of ascertaining identification as required under the PCMLTFA. and you may want to expand on how to ascertain the id etc...</p> <p>and indicate as well what is expected of the agent when identifying (recordkeeping etc...).</p>
10/10/2008	Security Dealers	<p>We are looking for guidance on how to close dormant pre-June 23 accounts that haven't satisfied certain AML requirements such as I.D. verification. Do we "freeze" the accounts per new rules introduced on June 23, or can we simply send out the assets in the account and close the account?</p>		<p>Firstly under our regulations, they have no authority to freeze the account.</p> <p>Secondly, you are right that before releasing any amounts of money from that account, they should identify the client (the ID obligation precedes the new June 23rd requirements and should of taken place within the 6 months of the opening of the account - so they are definitely in contravention with our regs either way - if no transaction has taken place yet, only the initial deposit, post-June 23rd, they would need to ID before releasing the money as this would be considered as a transaction other than the initial deposit !)</p> <p>Plus if they do not identify when releasing the money, they will definitely have some difficulty identifying after the money is released.</p>
26/08/2008	Credit Union	<p>We have been requested to open an account for a large private company with approx 1800 retail locations within its group of companies (Head Office Ontario).</p> <p>The account will be for deposit gathering for the location in close proximity to the branch. To satisfy FINTRAC identification requirements please confirm the following is satisfactory:</p> <p>Corporate documents (articles of incorporation)</p> <p>Listing of directors</p> <p>Identification of signing officers by attestation method (confirmed by commissioner of oaths) .</p>		<p>To confirm the existence of a corporation as well as the corporation's name and address, refer to the following documents:</p> <p>the corporation's certificate of corporate status; a record that has to be filed annually under provincial securities legislation; or any other record that confirms the corporation's existence. Examples of these include such other records as the corporation's published annual report signed by an independent audit firm, or a letter or a notice of assessment for the corporation from a municipal, provincial, territorial or federal government.</p> <p>You also have to determine the names of the corporation's directors . To do this, you may need to see the list of the corporation's directors submitted with the application for incorporation</p> <p>The attestation method (commissioner of oaths) can be used for</p>

				<p>identification but it MUST be combined with another method.</p> <p>Identification product or credit file method; or Cleared cheque or deposit account method Please refer to the attached link for additional information http://www.fintrac-canafe.gc.ca/publications/guide/Guide6/6G-eng.asp#445</p> <p>Beneficial Ownership</p> <p>Effective June 23, 2008, you also have to take reasonable measures to obtain information about the entity's beneficial ownership. In this context, reasonable measures would include asking the individual authorized to act for the entity about beneficial ownership of the entity. It could also include consulting a credible source of publicly or commercially available information.</p> <p>If obtained, you have to keep a record of the following:</p> <p>If the entity is a corporation: the name and occupation of all directors of the corporation; and the name, address and occupation of all individuals who directly or indirectly own or control 25% or more of the shares of the corporation. If the entity is other than a corporation: the name, address and occupation of all individuals who directly or indirectly own or control 25% or more of the entity. If this information cannot be obtained, you have to keep a record explaining why beneficial ownership could not be determined.</p>
08/09/2008	Trust and/or loan company	<p>1st situation:</p> <p>As a financial entity, we must open an account for a trust.</p> <p>In this case, it is a family trust created by a trust deed.</p> <p>What information must we collect in relation to</p>		<p>It would be a question of fact - the question that needs to be answered is who controls the trust (members or individual). They would have to be identified. And the individual that controls the trust is not necessarily the one who owns it. Also, it has been previously indicated that in the case of a corporation, one level is sufficient to determine the beneficial ownership.</p>

		<p>the following? If the entity is something other than a corporation: -Names, addresses and occupations for all the people who own or control, directly or indirectly, at least 25% of the trust.</p> <p>Who are these people? The constituents, trustees (and co-trustees) or beneficiaries?</p> <p>2nd situation: As a financial entity, we must open an account for a corporation.</p> <p>The principal shareholder is a family trust created by a trust deed.</p> <p>What information must we collect in relation to the following? If the entity is a corporation: - Names and occupations of all the administrators; -Names, addresses and occupations of all the people who own or control, directly or indirectly, at least 25% of its shares.</p> <p>Who are these people? The constituents, trustees (and co-trustees) or beneficiaries of the trust?</p>		
	<p>Bank Caisse populaire Credit Union Trust and/or loan company</p>	<p>Deficiency #14 : PCMLTF Regulations 11.1(1) - Beneficial Ownership - Reasonable Measures Your organization has the obligation to take reasonable measures to obtain, at the time of confirming the existence of an entity, the information on the directors or partners or on persons who own or control 25% or more of the entity as required by subsection 11.1(1) of the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations.</p>		<p>A financial entity has neither taken reasonable measures to obtain information about the entity's beneficial ownership nor determined if the not-for-profit organization is a registered entity or solicits charitable financial donations. In this specific case, it is my understanding that FINTRAC cited the deficiency under subsection 11.1(3) of the PCMLTFR.</p> <p>Subsection 11.1(1) of the PCMLTFR indicates that if the financial entity has to confirm the existence of a corporation or other entity at the opening of an account, at that same time, the financial entity also has to take reasonable measures to obtain information about the entity's</p>

		<p>During the examination 50 account records randomly selected were reviewed. It was determined that your organization did not take reasonable measures to obtain beneficial ownership information for two business accounts.</p> <p>Deficiency #15 : PCMLTF Regulations 11.1(3) - Beneficial Ownership - Not For Profit Your organization has the obligation to determine whether a not for profit organization for which the existence is being confirmed, is a registered charity or other charitable organization and keep a record of that information as required by subsection 11.1(3) of the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations.</p> <p>During the examination 50 account records randomly selected were reviewed. It was determined that your organization did not take reasonable measures to obtain beneficial ownership information</p> <p>Please refer to deficiency #14 and 15 and the wording for each deficiency. Deficiency #14 states "reasonable measures" and Deficiency #15 states "obligation to determine". Could you clarify the terms?</p>		<p>beneficial ownership.</p> <p>If obtained, the financial entity has to keep a record of the following:</p> <ul style="list-style-type: none"> • If the entity is a corporation: <ul style="list-style-type: none"> o the name and occupation of all directors of the corporation; and o the name, address and occupation of all individuals who directly or indirectly own or control 25% or more of the shares of the corporation. • If the entity is other than a corporation: <ul style="list-style-type: none"> o the name, address and occupation of all individuals who directly or indirectly own or control 25% or more of the entity. <p>In the case of a not-for-profit organization:</p> <p>If the financial entity has to confirm the existence of an entity that is a not-for-profit organization (confirming the existence as per subsection 11.1(1) of the PCMLTFR), the financial entity also has to do the following:</p> <ul style="list-style-type: none"> • Determine whether or not that entity is a registered charity for income tax purposes and keep a record to that effect; • If that entity is not a registered charity, determine whether or not it solicits charitable financial donations from the public and keep a record to that effect. <p>This requirement is not based on reasonable measures. If the entity is a not-for-profit organization, the financial entity must make the determination described above and keep the related record.</p> <p>That means, in the case of a not-for-profit organization, the financial entity has 1) to take reasonable measures to obtain information about the entity's beneficial ownership and 2) to determine if the not-for-profit organization is a registered charity or solicits charitable financial donations from the public.</p> <p>In general, if the financial entity has neither taken reasonable measures to obtain information about the entity's beneficial ownership nor determined if the not-for-profit organization is a registered entity or</p>
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