

Corporate Crime, Fraud and Corruption

Alex Rozmus

Legal Counsel, Ethics & Compliance

Agenda

- Fraud
- Bribery & Corruption
- Insider Trading, Tipping and Market Abuse
- Money Laundering and Terrorist Financing
- Financial Record Keeping
- Whistleblowing
- Questions



Fraud

—

“All multifarious means which human ingenuity can devise, and which are resorted to by one individual to get an advantage over another by false suggestions or suppression of the truth. It includes all surprise, trick, cunning or dissembling, and any unfair way by which another is cheated.”

-Blacks Law Dictionary

- **Criminal fraud**: occurs where by deceit, falsehood or other fraudulent means, a person defrauds the public or any person, whether ascertained or not of any property, money or valuable security or any service.
- **Civil fraud**: requires there to be a knowingly false representation, with intention to be relied upon, and resulting damages from relying on that representation.
- Fraud-like offences are enacted by statute at both the provincial and federal levels (e.g., Competition Bureau, Alberta Securities Commission, CRA)
- The essential difference between fraud and theft is ***deception***

Categories of Fraud

Bribery

Gross negligence

Breach of fiduciary duty

Conflict of interest

Concealment

Conspiracy

False claims

Theft

Negligent misrepresentation

Obstruction of justice

Illegal gratuity

Economic extortion

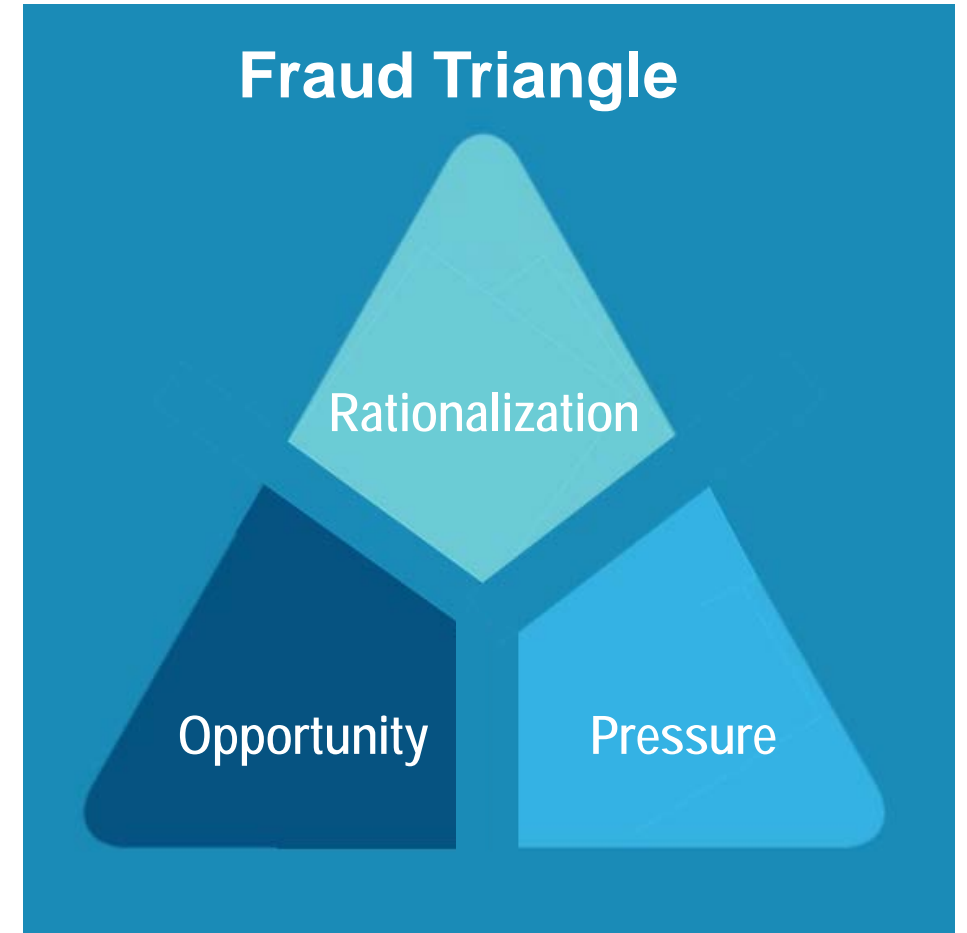
Perjury

Forgery

- Reporting any suspicious activities or transactions
- Paying attention to circumstances or situations that create the risk of fraud or theft
- Submitting truthful, timely and complete expense claims and time reports with all required supporting documentation
- Following all Enbridge policies and procedures that apply to procurement, vendor selection, contracting and invoice approvals
- Thoroughly reviewing all expense reports prior to approving them



- Governance
- Risk Assessment
- Prevention
- Detection
- Investigation and corrective action
- Hard controls – ***Prevent***
 - Background checks
 - Staff rotation
 - Using incentives and discipline
- Soft controls – ***Deter***
 - “Tone-at-the-top”
 - Code of Conduct
 - Fraud Policy
 - Awareness training



Bribery & Corruption

—

Bribery & Corruption

- **Bribe:** a payment of any item of value to any **public official** or any other person or entity, including persons or entities in the private or commercial sector, where the payment is intended to induce the recipient(s) to misuse their position or to obtain or retain an improper commercial advantage.
- **Corruption:** **public officials** enriching themselves or others close to them.
- Value is interpreted very broadly
- Corrupt intent is a requirement
- Obtaining or retaining business





Corruption of Foreign
Public Officials Act CFPOA



Foreign Corrupt
Practices Act FCPA

Centerpiece Provisions

Jurisdiction, Territoriality and Nationality

Real and substantial link
Issuers

Defences

Due diligence
Reasonable promotional expenses
Facilitation payments

Books and Records Offences

Books kept for the purposes of bribing
Six categories of books and records offences
RCMP vs. SEC enforcement

Penalties

Criminal fines and imprisonment
Civil liability

Forms of Bribes

Employment

Scholarships

Personal favors

Bank transfers

Gifts

Discounted services

Charitable contributions

Favors for family and friends

Cash

Donations to political parties

Entertainment

- Never offering, promising or giving anything of value to anyone nor receiving anything of value from anyone
- Never paying or offering to pay facilitation payments
- Monitoring third parties and their activity on any ongoing basis for corruption-related risks
- Conducting due diligence
- Ensuring that all third party contracts entered into require compliance with applicable anti-bribery, anti-corruption and illegal financing activity laws
- Always following Enbridge's policies related to giving and receiving gifts and entertainment



Enforcement & Settlement Trends

Canada:

- *R v Watts* (2005, Alberta QB) – guilty plea, \$25,000 fine
- *R v Niko Resources* (2011, Alberta QB) – guilty plea, \$9,499,000 fine
- *R v Griffiths Energy* (2013, Alberta QB) – guilty plea, \$10,350,000 fine
- *R v Karigar* (2013, Ontario SCJ) – convicted at trial, 3 years in prison

USA:

- Siemens (2008, Germany) - \$800 M fine
- KBR / Halliburton (2009, USA) - \$579 M fine
- BAE (2010, UK) - \$400 M fine
- Total S.A. (2013, France) - \$398 M



The CFPOA: Mandatory Risk Assessment

- *Niko Resources Ltd. (2011)* – Probation Order stated that conducting a risk assessment is now a mandatory element of compliance in the anti-corruption arena:
 - *“The company will develop these compliance standards and procedures, including internal controls, ethics and compliance programs on the basis of a risk assessment addressing the individual circumstances of the company, in particular foreign bribery risks facing the company, including but not limited to, its geographical organization, involvement in joint venture agreements, importance of licenses and permits in the company’s operations, degree of governmental oversight and inspection, and volume and importance of goods and personnel clearing through customs and immigration.”*
- UK Ministry of Justice (March 2011) – Guidance about procedures which relevant commercial organizations can put in place to prevent persons associated with them from bribing (section 9 of the *Bribery Act 2010*):
 - Six principles of a risk-based approach to managing bribery risks

Insider Trading, Tipping and Market Abuse

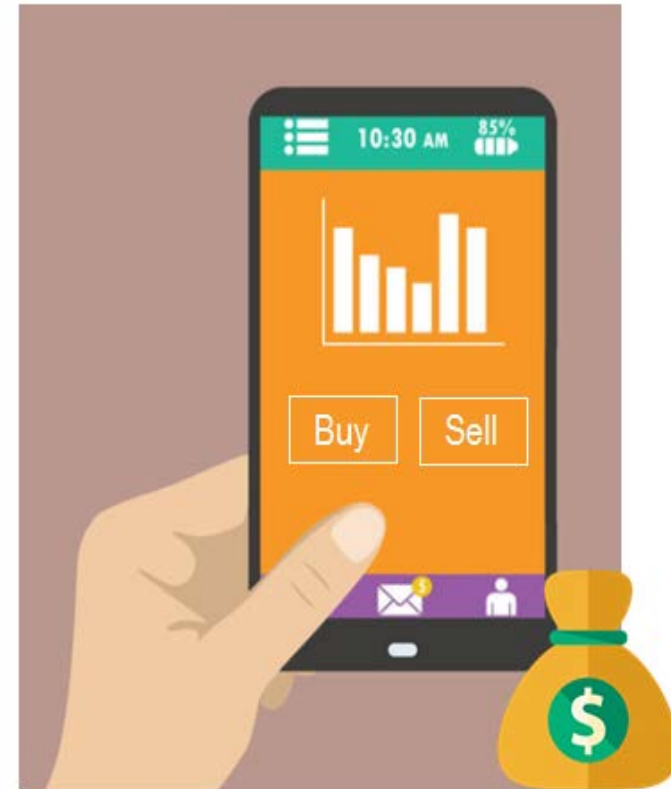
—

Insider Trading, Tipping and Market Abuse

- **Insider Information**: is any material information relating to the business and affairs of a company that has not been generally disclosed to the public and that, if known, would result in a significant change in the market price or value of any securities of that company.
- **Tipping**: includes directly or indirectly passing along insider information about any company to anyone, including friends or relatives, unless the disclosure is made in the necessary course of business.
- *Criminal Code* (applies nationally)
- Securities Acts (provincial governments)



- Complying with Disclosure Guidelines and Insider Trading and Reporting Guidelines
- Never using insider information to purchase or sell securities
- Never using insider information to recommend or encourage another person to purchase or sell securities
- Never engaging in tipping to anyone, including spouses, friends and relatives
- Only sharing insider information with fellow employees on a “need-to-know” basis
- Protecting insider information from unauthorized disclosure
- Directing all inquiries from financial analysts or others who work in the financial and investment communities to Investor Relations



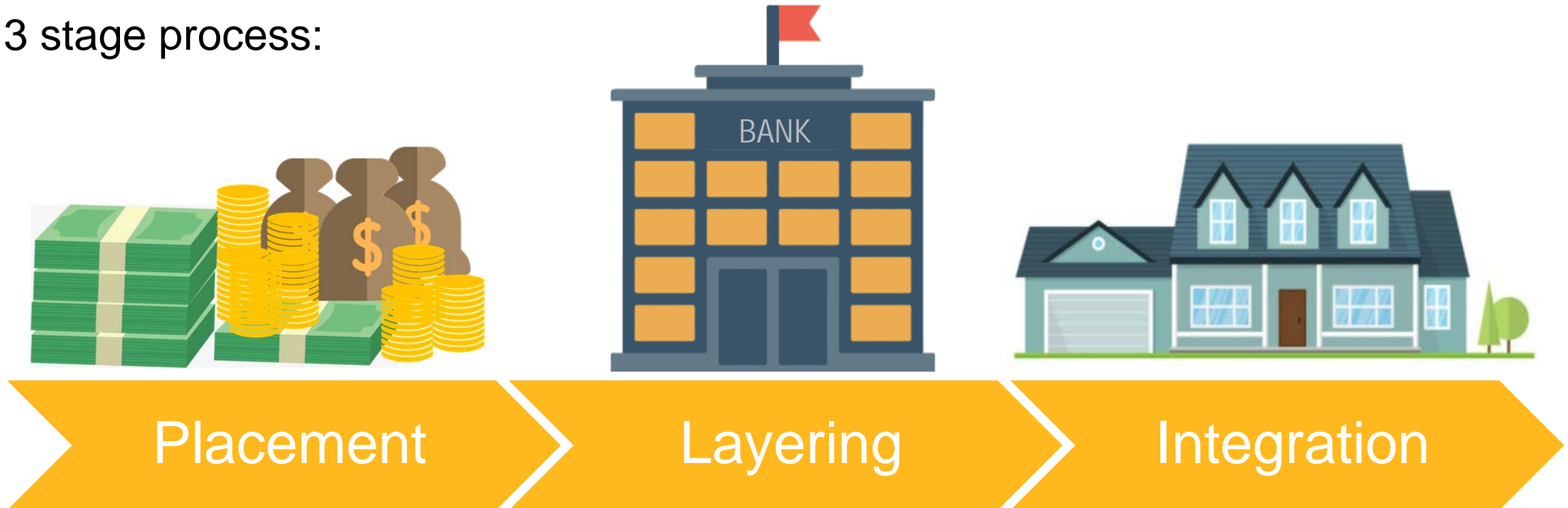
- Canadian Securities Administrators (CSA) – National Policy 51-201 (Disclosure Standards)
 - Have a written policy and disseminate (and train on) it widely
 - State the applicable law clearly in the policy
 - Establish scheduled blackout periods
 - Violations should have consequences
- Main stock exchanges in Canada have guidelines and requirements
 - Toronto Stock Exchange (TSX)
 - TSX Venture Exchange (TSXV)
 - Aequitas Neo Exchange
 - Canadian Securities Exchange (CSE)
- Insider trading laws are premised on a “level playing field”

Money Laundering and Terrorist Financing

—

Money Laundering & Terrorist Financing

- **Money laundering**: is the disguising of the existence, nature, source, control, beneficial ownership, location, and disposition of property derived from criminal activity.
- 3 stage process:



Methods

Cash

Bars, restaurants & nightclubs

Vending machines

Business front

Real estate

ATM's

Financial institutions

Insurance companies

Prepaid items

Digital currencies

Casinos

Shell companies

Charities & nonprofit organizations

- Recording the nature and purpose of all transactions and expenditures accurately and transparently
- Being vigilant about any unusual or suspicious activity, especially in relation to the use of our business assets, processes or systems
- Never engaging in or assisting with activities that conceal or disguise the nature, location, source, ownership or control of funds
- Never permitting or facilitating the movement of funds across national borders if we know of or suspect unlawful activity



- Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)
 - “Guideline 4: Implementation of a Compliance Regime”
 - Reporting entities need to take a risk-based approach to meet the necessary level of due diligence
- Financial Action Task Force (FATF)
 - “The FATF Recommendations - International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation”
 - Not legally binding in Canada *per se*
 - FATF Recommendations are nonetheless considered the foundation of Canadian anti-money laundering and terrorist financing legislation

Financial Record Keeping

—

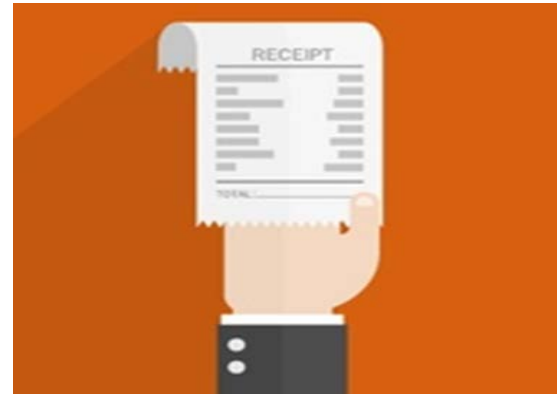
Financial Record Keeping

- Complying with the U.S. Sarbanes-Oxley Act
 - CEO and CFO of public companies must personally certify annual and quarterly SEC filings
 - Criminal and civil certifications are required
- Applicable Canadian and U.S. securities laws
 - Examples: *Uniform Securities Act, Securities Act, USA PATRIOT Act*
- Complying with Generally Accepted Accounting Principles (GAAP) and internal controls

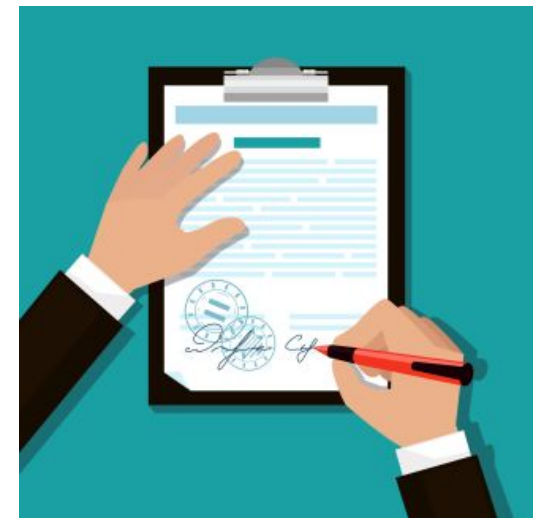


Employees shall not under any circumstances:

- Keep any accounts or transactions “off-book”
- Establish any undisclosed or unrecorded Enbridge funds or assets
- Make inflated or artificial entries
- Make any entries using false documentation
- Falsify any accounting record or document relating to a transaction



- Reporting complete, accurate information for all assets, liabilities, transactions, financial reports and filings
- Speaking up and reporting transactions that do not appear to serve a legitimate commercial business purpose
- Cooperating with internal and external auditors
- Ensuring that any presentations or proposals we make to investors, investment analysts, customers, business partners or others are truthful
- Ensuring that all contracts are documented in writing
- Never accepting any “side” or “comfort” letters which are not attachments to the main contract



Cooperation Credit and Leniency Programs

- Royal Canadian Mounted Police (RCMP)
- Canadian Security Intelligence Service (CSIS)
- Securities and Exchange Commission (SEC)
- Department of Justice (DOJ)

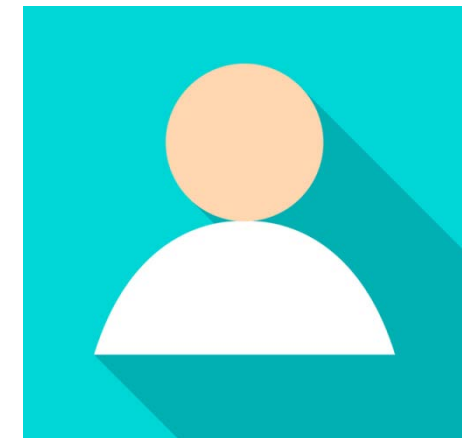
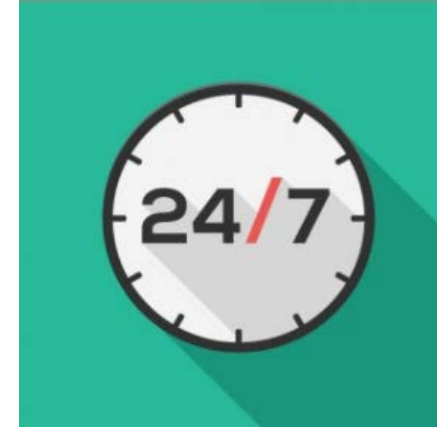


Whistleblowing

—

- U.S. *Sarbanes-Oxley Act*
 - makes it the responsibility of the audit committee to establish procedures (e.g., a hotline) for receiving and dealing with complaints and anonymous employee tips regarding irregularities in the company's accounting methods, internal controls, or auditing matters
- Canadian *Criminal Code* (s. 425.1)
 - Offence for an employer to take action to obstruct or retaliate against an employee who provides information about unlawful acts to law enforcement authorities
- Competition Bureau of Canada
 - “*Bulletin – Corporate Compliance Programs*” (June 2015): monitoring, verification and reporting mechanisms are vital to the success of any corporate compliance program
- U.S. *Dodd-Frank Act* (s. 922)
 - SEC will **pay** eligible whistleblowers who voluntarily provide information that leads to a successful enforcement action for breach of federal securities laws
 - 10% to 30% of monetary sanctions exceeding \$1 million

- Whistle Blower Policy
- Channels of Reporting
 - Email
 - In-person
 - Mail
 - Telephone
 - Enbridge Ethics & Conduct Hotline
1-866-571-4989
Enbridgehotline.com
- Confidentiality and Anonymity
- Retaliation is strictly Prohibited



Establish Internal Reporting Mechanisms

- Establish multiple and convenient reporting mechanisms
 - Internal or external telephone and online hotlines for employees and agents
 - Reporting channels for written complaints and escalation internally
- Confidential and anonymous hotlines are regarded as best practice by regulators and enforcement agencies
- Generates important comparative data
- Good faith reports ought to be encouraged
 - “Speak-Up” Culture
- Non-retaliation safeguards for reporting
- Follow-up and investigate complaints and violations
 - Build trust, boost morale and establish credibility



Questions & Answers

—

