



28th May 2021

Director, Policy and Rules
AUSTRAC
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West Chatswood NSW 1515

Email: aml_ctf_rules@austrac.gov.au

Dear Director,

Proposed amendments to Chapters 3, 6, 7 and 10 of the AML/CTF Rules

The Australian Financial Markets Association (**AFMA**) represents the interests of over 120 participants in Australia's wholesale banking and financial markets. Our members include Australian and foreign-owned banks, securities companies, treasury corporations, traders across a wide range of markets and industry service providers. A significant proportion of AFMA's members are reporting entities for the purposes of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (**the AML/CTF Act**). We are pleased to make a supplementary submission to the latest version of the Draft Rules (**the Draft Rules**) prepared by AUSTRAC to support the amendments in the *Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Act 2020*, (**the Phase 1.5 Reforms**).

Correspondent Banking

Scope of Correspondent Banking Definition

Current Rule 3.2.2 provides that "(f)or the purposes of paragraph (e) of the definition of correspondent banking relationship in section 5 of the AML/CTF Act, all banking services that do not involve a vostro account are specified." In essence, this limits the scope of correspondent banking relationships to only vostro accounts unless there is a specific extension set out in the Rules. Given that there is no

equivalent Rule in the proposed Chapter 3, this would appear to expand the ambit of the correspondent banking definition to purely beyond vostro accounts, at least in terms of the Rules. Can AUSTRAC confirm that there is no intention to expand the scope of correspondent banking relationships beyond vostro accounts? If so, can AUSTRAC please confirm the legislative basis for this position, or otherwise reinstate the previous Rule 3.2.2?

Specific Issues

In relation to specific changes:

- The word “ultimate” has been inserted in the first line of 3.1.3(3)(b) – can it also be included before “parent” in the third line?
- As per our initial submission, the scope of “any related bodies corporate” in 3.1.3(6) is very broad and may involve entities that have no relationship (apart from ownership) with the respondent. We again submit that there should be an operational nexus between those bodies corporate that are within scope for the purpose of the assessment and the respondent with whom the correspondent banking relationship is to exist;
- We again seek confirmation that the “investigation” for 3.1.3(6)(a) and the “adverse regulatory action” for 3.1.3(6)(b) need to relate to “money laundering, financing of terrorism or other serious crimes” as per 3.1.3(6)(c);
- In relation to the requirements under Rule 3.1.4(2), it may be difficult for the senior officer to have any oversight over the effectiveness of the correspondent’s anti-money laundering and counter-terrorism financing program without access to audit or other information that the correspondent bank may have. Our suggestion is that either AUSTRAC provide greater clarity around the expectations as to effectiveness or constrain the requirement to adequacy, which is more suitably assessed based on publicly available information.

Verification of Identity

Proposed Part 6.2 sets out the requirements for Reporting Entities where a suspicious reporting obligation arises for a “pre-commencement customer.” In our view, it should be clarified that these requirements only apply to pre-commencement customers that have not been subject to ACIP.

Based on our understanding of the requirements under the Act/Rules for pre-commencement customers, conducting ACIP may not result in the customer no longer being “pre-commencement.” However, once ACIP has been conducted in relation to that customer, the obligations with respect to that customer should be identical to post-commencement customers.

Further, proposed Rule 6.2.2 sets out three actions reporting entities may take when a suspicious matter reporting obligation arises for a pre-commencement customer. We request that the Rule be extended to allow the reporting entity to cease the relationship with the customer as a potential action, particularly where the customer is not communicating with the reporting entity.

Reliance

In the proposed Phase 1.5 Rules to support the reliance changes, Rule 7.2.2(1)(b) and 7.3.2(2) allow for reliance only where the party being relied on has obtained “all required KYC information.” We seek confirmation from AUSTRAC that this requirement refers to the minimum KYC information required under Chapter 4 as opposed to the minimum required under Part B of the relying party’s program.

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Thank you for the opportunity to make a submission in relation to the updated Draft Rules. Please contact me at rcolquhoun@afma.com.au or on (02) 9776 7996 with any specific queries.

Yours sincerely,



Rob Colquhoun
Director, Policy