22 May 2017

Director, Rules
AUSTRAC
PO Box 5516
CHATSWOOD NSW 1515

By email: aml_ctf_rules@austrac.gov.au

Dear Sir/Madam

Draft AML/CTF Rules
Review of the Act

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. Our members are the major providers of services to Australian businesses and retail investors who use the financial markets. The majority of AFMA's members are reporting entities for the purposes of the AML/CTF Act.

We are pleased to provide a submission to AUSTRAC in relation to the proposed amendments to the AML/CTF Rules arising from the Statutory Review of the Anti-Money Laundering and Counter Terrorism Financing Act 2006 and Associated Rules and Regulations conducted by the Attorney-General's Department (**the Review**).

General Comments

It is generally noted that the proposed amendments to the Rules do not offer a significant easing of the regulatory burden for reporting entities and that many of the proposed amendments are prescriptive rather than risk-based.

AFMA is particularly concerned that the opportunity to further simplify the Customer Due Diligence requirements in Chapter 4 has not been taken up and that a more holistic review of the requirements imposed by the Rules, both in relation to the broader recommendation 5.4 and the two-step requirement to both collect and verify the

customer information. We look forward to further engagement with AUSTRAC in relation to the refinements to Chapter 4.

We seek further clarity on the commencement timeframes for the proposed amendments.

Specific Proposals

Chapter 1 (Definitions) – Recommendation 19.2

AFMA broadly supports the amendment, specifically the amendment to the definition of "certified copy," which addresses an issue that has been faced by reporting entities with global customers. We submit, however, that the amendment should be drafted with reference to the risk based approach to allow reporting entities to assess the appropriateness of those capable of certifying in particular countries. It is further submitted that sub-rule (7) be deleted given this is now covered by sub-rule (6).

Chapter 4 (Customer Due Diligence) – Recommendation 5.4

The amendment is welcomed by AFMA (and indeed has been the subject of previous engagement with AUSTRAC). However, we maintain our preference that the relief be extended to a company that is subject to regulation in a comparable foreign jurisdiction.

Chapter 4 (Customer Due Diligence) – Recommendation 5.6

AFMA can see the benefit of the proposals for smaller reporting entities; however it needs to be clear that a reporting entity has the discretion not to include the alternate procedure (including both the ACIP and the self-attestation procedure) in its AML/CTF programs.

Further clarity is sought on:

(i) The responsibilities and characteristics of the "trusted referee" under new Rule 4.15.4;
(ii) The contents of the "report" contemplated by new Rules 4.15.4(2) & 4.15.4(3);
(iii) How an interview could provide a reporting entity with necessary assurance that the customer is who they claim to be;
(iv) How the procedure contemplated under new Rule 4.15.4(5) provides a means for identifying the customer; and
(v) Whether the Note in relation to the potential applications of Section 136 and 137 applies solely to the self-attestation procedure or Part 4.15 in its entirety.

Chapters 8 and 9 (AML/CTF Programs) – Recommendation 7.3

AFMA's view is that the proposed amendments to Parts 8.5 and 9.5 are too prescriptive and do not recognise the different ways in which reporting entities may structure their

AML/CTF programs in accordance with their own organisational requirements and the risk-based approach. In many organisations the Compliance Officer may oversee and obtain assurance that appropriate measures are in place, as opposed to conducting actual implementation. For example, an employee due diligence program may be implemented in an organisation by the Human Resources function, with appropriate oversight from the Compliance Officer. To that end, the granular responsibilities of the Compliance Officer contemplated by proposed Rules 8.5.4 and 9.5.4 may be more appropriately articulated in AUSTRAC guidance.

We acknowledge that AFMA members have sought specific clarity on the inclusion of the requirements with respect to overseas permanent establishments (8.5.4(7)/9.5.4(7)) and third party service providers (8.5.4(12)/9.5.4(12)) and would appreciate AUSTRAC sharing the response.

In relation to the proposed amendments to Parts 8.7/9.7, we submit that the specific requirement to include the information from "AUSTRAC or other relevant authorities" in the risk assessment is too prescriptive and that the reporting entity is best placed to utilise the information in its own program, in accordance with the risk-based approach. The requirement for a specific documented procedure for incorporation of the information in the risk-assessment also appears superfluous. We also query whether the ambit of these amendments should be restricted just to AUSTRAC, given its role as Australia's Financial Intelligence Unit and the source of ML/TF risk information in Australia. The term "other relevant authorities" is vague and may be difficult for reporting entities to determine with appropriate specificity.

Chapter 30 (Disclosure Certificates) – Recommendation 5.7

Proposed Rule 30.4 states that, in the context of certification of disclosure certificates, an "appropriate officer" is determined by the reporting entity "in accordance with its risk-based systems and controls" but that the Note appears to specify who an "appropriate officer" may be. We suggest that the Note be removed and this is a matter better suited for AUSTRAC guidance.

Yours sincerely

Rob Colquhoun
Director, Policy