



1 September 2015

Director, Rules
AUSTRAC
PO Box 13173, Law Courts
MELBOURNE VIC 8010

By email: aml_ctf_rules@austrac.gov.au

Dear Sir/Madam

**Key terms used in 'politically exposed person' definition
Updated draft guidance note**

The Australian Financial Markets Association (AFMA) represents the interests of over 130 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.

AFMA is pleased to provide a submission to AUSTRAC in relation to the updated draft guidance note titled "Key terms used in 'politically exposed person' definition" (**the draft guidance note**). It is noted that AFMA lodged a submission on the previous draft of the guidance note on 13 February 2015 and the comments set out below should be read in light of that submission.

Use of commercial databases

The draft guidance note states (at 2.6) that "(r)eporting entities may use commercial databases in order to assist in the identification of PEPs, although AUSTRAC notes that the exclusive use of a commercial database cannot be a substitute for a thorough and comprehensive risk assessment by the reporting entity. Such an assessment will include training for frontline staff in identifying whether a person is a PEP."

While AFMA agrees that ascertaining whether a customer is a PEP will be the basis of a "thorough and comprehensive risk assessment," it does not necessarily follow that such an assessment is performed by frontline staff. Our view is that it is the reporting entity that is best placed to determine the best process to identify PEPs and hence the reference to training for frontline staff is overly proscriptive. Accordingly, we recommend that the sentence be removed.

Foreign municipal government officials

We acknowledge the amendments in section 4 of the draft guidance note, and particularly that members of Australian municipal or local governments will only be considered to be PEPs to the extent that they exercise “substantive powers.” This approach is aligned to that preferred by FATF and is welcomed.

With respect to foreign members of municipal or local governments, however, the draft guidance note appears to maintain that such members will be PEPs regardless of the powers held. This inconsistency is based on a technical nuance between the definition of “Australian government body” and “government body,” which has no restrictions with respect to the level of government the relevant person belongs to. In our view, this interpretation is unduly legalistic and we would prefer an interpretation which promoted symmetry between the PEP status of Australian and foreign officials, through interpreting “government body” as not extending to local or municipal governments. This would be consistent with the FATF position (as expressed in Paragraph 38 of the FATF Guidelines) and the policy intention of capturing PEPs based on the substantive positions they hold.

Senior foreign representatives

We note that, notwithstanding our submission of 13 February 2015, there have not been any amendments to the draft guidance note with respect to Honorary-Consuls or Consuls-General. We reiterate:

- With respect to Honorary-Consuls, such personnel do not have executive delegations or budgets and are authorised to perform only limited functions and hence are not “senior foreign representatives;”
- With respect to Consuls-General, no explicit mention of these representatives exists in the Rules. To the extent that AUSTRAC believes that Consuls-General should be considered to be PEPs, we would advocate an amendment to the Rules that specifically states this.

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Thank you for the opportunity to provide a submission in relation to the draft guidance note. Please contact me with any queries on 02 9776 7996 or rcolquhoun@afma.com.au.

Yours sincerely



Rob Colquhoun
Director, Policy