



18 December 2015

Director – AML/CTF Rules  
Legal, Governance and Risk  
AUSTRAC  
PO Box 13173, Law Courts  
MELBOURNE VIC 8010

**Attention:** Philip Johns

**By email:** Rules@austrac.gov.au

Dear Philip,

#### **Draft Privacy Impact Assessment – Amendments to Chapter 4 of the Rules**

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.

We are pleased to provide this submission in relation to the AUSTRAC's Draft Privacy Impact Assessment in relation to proposed amendments to Chapter 4 of the AML/CTF Rules.

#### **Introductory comments**

At the outset, it is noted that AFMA supports the proposed changes to Chapter 4 to change the requirement to collect KYC information "from the customer" to "about the customer," both from a regulatory burden perspective and also in terms of more closely aligning the Australian AML/CTF regime to the FATF standard. Accordingly, we have sought to set out below views from our members on the discussion questions set out in the Draft Impact Assessment to facilitate continued dialogue between AUSTRAC and the Australian Privacy Commissioner.

In making our submission, we note the following:

- Even notwithstanding the extension granted to AFMA, the period for the consultation on the Draft Impact Assessment was relatively short and hence the comments set out below represent best assessment from members as to the implications arising from the proposed changes to Chapter 4 in the time period allowed;

- Our members would like to better understand the process for engagement between AUSTRAC and the Australian Privacy Commissioner; in particular, whether the Commissioner has reviewed the Draft Impact Statement and whether the comments from the Commissioner will be made publicly available;
- We seek confirmation that AUSTRAC has considered all potentially applicable privacy principles, particularly given the proposed Note to be inserted into the Rules addresses only APP 3.6. Our member have suggested that the following APPs may also be relevant to the collection of information “about the customer” and hence should be addressed in the Impact Statement and the proposed Note in the Rules:
  - APP 5.2, regarding the notification of the collection of personal information and whether this may be addressed by a reporting entity’s privacy policy;
  - APP 10.1, regarding the requirement to ensure that the personal information collected is accurate, up to date and complete; and
- Any comments below regarding the circumstances in which a reporting entity will seek to collect information about the customer from third party sources is based on the current information sources available. That is, to the extent that additional, reliable sources of information become available at a point in time, we would expect that these could be utilised by the reporting entity with the approval of the Australian Privacy Commissioner.

- 1. Do you anticipate collecting information about a customer from sources other than the customer? If so, please provide examples of:**
- a. What sort of information will be collected from other sources;**
  - b. Which other sources you propose to use to collect this information; and**
  - c. When you will collect customer information from other sources, other than the customer directly?**

The feedback from AFMA members is that the regulatory benefit arising from being able to collect information about the customer primarily arises with respect to non-individual customers. For example, for corporate entities, the following information may be obtained from sources other than the customer:

- Date of incorporation;
- Address of registered office;
- ACN, ABN or other identification number;
- Business or trading names;
- Current shareholding/beneficial ownership details;
- Director and office-bearer information; and
- Listing information (where applicable).

AFMA members did not necessarily see, at the current time, significant opportunities to collect information about the customer where the customer is an individual. It was noted that there were limited reliable and independent sources for individual information. Should such reliable and independent sources be made available, reporting entities reserve the right to assess the ability to utilise such sources to collect information about the customer.

The currently available potential sources to collect information about non-individual customers include the following:

- Corporate registries (ASIC or overseas equivalent);

- Annual reports and other public documents issued by the company;
- Corporate websites;
- Australian Business Register;
- Foreign registration bodies;
- Professional association databases;
- Third party KYC or credit check service providers, such as VEDA, Bloomberg, Thomson Reuters, etc.

Information will be collected by reporting entities from sources other than the customer in circumstances where it is unreasonable or impractical to collect information directly from the customer. The information will generally be collected at the time of on-boarding and periodically as part of customer due diligence.

**2. Do you anticipate amending your existing privacy policies and documentation relevant to the Australian Privacy Principles 1 to 13, if the new process is adopted? If so, please provide examples of proposed changes that will reduce or mitigate any privacy risks that may result from the proposed amendments. If not, please provide examples of existing policies and documentation that will accommodate the proposed amendments.**

AFMA members noted that should the draft Rules be finalised, they would then undertake an assessment of privacy policies and the privacy regulatory framework to determine whether amendments are necessary. This will include analysis to identify all instances where information would be collected from sources other than the customer to ensure that any privacy concerns are mitigated prior to the collection from a particular source. Notwithstanding, it was noted that privacy policies held by reporting entities are not sufficiently granular as to where the information is being collected from to immediately necessitate a change should the draft Rules be finalised.

\* \* \* \* \*

We are happy to continue to engage with AUSTRAC on this matter, including providing any further information that may be required as a consequence of this submission or otherwise. Please contact me with any queries on 02 9776 7996 or [rcolquhoun@afma.com.au](mailto:rcolquhoun@afma.com.au) .

Yours sincerely



**Rob Colquhoun**  
Director, Policy