



19 March 2014

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

By email: aml_ctf_rules@austrac.gov.au

Dear Sir/Madam,

AUSTRAC Supervisory Approach Compliance with Additional Customer Due Diligence Requirements

The Australian Financial Markets Association welcomes the opportunity to provide comments in relation to AUSTRAC's draft Supervisory Approach to Compliance with Additional Customer Due Diligence Requirements (**the Draft Supervisory Approach**), as released for public consultation on 5 March 2014.

General comments

At the outset, AFMA would like to express concern at the approach that has been adopted by AUSTRAC with respect to the implementation, and particularly the timing thereof, of the amended customer due diligence requirements. The approach adopted in the Draft Supervisory Approach merely provides industry with a (renounceable) amnesty against the commencement of civil penalty proceedings prior to 1 January 2016. Given the changes to the customer due-diligence rules that have been promulgated by AUSTRAC remain in draft, it is abundantly clear that compliance by the commencement date of 1 June 2014 is in no way realistic. In our view, the existence of a Draft Supervisory Approach does not cure issues associated with an unrealistic commencement timeframe.

AFMA continues to advocate that the implementation of a reasonable transitional period for the additional requirements is a preferable approach, particularly given the requirement by AUSTRAC for reporting entities to adopt an appropriately approved transition plan. Adopting a transitional period approach would ensure that reporting entities that continue to undertake best endeavours to comply with the additional customer due diligence requirements in a manner consistent with AUSTRAC's expectations continue to be in compliance with the rules and are able to certify accordingly.

Our concerns are heightened by the content of the Draft Supervisory Approach itself. Through merely providing an amnesty against the commencement of civil penalty

proceedings by AUSTRAC, the Draft Supervisory Approach does not in any way preclude a third party from taking action based on non-compliance by an Australian reporting entity with the rules as they apply from 1 June 2014, nor does it permit an Australian reporting entity to certify to an overseas counterparty or regulator that it is compliant with all local AML/KYC requirements. To this end, the Draft Supervisory Approach should, in AFMA's view, contain language that AUSTRAC will deem entities that comply with the approach to be compliant with Australian AML/KYC requirements.

The ambit of the amnesty is also not sufficiently broad insofar as it only extends to the imposition of civil penalties. It is within AUSTRAC's power to seek additional remedies against a reporting entity/designated business group, including enforceable undertakings, remedial directions and written notices. Accordingly, the Draft Supervisory Approach should, in AFMA's view, provide that AUSTRAC will not, prior to 1 January 2016, take enforcement action of any kind under Part 15 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* where an entity is able to demonstrate that it is making reasonable attempts to put in place arrangements that will comply with the additional requirements and/or the Draft Supervisory Approach.

For completeness, we note that the commencement date of 1 June 2014 adds significant complexity and cost in complying with the new rules vis-à-vis, for example, 1 July 2014. Many issuers may undertake reviews and updates of disclosure documents (such as Product Disclosure Statements) on an annual or semi-annual basis, often at the end of the financial year. Industry participants have recently undertaken an update of disclosure documents and related material to address changes to privacy legislation that became effective on 12 March 2014 and to impose a further requirement for amendment outside the usual updates is an onerous obligation to impose upon industry.

Specific circumstances

To the extent that the Draft Supervisory Approach remains in place as currently drafted, the approach from AUSTRAC is that it will not commence civil penalty proceedings where a reporting entity/designated business group has complied with the circumstances set out in the Draft Supervisory Approach. We set out below our comments with respect to such specific circumstances.

Circumstance 1(a)

Circumstance 1(a) provides that the reporting entity/designated business group will, in respect of customers that are on-boarded post 1 June 2014 and assessed as high-risk, ensure that there is compliance "with the new obligations as soon as practicable." AFMA understands that this imposes a requirement to remediate those high-risk customers on-boarded post 1 June 2014 but in advance of the reporting entity/designated business group not having developed systems and processes to fully comply with the additional requirements.

AFMA notes the lack of reference to medium or low-risk customers in this circumstance and interprets this as meaning that there is no remediation requirement in respect of such customers. Accordingly, the application of the additional requirements to such customers is prospective only from the time that the reporting entity/designated business group is able to comply with the additional requirements.

Circumstance 1(c)

In the circumstance where a designated business group comprises a large number of entities, AFMA believes it appropriate and consistent with governance best-practice that

the requirement for approval of the transitional plan from the Board (or similar governing body) may be made by the top board only and apply to all entities within the designated business group. AFMA sees no utility in having each reporting entity within the designated business group obtain separate approvals in respect of a transition plan (especially by 1 September 2014) which, for all practical purposes, will be implemented by the top entity on behalf of the designated business group.

More generally, AFMA does not advocate AUSTRAC prescribing the governance processes that need to be adhered to by each reporting entity/designated business group, with the process for approvals ideally being matters for the entities themselves. It would, therefore, be preferable that the Draft Supervisory Approach referred to an appropriately approved and resourced transition plan being in place by 1 September 2014.

Right to withdraw Draft Supervisory Approach

AFMA is concerned with the statement in the Draft Supervisory Approach that says "AUSTRAC reserves the right to withdraw or revise this supervisory approach at any time. In doing so, AUSTRAC will give due allowance to the consequences if a reporting entity has acted in reasonable reliance on AUSTRAC's approach as described above."

The fact that the Draft Supervisory Approach is stated to be capable of withdrawal or revision at any time, coupled with the absence of any legal basis for the Draft Supervisory Approach, appears to insulate AUSTRAC from any adverse consequences from failing to abide by the Draft Supervisory Approach.

Adherence to the Draft Supervisory Approach will result in reporting entities/designated business groups incurring significant time and expense. Accordingly, it is troubling that AUSTRAC can withdraw the Draft Supervisory Approach on an unfettered basis. A preferable position would be that AUSTRAC state that it will not withdraw the Draft Supervisory Approach unless in the event of exceptional circumstances, and articulate what such circumstances would be. In addition, AUSTRAC may specify that it reserves the right to withdraw the supervisory approach as against any reporting entity/designated business group that fails to comply with the specified circumstances.

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AFMA acknowledges the balance that AUSTRAC is seeking to strike between appropriate transition for industry and compliance with FATF requirements and is committed to continue to work with AUSTRAC to achieve an optimal outcome. In this regard, we would welcome the opportunity to engage with AUSTRAC on a regular basis to ensure industry consistency with respect to the application of the additional requirements.

Please contact me on (02) 9776 7996 if you have any queries or comments.

Yours sincerely,



Rob Colquhoun
Director, Policy