



Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2010 (No. 2)

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

I, John Lance Schmidt, Chief Executive Officer, Australian Transaction Reports and Analysis Centre, make this Instrument under section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

Dated 9 September 2010

[Signed]
John Lance Schmidt
Chief Executive Officer
Australian Transaction Reports and Analysis Centre

1 Name of Instrument

This Instrument is the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2010 (No.2)*.

2 Commencement

This Instrument commences on the day after it is registered.

3 Amendment

Schedule 1 amends the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.

Schedule 1 Amendment of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.

1. After Chapter 45

insert

Chapter 46 Special circumstances for the applicable customer identification procedure

- 46.1. These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made under section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act), for paragraphs 33(a) and 33(b) and subparagraph 34(1)(d)(i) of that Act.
- 46.2. Under paragraph 33(a) and paragraph 33(b) of the AML/CTF Act, the services specified and relevant conditions are, in the capacity of an agent of a person, acquiring or disposing of a security or a derivative or a foreign exchange contract by a reporting entity on behalf of another person (customer) under item 33 of table 1 in subsection 6(2) of the AML/CTF Act where the transaction occurs on a prescribed financial market under the following conditions:

- (1) the reporting entity does not accept physical currency to fund the designated service; and
- (2) the reporting entity does not permit the customer to transfer, or otherwise part with, proceeds from a disposal of a security or derivative or a foreign exchange contract; and
- (3) the reporting entity does not re-sell, transfer, or otherwise part with (including to another reporting entity for the purpose of providing the item 33 designated service to that customer), a security or derivative or a foreign exchange contract on behalf of the customer which has been acquired on behalf of the customer; and
- (4) the reporting entity does not allow the customer to be re-credited with or obtain a refund of the purchase price; and
- (5) the designated service does not involve the acquisition of an interest in a managed investment scheme to which section 1019B of the *Corporations Act 2001* applies; and
- (6) the reporting entity cannot reasonably undertake the applicable customer identification procedure before the commencement of the provision of the designated service; and
- (7) the transaction must be performed rapidly due to financial market conditions relevant to the transaction; and
- (8) the reporting entity must put in place appropriate risk-based systems and controls to determine whether and in what circumstances to provide the designated service to a customer before the applicable customer identification procedure is carried out, including in relation to the number, types and/or amount of transactions.

46.3. For the purposes of paragraph 46.2 of these Rules and subparagraph 34(1)(d)(i) of the AML/CTF Act, the period is the earlier of the following:

- (1) the day on which the reporting entity carries out the applicable customer identification procedure; or
- (2) the end of the period of 5 business days after the day on which the reporting entity commenced to provide the designated service to the customer.

46.4. In this Chapter:

- (1) 'derivative' has the meaning given by section 5 of the AML/CTF Act;
- (2) 'security' has the meaning given by section 5 of the AML/CTF Act;

- (3) 'prescribed financial market' has the meaning given by section 9 of the *Corporations Act 2001*.

Reporting entities should note that in relation to activities they undertake to comply with the AML/CTF Act, they will have obligations under the Privacy Act 1988, including the requirement to comply with the National Privacy Principles, even if they would otherwise be exempt from the Privacy Act. For further information about these obligations, please go to <http://www.privacy.gov.au> or call 1300 363 992.

Chapter 47 Risk-only life policy interests in a superannuation fund

- 47.1. These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made under section 229 for subsection 247(3) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act).
- 47.2. Subject to paragraph 47.3, the AML/CTF Act does not apply to a designated service that:
- (1) is of a kind described in item 42(a) of table 1 in subsection 6(2) of the AML/CTF Act; or
 - (2) is of a kind described in item 43(a) of table 1 in subsection 6(2) of the AML/CTF Act.
- 47.3. The exemption in paragraph 47.2 applies only if:
- (1) the provision of the designated service relates to an actual or potential interest in, or entitlement under, a Risk-only life policy of a member of a superannuation fund (“Risk-only life policy interest”) (regardless of whether the member has any other interests, benefits, entitlements, balances or accounts in the superannuation fund) where the Risk-only life policy:
 - (a) has been acquired by the trustee of the superannuation fund from a life insurer on behalf of the member of the superannuation fund; and
 - (b) is held by the trustee of the superannuation fund as the policy holder; and
 - (2) the Risk-only life policy interest of the member referred to in subparagraph 47.3(1) does not include an investment component or an accumulated balance or account; and
 - (3) in respect to a designated service which falls within subparagraph 47.2(2) of these Rules, on the occurrence of an event specified in the Risk-only life policy, the trustee of the superannuation fund cashes out the whole or part of the Risk-only life policy interest referred to in subparagraph 47.3(1) in relation to that occurrence to the member of the superannuation fund (regardless of whether or not the trustee of the superannuation fund exercises its discretion to cash out other interests, benefits, entitlements, balances or accounts the member may have in the superannuation fund).

47.4. In this Chapter:

- (1) 'member' has the same meaning as the customer of the designated service in items 42 or 43 (as applicable) of table 1 in subsection 6(2) of the AML/CTF Act;
- (2) 'Risk-only life policy' is a life policy which falls outside the definition of 'life policy' in section 5 of the AML/CTF Act and, in particular, is a life policy in respect of which:
 - (a) a single lump sum amount is, or instalment amounts are, payable to the trustee of the superannuation fund as policy holder, on the occurrence of an event specified in the policy relating to the death or disability of the member of the superannuation fund, and
 - (b) there is no prescribed minimum surrender value (other than that which may be provided for in the policy documentation and promotional material) or no investment component.

For the purposes of this definition, the question of whether a policy has a prescribed minimum surrender value is to be determined in accordance with the prudential standards made under section 230A of the *Life Insurance Act 1995* as in force from time to time.

Reporting entities should note that in relation to activities they undertake to comply with the AML/CTF Act, they will have obligations under the Privacy Act 1988, including the requirement to comply with the National Privacy Principles, even if they would otherwise be exempt from the Privacy Act. For further information about these obligations, please go to <http://www.privacy.gov.au> or call 1300 363 992.

Chapter 48

Exemption of salary packaging administration services from the AML/CTF Act

- 48.1. These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made under section 229 for subsection 247(3) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act).
- 48.2. Subject to paragraph 48.3, the AML/CTF Act does not apply to a designated service that:
- (1) is of a kind described in items 6, 7, 31, 32 and 48 of table 1 in subsection 6(2) of the AML/CTF Act.
- 48.3. The exemption in paragraph 48.2 only applies if the reporting entity:
- (1) is carrying on a business of providing administrative services relevant to salary packaging for an employer client, and
 - (2) does not undertake transactions which involve the receipt or payment of physical currency in regard to the designated services described in items 31 and 32 of table 1 in subsection 6(2) of the AML/CTF Act.
- 48.4. In this Chapter:
- ‘salary packaging’ refers to an arrangement between an employer and an employee, whereby the employee agrees to forgo part of their future entitlement to salary or wages in return for the employer providing them with benefits of a similar cost.

Reporting entities should note that in relation to activities they undertake to comply with the AML/CTF Act, they will have obligations under the Privacy Act 1988, including the requirement to comply with the National Privacy Principles, even if they would otherwise be exempt from the Privacy Act. For further information about these obligations, please go to <http://www.privacy.gov.au> or call 1300 363 992.