

## **Explanatory Statement – Anti-Money Laundering and Counter-Terrorism Financing Rules for issuing or selling a security or derivative**

### **1. Purpose and operation of Anti-Money Laundering and Counter-Terrorism Financing Rules (AML/CTF Rules) for issuing or selling a security or derivative**

Section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) provides that the AUSTRAC Chief Executive Officer (CEO) may, by writing, make AML/CTF Rules prescribing matters required or permitted by any other provision of the AML/CTF Act.

These AML/CTF Rules relate to paragraph (d) of item 35 of table 1 in subsection 6(2) and subsection 247(3) of the AML/CTF Act. These Rules exempt certain types of services from the operation of the AML/CTF Act.

These AML/CTF Rules provide that a disposal of a security or derivative by a service provider acting on behalf of a client (item 33) would not also be caught by item 35. This prevents both the agent and principal having to identify a person acquiring a security or derivative. These AML/CTF Rules also provide that a disposal or purchase of a security on a prescribed financial market and certain off-market issues of an interest in a managed investment scheme, are exempt from the operation of the AML/CTF Act. Due to the operation of such exchange markets (that is, electronic buy/sale orders), the issuer or seller would not have knowledge of the identity of the buyer or the person to whom the security or derivative is issued and so it is impractical to impose AML/CTF obligations.

### **2. Notes on sections and schedules**

#### **Section 1**

This section provides that this Instrument is the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2008 (No. 2)*.

#### **Section 2**

This section states that the Instrument commences on the day after it is registered.

#### **Section 3**

Schedule 1 inserts Chapter 21 into the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.

## Notes on paragraphs

### Paragraph 21.1

This paragraph states that these AML/CTF Rules are made under section 229 of the AML/CTF Act. Paragraph (d) of item 35 of table 1 in subsection 6(2) and subsection 247(3) of the AML/CTF Act permit the making of these Rules.

### Paragraph 21.2

A service is captured by item 35 of table 1 in subsection 6(2) of the AML/CTF Act if it falls within the descriptions in paragraphs (a) to (d) inclusive, in that item.

This paragraph specifies a particular condition under paragraph (d) of item 35. The condition is that the service is not the disposal of securities or derivatives through an agent (who is doing so in the course of carrying on a business of disposing of securities or derivatives in the capacity of agent), within the terms of item 33 of table 1. In effect, if a service is one that is described by item 33 in the manner above, then item 35 would not apply to this service, as the service does not satisfy all the descriptions described in paragraphs (a) to (d) inclusive, of item 35.

### Paragraph 21.3

These AML/CTF Rules provide that the following types of services or trades are exempt from the operation of the AML/CTF Act:

- (a) trading in securities or derivatives on a domestic exchange market. Due to the operation of such exchange markets (that is, the electronic buy/sale orders), the issuer or seller would not have knowledge of the identity of the buyer or the person to whom the security or derivative is issued
- (b) certain off-market issues of an interest in a listed or quoted managed investment scheme. These off-market issues relate to fundraising, public offerings, rights issues or distribution reinvestment plans. The issued interest is to be quoted on a prescribed financial market.

The quotation of securities such as units in a managed investment scheme and an option to acquire an interest in a managed investment scheme also includes stapled securities.

### Paragraph 21.4

This paragraph provides relevant definitions for ‘dividend or distribution plan’, ‘initial public offering’, ‘prescribed financial market’ and ‘rights issue’.

As at the date of these AML/CTF Rules, for the purposes of ‘prescribed financial market’ the following market operators are prescribed (see section 9 of the *Corporations Act 2001* and regulation 7.1.01 of the *Corporations Regulations 2001*): Australia Pacific Exchange Limited, Australian Stock Exchange Limited, Bendigo Stock Exchange Ltd and National Stock Exchange of Australia Limited.

### **3. Legislative instruments**

The AML/CTF Rules are legislative instruments as defined in section 5 of the *Legislative Instruments Act 2003*.

### **4. Likely impact**

These AML/CTF Rules will have a favourable impact on any reporting entity that provides a designated service under item 35 of table 1 in section 6 of the AML/CTF Act in relation to a service described in section 1 of this explanatory statement.

### **5. Assessment of benefits**

Certain entities will benefit from being exempted from the operation of the AML/CTF Act.

These AML/CTF Rules provide that an issue or sale of a security or derivative to a person in circumstances described above will not be covered by item 35 if it is a service that is described in item 33. Without this carve out, a disposal of a security or derivative may be caught by both items 33 and 35 in some circumstances and there would be an unnecessary duplication of effort. Where securities and derivatives transactions take place on market, it will be impossible for the provider of the service to comply with AML/CTF obligations. These transactions take place electronically and the identity of the buyer or person to whom the security or derivative is issued will be unknown. The burden in applying obligations under the AML/CTF Act would far outweigh any AML/CTF benefits. The AML/CTF Rules also exempt certain off-market issues of interests in a managed investment scheme which would occur just prior to listing of those interests on market. These Rules reduce the regulatory impact of the AML/CTF Act.

### **6. Consultation**

AUSTRAC has consulted with the Office of the Privacy Commissioner, the Australian Customs Service, the Australian Federal Police, the Australian Taxation Office and the Australian Crime Commission in relation to these AML/CTF Rules.

AUSTRAC also published drafts of these AML/CTF Rules on its website for public comment.

### **7. Ongoing consultation**

AUSTRAC will conduct ongoing consultation with stakeholders on the operation of the AML/CTF Rules.