



Australian Government

Australian Transaction Reports and Analysis Centre

Explanatory Statement – *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2011 (No. 1)* amending the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*

1. Purpose and operation of Anti-Money Laundering and Counter-Terrorism Financing Rules (AML/CTF Rules) amending Chapters 1 and 17 and adding Chapter 49 and Chapter 50 of the AML/CTF Rules

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

Amendments to Chapter 1

Paragraph 1.2.1 of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* (AML/CTF Rules) provides the definitions of ‘certified copy’ and ‘certified extract’.

The amendments to Chapter 1 add officers and authorised representatives of Australian credit licence holders as appropriate persons who can certify true copies of documents under the AML/CTF Rules. The *National Consumer Credit Protection Act 2009* requires that from 1 July 2011 persons cannot undertake credit activities without a licence and that from 1 July 2010 they may apply to ASIC for a licence.

The Chapter 1 AML/CTF Rules state that in regard to certain persons, there is a requirement that they should have ‘2 or more years of continuous service’ before they are eligible to certify documents. It is noted that this phrase relates solely to the length of employment with a licence holder. It does not require that the licence holder(s) with whom the officer or authorised representative is employed have also held the licence for the two-year period. The phrase ‘with one or more licensees’ serves only to identify the entity with whom the person must have two or more years of continuous service of employment. The provision does not require that a licensee has held the licence for two years, but rather that the licensee must hold the licence at the time the officer or authorised representative certifies a document pursuant to the AML/CTF Rules.

As a consequence of the amendment, the definition of ‘certified extract’ has undergone minor changes.

Amendments to Chapter 17

Chapter 17 of the AML/CTF Rules sets out the reporting requirements for reporting entities in regard to international funds transfer instructions under a designated remittance service for items 3 and 4 of section 46 of the AML/CTF Act.

These amendments to Chapter 17 have resulted from:

- (a) the *Crimes Legislation Amendment (Serious and Organised Crime) Act (No.2) 2010*, which recently amended the AML/CTF Act, with the principal change relating to the insertion of the term ‘non-financier’. Consequential amendments are therefore required to Chapter 17;
- (b) a consideration of circumstances by AUSTRAC where, when money is transferred to a bank account, the customer will have the account details (including branch code and account number), but may not know the full name of the bank or the full address of the bank.

The amendments allow for the reporting of an ‘identifier’ by a reporting entity, when that identifier can be linked to a name and location. An ‘identifier’ may include a bank’s BSB, Bank Identifier Code, Business number or IBAN, as published by the Australian Payments Clearing System and SWIFT. Identifiers will also be accepted in reports where the entity has previously communicated the number and corresponding name and address to AUSTRAC (a Branch Registration Number (BRN)).

Chapter 49 ‘International Uniform Give-Up Agreements’

Chapter 49 exempts reporting entities that are executing brokers from the applicable customer identification procedure (ACIP) of the AML/CTF Act, if they provide the item 33 designated service (as an agent, acquiring or disposing of a security or derivative or a foreign exchange contract).

Executing brokers enable trades to occur by processing and providing a channel to another broker who executes the trade which is then ‘given up’ to a clearing broker who holds the customer account. In such circumstances, the clearing broker receives the executed trade.

The AML/CTF Act currently requires brokers to identify customers before they provide a designated service. However, where an executing broker ‘gives up’ a trade to a clearing broker, customer identification under the Act is duplicated. As a result of Chapter 49, duplication of the ACIP by relevant reporting entities will be avoided.

Chapter 50 ‘Exemption from applicable customer identification procedure in certain circumstances’

A ‘pre-commencement customer’ under the AML/CTF Act does not need to be identified unless certain circumstances arise which require that identification, for example, under section 29 which requires the verification of identity of the pre-commencement customer when a suspicious matter reporting obligation arises.

Chapter 50 deals with pre-commencement customers within the context of a designated business group (DBG).

Reporting entities may only use the exemption in circumstances where their risk-based systems and controls assess the money laundering/terrorism financing (ML/TF) risk of treating a pre-commencement customer of another reporting entity in the DBG, as their pre-commencement customer. In addition, the reporting entity is required to undertake certain actions if a suspicious matter reporting obligation arises, or where there has been a significant increase in ML/TF risk in regard to the designated service being provided to the particular customer. This includes an assessment of the ML/TF risk by the reporting entity when relying upon identification procedures previously carried out in relation to the customer under the *Financial Transaction Reports Act 1988* (FTR Act) and the *Financial Transaction Reports Regulations 1990* (FTR Regulations).

Chapter 50 applies in two scenarios:

Scenario One

Where a pre-commencement customer comes into a DBG as a result of an assignment, conveyance, sale or transfer of a business to a reporting entity within the DBG, Chapter 50 allows that status to continue in certain circumstances. Ordinarily, a pre-commencement customer who is provided a designated service by another member of the DBG is required to be identified under the AML/CTF Act, as that customer loses their pre-commencement status and becomes a post-commencement customer.

Three types of reporting entity are identified in Chapter 50:

‘Reporting entity one’ refers to the reporting entity which is acquired in whole or part by ‘reporting entity two’ which is currently within the DBG. After acquisition, the pre-commencement customers of ‘reporting entity one’ become the customers of ‘reporting entity two’. ‘Reporting entity three’ is another reporting entity within the DBG which wishes to treat the customers of reporting entity two as its pre-commencement customers, because it is providing a designated service to those customers.

Reporting entity three is allowed to treat those customers as being pre-commencement customers under Chapter 50, except in circumstances where a suspicious matter reporting obligation arises or there has been a significant increase in ML/TF risk in regard to the designated service provided to that customer.

If any of these events arise, then reporting entity three is required to undertake the applicable customer identification procedure, or rely upon identification previously undertaken by reporting entity two under the FTR Act and FTR Regulations in regard to the pre-commencement customer.

Scenario Two

This scenario applies in circumstances where a pre-commencement customer is a customer for one reporting entity within a DBG, and is subsequently provided with a designated service by another reporting entity in the same DBG. Ordinarily, the pre-commencement customer will become a post-commencement customer and therefore is required to be identified under the AML/CTF Act.

Chapter 50 allows the pre-commencement status of the customer to continue, and therefore the reporting entity supplying the designated service does not need to identify the customer.

However, if a suspicious matter reporting obligation arises or there has been a significant increase in ML/TF risk in regard to the designated service provided to the pre-commencement customer, then the reporting entity supplying the designated service, must carry out the same procedures as detailed above under Scenario One.

As in Scenario One, the reporting entity may rely upon FTR Act and FTR Regulations identification where appropriate in regard to ML/TF risk.

2. Notes on sections

Section 1

This section sets out the name of the instrument, i.e. the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2011 (No.1)*.

Section 2

This section specifies that Schedule 1 commences on the day after it is registered.

Section 3

This section contains the Schedule which amends *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No.1)* as follows:

Schedule 1

This schedule amends Chapter 1 and Chapter 17 and adds Chapter 49 and Chapter 50.

3. Notes on paragraphs

Chapter 1

Item 1 - Paragraph 1.2.1

This paragraph inserts officers and credit representatives of an officer who holds an Australian credit licence, as persons who can certify documents as being true copies of the original document.

Item 2 - Paragraph 1.2.1

This paragraph amends the definition of ‘certified extract’ to include the insertion as described in Item 1 – Paragraph 1.2.1.

Item 3 – Paragraph 1.2.2

This paragraph defines the terms ‘Australian credit licence’ and ‘credit representative’.

Chapter 17

4. Notes on paragraphs

Subparagraph 17.2.3(3)

This amendment incorporates consequential amendments as a result of the *Crimes Legislation Amendment (Serious and Organised Crime) Act (No.2) 2010* and allows the reporting of an ‘identifier’ to AUSTRAC by the reporting entity.

Subparagraph 17.2.3(4)

This amendment incorporates consequential amendments as a result of the *Crimes Legislation Amendment (Serious and Organised Crime) Act (No.2) 2010*.

Subparagraph 17.2(5)

This amendment incorporates consequential amendments as a result of the *Crimes Legislation Amendment (Serious and Organised Crime) Act (No.2) 2010*.

Subparagraph 17.2(6A)

This amendment incorporates consequential amendments as a result of the *Crimes Legislation Amendment (Serious and Organised Crime) Act (No.2) 2010*.

Subparagraph 17.2(7)

This amendment incorporates consequential amendments as a result of the *Crimes Legislation Amendment (Serious and Organised Crime) Act (No.2) 2010* and allows the reporting of an ‘identifier’ to AUSTRAC by the reporting entity.

Subparagraph 17.2(12B)

This amendment incorporates consequential amendments as a result of the *Crimes Legislation Amendment (Serious and Organised Crime) Act (No.2) 2010*.

Subparagraph 17.3(4)

This amendment incorporates consequential amendments as a result of the *Crimes Legislation Amendment (Serious and Organised Crime) Act (No.2) 2010*.

Subparagraph 17.3(5)

This amendment allows the reporting of an ‘identifier’ to AUSTRAC by the reporting entity.

Subparagraph 17.3(7)

This amendment incorporates consequential amendments as a result of the *Crimes Legislation Amendment (Serious and Organised Crime) Act (No.2) 2010*.

Subparagraph 17.3(8)

This amendment incorporates consequential amendments as a result of the *Crimes Legislation Amendment (Serious and Organised Crime) Act (No.2) 2010*.

Subparagraph 17.3(9)

This amendment incorporates consequential amendments as a result of the *Crimes Legislation Amendment (Serious and Organised Crime) Act (No.2) 2010* and allows the reporting of an ‘identifier’ to AUSTRAC by the reporting entity.

Paragraph 17.4

The privacy statement is omitted to avoid potential misinterpretation as to where the statement should be located in respect to paragraphs 17.4 and 17.5.

Paragraph 17.5

This paragraph inserts a definition of ‘identifier’ and reinserts the privacy statement which was previously omitted as noted above under Paragraph 17.4.

Chapter 49

Paragraph 49.1

This paragraph specifies that these AML/CTF Rules have been made under section 229 of the AML/CTF Act for the purposes of paragraph 39(4) of that Act.

Paragraph 49.2

This paragraph specifies that the exemption applies to the item 33 designated service in circumstances specified in paragraph 49.3.

Paragraph 49.3

This paragraph specifies the circumstances that the reporting entity which provides the item 33 designated service must satisfy for the exemption to apply to that reporting entity.

Paragraph 49.4

This paragraph defines ‘participant’, ‘licensed market’, licensed CS facility’ and ‘International Uniform Give-Up Agreement.’

Chapter 50

Paragraph 50.1

This paragraph specifies that these AML/CTF Rules have been made under section 229 of the AML/CTF Act for the purposes of subsection 39(4) of that Act.

Paragraph 50.2

This paragraph specifies that the customer identification procedures under Division 4 of Part 2 of the AML/CTF Act do not apply to designated services provided in certain circumstances, and allows a member of a designated business group to treat the customers of another member of the designated business group as its pre-commencement customers. This applies to situations where those customers have become members of the designated business group as a result of an assignment, conveyance, sale or transfer. These circumstances apply to paragraphs 50.2 to 50.5.

Paragraph 50.3

This paragraph specifies the circumstances which must apply to allow a reporting entity to use the exemption specified in paragraph 50.2.

Paragraph 50.4

This paragraph specifies the actions which a reporting entity must undertake if certain circumstances occur as described in paragraph 50.5.

Paragraph 50.5

This paragraph specifies the circumstances for paragraph 50.4 which relate to a suspicious matter reporting obligation or a significant increase in ML/TF risk relevant to the designated service being provided by the reporting entity.

Paragraph 50.6

This paragraph specifies that the customer identification procedures under Division 4 of Part 2 of the AML/CTF Act do not apply to designated services provided in certain circumstances, and allows a member of a designated business group to treat the customers of another member of the designated business group as its pre-commencement customers. This applies to situations where those customers are already customers of a reporting entity which is a member of the designated business group, and a second reporting entity wishes to provide designated services to those customers. These circumstances apply to paragraphs 50.6 to 50.9.

Paragraph 50.7

This paragraph specifies the circumstances which must apply to allow a reporting entity to use the exemption specified in paragraph 50.2.

Paragraph 50.8

This paragraph specifies the actions which a reporting entity must undertake if certain circumstances occur as described in paragraph 50.6.

Paragraph 50.9

This paragraph specifies the circumstances for paragraph 50.7 which relate to a suspicious matter reporting obligation or a significant increase in ML/TF risk relevant to the designated service being provided by the reporting entity.

Paragraph 50.10

This paragraph defines ‘reporting entity one’, ‘reporting entity two’, ‘reporting entity three’, ‘first reporting entity’, ‘second reporting entity’, ‘prescribed verification procedure’, ‘identification reference’, ‘procedure approved by the AUSTRAC CEO’ and ‘transferring customer’.

5. Legislative instruments

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

6. Likely impact

These AML/CTF Rules will have an impact on any reporting entity that provides a designated service covered by these Rules.

7. Assessment of benefits

Chapter 1

These amendments provide greater flexibility to industry by expanding the persons who can certify copies of documents and extracts of documents under the AML/CTF Rules.

Chapter 17

The amendments made as a consequence of the *Crimes Legislation Amendment (Serious and Organised Crime) Act (No.2) 2010* ensure that the AML/CTF Rules are consistent with the AML/CTF Act and in turn provide certainty for industry. The amendments made in regard to bank identifiers provide flexibility to reporting entities in making international funds transfer reports under a designated remittance arrangement.

Chapter 49 ‘International Uniform Give-Up Agreements’

The AML/CTF Act currently requires brokers providing the item 33 designated service to identify customers before they provide that designated service. However, where an executing broker ‘gives up’ a trade to a clearing broker, customer identification under the Act is duplicated. As a result of Chapter 49, duplication of the applicable customer identification procedure by relevant reporting entities will be avoided thereby reducing compliance costs for those entities.

Chapter 50 ‘Exemption from applicable customer identification procedure in certain circumstances’

Chapter 50 allows reporting entities to treat post-commencement customers within the context of a designated business group (DBG) as pre-commencement customers and therefore avoid the requirement to identify such customers under the AML/CTF Act, subject to certain circumstances. The ability to use identification of customers carried out under the *Financial Transaction Reports Act 1988* and the *Financial Transaction Reports Regulations 1990* for the purposes of the AML/CTF Act, further eases the compliance costs which would otherwise be borne by the reporting entities within a DBG.

8. Consultation

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

AUSTRAC published a draft of each of these AML/CTF Rules on its website for public comment.

9. Ongoing consultation

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