



Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2012 (No. 1)

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 31 January 2012

[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 2012 (No. 1)*.

2 Commencement

This Instrument commences as follows:

- (a) on the day after it is registered – Sections 1, 2 and 3;
- (b) on the day after it is registered – Schedule 1;
- (c) on 1 February 2012 – Schedule 2.

3 Amendment

Schedules 1 and 2 amend 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. Chapter 1

Item 1. Definition of ‘primary non-photographic identification document’ subparagraph 1.2(5)

Omit

Centrelink

Substitute

the Department of Human Services

2. Chapter 8

Item 2. For subparagraph 8.1.1 substitute:

8.1.1 These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made pursuant to section 229 and (in relation to these Rules in 8.1

to 8.7 and 8.9) for the purposes of paragraph 84(2)(c) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act). Part 7 of the AML/CTF Act obliges a reporting entity to adopt and maintain an AML/CTF program relating to the provision of designated services. A standard AML/CTF program is a program that applies to a particular reporting entity. Standard AML/CTF programs are divided into Parts A and B.

Item 3. Subparagraph 8.1.6

Omit

or

Substitute

of

Item 4. After Part 8.8 insert

Part 8.9 Reporting obligations

8.9.1 Part A of a reporting entity's AML/CTF program must include:

- (1) the obligations that apply to the reporting entity under sections 41, 43, 45 and 47 of the AML/CTF Act (reporting obligations); and
- (2) appropriate systems and controls of the reporting entity designed to ensure compliance with the reporting obligations of the reporting entity.

3. Chapter 9

Item 5. For subparagraph 9.1.1 substitute:

9.1.1 These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made pursuant to section 229 and (in relation to these Rules in 9.1 to 9.7 and 9.9) for the purposes of paragraph 85(2)(c) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act). Part 7 of the AML/CTF Act obliges a reporting entity to adopt and maintain an AML/CTF program relating to the provision of designated services. A joint AML/CTF program is a program that applies to each reporting entity that from time to time belongs to a designated business group. Joint AML/CTF programs are divided into Parts A and B.

Item 6. **After Part 9.8 insert**

Part 9.9 Reporting obligations

9.9.1 Part A must include:

- (1) the obligations that apply to each of the reporting entities under sections 41, 43, 45 and 47 of the AML/CTF Act (reporting obligations); and
- (2) appropriate systems and controls of each of the reporting entities designed to ensure compliance with the reporting obligations of the reporting entity.

4. Chapter 21

Item 7. **For paragraph 21.3 substitute**

21.3. For subsection 247(3) of the AML/CTF Act, the following designated services provided in any of the following circumstances are specified:

- (1) a person issuing or selling a security or derivative to another person (transaction) under item 35 of table 1 in subsection 6(2) of the AML/CTF Act and the transaction occurs:
 - (a) on a prescribed financial market; or
 - (b) on a financial market in a foreign jurisdiction where:
 - (i) the financial market uses a proprietary system to facilitate the transaction; and
 - (ii) as a result of the use of that proprietary system, it is not reasonably practicable to conduct the applicable customer identification procedure on the customer in that jurisdiction; or
- (2) an issue of an interest in a managed investment scheme (including an option to acquire an interest in a managed investment scheme) where the managed investment scheme is quoted on a prescribed financial market, in the following circumstances:
 - (a) the issue is in accordance with relevant requirements in the *Corporations Act 2001* pursuant to a dividend or distribution plan (also known as a distribution reinvestment plan); and

- (b) the interest is to be quoted on a prescribed financial market; or
- (3) an issue of an interest in a managed investment scheme (including an option to acquire an interest in a managed investment scheme) where the managed investment scheme is quoted or to be quoted on a prescribed financial market, in the following circumstances:
 - (a) the issue is in accordance with relevant requirements in the *Corporations Act 2001* pursuant to fundraising (including an initial public offering and a rights issue); and
 - (b) the interest is to be quoted on a prescribed financial market.

Item 8. For paragraph 21.4 *substitute*

21.4 In this Chapter:

- (1) ‘dividend or distribution plan’ has the meaning given by Chapter 19 of the ASX Listing Rules issued, as in force on 22 April 2008, by ASX Limited trading as the Australian Securities Exchange;
- (2) ‘initial public offering’ in the context of an interest in a managed investment scheme is an offering of that interest by a reporting entity, for the first time, to an applicant who subscribes for that interest, before the interest is quoted on a prescribed financial market;
- (3) ‘interest’ in a managed investment scheme includes a stapled security whereby one or more financial products are transferred together;
- (4) ‘prescribed financial market’ has the meaning given by section 9 of the *Corporations Act 2001* and includes the Australian Securities Exchange Limited (ACN 000 943 377);
- (5) ‘proprietary system’ means a system or systems for the electronic trading, clearing and settlement of transactions relating to securities or derivatives;
- (6) ‘rights issue’ has the meaning given by section 9A of the *Corporations Act 2001*.

5. Chapter 28

Item 9. For paragraph 28.3 *substitute*

28.3. The specified circumstances for the purposes of paragraph 28.2 are that:

- (1) either
 - (a) reporting entity one has assigned, conveyed, sold or transferred the whole or a part of its business to reporting entity two, excluding a compulsory transfer of business which takes effect under Part 4 of the *Financial Sector (Business Transfer and Group Restructure) Act 1999* (FSA); or
 - (b) all or part of the assets and liabilities of reporting entity one have become the assets and liabilities of reporting entity two as a result of a transfer effected pursuant to a certificate of transfer issued by the Australian Prudential Regulation Authority (APRA) under section 18 of the FSA; and
- (2) the designated service is provided to a transferring customer; and
- (3) prior to the assignment, conveyance, sale or transfer, or all or part of the assets and liabilities of reporting entity one becoming the assets and liabilities of reporting entity two, reporting entity two has reasonably determined:
 - (a) the ML/TF risk it faces in providing the designated service to the transferring customers as a group; and
 - (b) that it has in place appropriate risk-based systems and controls to identify, manage and mitigate the ML/TF risk it faces in providing the designated service to the transferring customers as a group; and
 - (c) based on the assessed ML/TF risk and its risk-based systems and controls, it is reasonable for it to either:
 - (i) rely upon the applicable customer identification procedure of reporting entity one as an appropriate means to identify and verify the identification of a transferring customer; or
 - (ii) treat a transferring customer who was a pre-commencement customer of reporting entity one as if the customer was a pre-commencement customer of reporting entity two.

Item 10. For paragraph 28.6 substitute

28.6. In this Chapter:

- (1) 'reporting entity one' means the reporting entity that either:
 - (a) assigns, conveys, sells or transfers a whole or a part of the business; or
 - (b) is to transfer, or has transferred, all or part of its assets or liabilities pursuant to Part 3 of the FSA;
- (2) 'reporting entity two' means the reporting entity to which reporting entity one either:
 - (a) assigns, conveys, sells or transfers a whole or a part of the business, excluding compulsory transfers of business effected pursuant to Part 4 of the FSA; or
 - (b) is to transfer, or has transferred, all or part of its assets or liabilities pursuant to Part 3 of the FSA;
- (3) 'transferring customer' means a customer who is a customer of reporting entity two in relation to a designated service solely because of the transfer of all or part of the assets or liabilities of reporting entity one to reporting entity two or the assignment, conveyance, sale or transfer of the whole or a part of the business from reporting entity one.

6. After Chapter 66

Add

Chapter 67 Warrants

- 67.1. These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made under section 229 for subsection 39(4) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act).
- 67.2. Division 4 of Part 2 of the AML/CTF Act does not apply to a warrant issuer providing a designated service in relation to a warrant that is of a kind described in item 46 of table 1 in subsection 6(2) of the AML/CTF Act in the circumstances specified in subparagraph 67.7(1).

- 67.3. Division 4 of Part 2 of the AML/CTF Act does not apply to a warrant issuer providing a designated service in relation to a warrant that is of a kind described in item 46 of table 1 in subsection 6(2) of the AML/CTF Act in the circumstances specified in subparagraph 67.7(2).
- 67.4. Division 4 of Part 2 of the AML/CTF Act does not apply to a warrant issuer providing a designated service in relation to a warrant that:
- (1) is of a kind described in item 35 of table 1 in subsection 6(2) of the AML/CTF Act; or
 - (2) is of a kind described in item 46 of table 1 in subsection 6(2) of the AML/CTF Act
- in the circumstances specified in subparagraph 67.7(3).
- 67.5. Division 4 of Part 2 of the AML/CTF Act does not apply to a warrant issuer providing a designated service that relates to a warrant that is of a kind described in item 46 of table 1 in subsection 6(2) of the AML/CTF Act in the circumstances specified in subparagraph 67.7(4).
- 67.6. Division 4 of Part 2 of the AML/CTF Act does not apply to a warrant issuer providing a designated service that relates to a warrant that:
- (1) is of a kind described in item 35 of table 1 in subsection 6(2) of the AML/CTF Act; or
 - (2) is of a kind described in item 46 of table 1 in subsection 6(2) of the AML/CTF Act;
- in the circumstances specified in subparagraph 67.7(5).
- 67.7. The specified circumstances for the purposes of paragraphs 67.2, 67.3, 67.4, 67.5 and 67.6 are that the designated service is provided by a warrant issuer in relation to a warrant; and
- (1) a customer acquires a warrant on-market or off-market through the completion of a transfer; or
 - (2) after the circumstances in subparagraph 67.7(1) occur, as a result of a corporate action in relation to the underlying asset, the warrant issuer sells the underlying asset; or
 - (3) after the circumstances in subparagraph 67.7(1) occur, as a result of a corporate action in relation to the underlying asset, the warrant issuer issues a new warrant to the warrant holder; or
 - (4) after the circumstances in subparagraph 67.7(1) occur, the service is provided as a result of the roll-over or re-set of a warrant, when the warrant issuer sells the underlying asset; or

- (5) after the circumstances in subparagraph 67.7(1) occur, the service is provided as a result of the expiry of a warrant, when the warrant issuer issues a new warrant to the warrant holder.

67.8. In this Chapter:

- (1) ‘corporate action’ includes an assignment, conveyance, sale, or transfer of the whole or part of a business in relation to the underlying asset;
- (2) ‘off-market’ means where customers purchase warrants on their own behalf, rather than from warrant issuers, outside a prescribed financial market;
- (3) ‘prescribed financial market’ has the meaning given by section 9 of the *Corporations Act 2001*;
- (4) ‘warrant’ has the meaning set out in Regulation 1.0.02 of the *Corporations Regulations 2001*, when issued by a bank, government or other institution;
- (5) ‘warrant holder’ means the customer of the warrant issuer;
- (6) ‘warrant issuer’ means a person approved by a prescribed financial market to issue warrants.

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.

Schedule 2 **Amendment of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.**

1. Chapter 51

Item 1. *Repeal Chapter 51*

Item 2. *After Chapter 50 insert*

Chapter 51 **AML/CTF Rules relating to certain definitions under the AML/CTF Act - Ordering and Beneficiary Institutions, Financial Institutions and Non-Financiers**

Part 51.1 **Introduction**

51.1.1 This Chapter commences on 1 February 2012.

Note: For obligations and liabilities under the Rules in Chapter 51 as in force on 31 January 2012, see section 7(2) of the Acts Interpretation Act 1901.

51.1.2 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 the definition of ‘financial institution’ in section 5 of the AML/CTF Act under paragraph (e), the definition of ‘non-financier’ in section 5 of the AML/CTF Act under paragraph (e), the definition of ‘ordering institution’ and ‘beneficiary institution’ in subparagraphs 8(1)(c)(v), 8(1)(d)(v), 8(2)(c)(v), 9(1)(c)(v), 9(1)(d)(v) and 9(2)(c)(v) of the AML/CTF Act and the conditions under paragraph 45(1)(c) of that Act.

Part 51.2 **KEB Australia Limited and Travelex Limited**

51.2.1 For the purposes of subparagraph (e) of the definition of ‘financial institution’ in section 5 of the AML/CTF Act, the following persons are specified, subject to the applicable conditions in paragraph 51.2.4:

- (1) KEB Australia Limited ABN 11 003 095 181 of Suite 902, 2 Chifley Square, Sydney, NSW, 2000; and
- (2) Travelex Limited ABN 36 004 179 953 of Level 12, 1 Margaret Street, Sydney, NSW, 2000.

- 51.2.2 For the purposes of subparagraph (e) of the definition of ‘non-financier’ in section 5 of the AML/CTF Act, the following persons are specified, subject to the applicable conditions in paragraph 51.2.4:
- (1) KEB Australia Limited ABN 11 003 095 181 of Suite 902, 2 Chifley Square, Sydney, NSW, 2000; and
 - (2) Travelex Limited ABN 36 004 179 953 of Level 12, 1 Margaret Street, Sydney, NSW, 2000.
- 51.2.3 For the purposes of subparagraphs 8(1)(c)(v), 8(1)(d)(v), 8(2)(c)(v), 9(1)(c)(v), 9(1)(d)(v) and 9(2)(c)(v), the following persons are specified, subject to the applicable conditions in paragraph 51.2.4:
- (1) KEB Australia Limited ABN 11 003 095 181 of Suite 902, 2 Chifley Square, Sydney, NSW, 2000; and
 - (2) Travelex Limited ABN 36 004 179 953 of Level 12, 1 Margaret Street, Sydney, NSW, 2000.
- 51.2.4 For the purposes of paragraphs 51.1 – 51.2.3, the following conditions are specified in relation to international funds transfer instructions covered by item 1 or 2 of the table in section 46:
- (1) the person uses a proprietary system to send or receive the international funds transfer instruction; and
 - (2) the person is licensed under the *Corporations Act 2001* to deal in a foreign exchange contract; and
 - (3) the person is not acting in the capacity of an agent of a non-financier; and either of the following two additional conditions is also met:
 - (4) the person is a wholly owned or majority owned subsidiary of an ADI, bank, building society or credit union; or
 - (5) the person is part of a member-administered closed user group.

Part 51.3 PayPal Pte Ltd. and PayPal Inc.

- 51.3.1 For the purposes of subparagraphs 8(1)(c)(v), 8(1)(d)(v), 8(2)(c)(v), 9(1)(c)(v), 9(1)(d)(v) and 9(2)(c)(v), the following persons are specified:
- (1) PayPal Pte Ltd. 200509725E (PayPal Singapore) 09-01 Suntec Tower 5, 5 Temasek Boulevard, Singapore 038985; and
 - (2) PayPal Inc. 770510487 (PayPal USA) 2211 North First Street San Jose, California 95131.

51.4 In this Chapter:

- (1) 'foreign exchange contract' has the same meaning as in the *Corporations Act 2001*;
- (2) 'member-administered closed user group' means a SWIFT operated, SWIFT member administered service that enables the members of the closed user group to exchange SWIFT financial messages and file services with other members of the group;
- (3) 'proprietary system' includes the Society for Worldwide Interbank Financial Telecommunication (SWIFT).

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.