



Australian Government

Australian Transaction Reports and Analysis Centre

Explanatory Statement – *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2014 (No. 2)* amending the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*

1. Purpose and operation of Anti-Money Laundering/Counter-Terrorism Financing Rules (AML/CTF Rules) amending Chapter 21

1. 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.

Amendment to Chapter 21

2. These AML/CTF Rules amend Chapter 21 (issuing or selling a security or derivative) by providing an exemption from the obligations under the AML/CTF Act for reporting entities which provide designated services under item 35 of table 1 in subsection 6(2) of the AML/CTF Act in certain circumstances.
3. The new exemption will only apply to the issue (but not sale, transfer or redemption) of a new interest in a managed investment scheme registered under section 601EB of the *Corporations Act 2001* (registered MIS) which is not admitted to quotation on a financial market.
4. The exemption does not apply to interests in MISs which form part of a stapled security. New definitions of ‘Australian market licence exemption’, ‘managed investment scheme’, ‘MIS service’, ‘participant’ and ‘registered managed investment scheme’ have been added.
5. The exemption relates to the following parties:
 - The issuer of the interest(s) in the MIS is a reporting entity as it will be providing an item 35 designated service.

It is noted that an issuer may have an agent acting on their behalf in relation to the issue of an interest in an MIS, for example, a Product Issuer

Settlement Participant (PISP) who acts through the Clearing House Electronic Subregister System (CHESS). As the principles of agency apply across the AML/CTF Act generally, a PISP could act on behalf of an issuer-entity, but the issuer would still be the reporting entity under the AML/CTF Act.

- The customer of the item 35 designated service is the person to whom the interest in the registered MIS is issued.
- The broker acting on behalf of a customer is a reporting entity as it would be providing an item 33 designated service as the broker would be acquiring an interest in the registered MIS in the capacity of an agent of a person.

For the exemption to apply, this item 33 reporting entity must be a 'participant' as defined by section 761A of the *Corporations Act 2001*.

- The customer of the item 33 designated service is the person who has engaged the broker to act on their behalf in relation to the application for the allotment of an interest in the registered MIS.
6. In the above circumstances, the customer of reporting entity providing the item 35 designated service is also the customer of the reporting entity providing item 33 designated service. Both reporting entities need to identify and verify and undertake various AML/CTF obligations in relation to the same customer. The exemption avoids this duplication.
7. For the exemption to apply to the reporting entity providing the item 35 designated service, the following conditions need to be satisfied:
- (1) The processing and settlement of the issue of the interest in the registered MIS will need to occur through a particular type of electronic platform or facility which can only be operated by the following persons:
 - (a) a prescribed financial market; or
 - (b) an operator of a financial market in respect of which an 'Australian market licence exemption' has been made; or
 - (c) both of the persons specified in paragraphs (a) and (b).
 - (2) The customer of the item 35 designated service will need to have been provided with a designated service covered by the item 33 reporting entity.
 - (3) The item 33 reporting entity must carry out an applicable customer identification procedure in relation to the customer and electronically confirm through the MIS platform, that this has been completed, prior to the item 35 reporting entity issuing the MIS interest to the customer.

8. The item 35 reporting entity will be exempt from the relevant AML/CTF obligations and result in the customer only needing to be identified once, rather than by both reporting entities.
9. The benefits of the exemption will not be available in relation to ‘pre-commencement customers’ of a reporting entity providing the item 33 designated service. ‘Pre-commencement customers’ are existing customers of a reporting entity who were first provided with a designated service before 12 December 2007 – the date that section 28 of the AML/CTF Act commenced operation. Sections 28 and 29 of the AML/CTF Act only require an applicable customer identification procedure (ACIP) to be undertaken in relation to a pre-commencement customer if a suspicious matter obligation arises, or has arisen, after 11 December 2007.
10. Unless an ACIP is undertaken by an item 33 reporting entity in relation to its pre-commencement customer, the exemption will not apply and the item 35 reporting entity will be subject to the normal AML/CTF requirements in relation to that pre-commencement customer.

Statement of Compatibility with the *Human Rights (Parliamentary Scrutiny) Act 2011*

11. The *Human Rights (Parliamentary Scrutiny) Act 2011* was passed on 25 November 2011 and came into effect on 4 January 2012. It introduced a requirement for a Statement of Compatibility to accompany all new Bills and disallowable legislative instruments.
12. The Statement of Compatibility for the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2014 (No. 2)* is included in this Explanatory Statement at page 6. The AUSTRAC CEO, as the rule-maker of this legislative instrument, has stated that it is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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 2014 (No. 2)*.

Section 2

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

Section 3

This section contains the details of the amendment:

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

Schedule 1

This schedule amends Chapter 21.

3. Notes on Items

Schedule 1

Chapter 21

Item 1

This item inserts a new subparagraph 21.3(4) which specifies a new exemption for reporting entities providing item 35 designated services from obligations under the AML/CTF Act. The new exemption applies where such reporting entities issue a new interest in a registered MIS to a customer and certain other specified conditions are met.

Item 2

This item repeals all the definitions in paragraph 21.4.

Item 3

This item inserts a new replacement paragraph 21.4 containing definitions relevant to the interpretation of Chapter 21. These definitions comprise the repealed definitions and new definitions for ‘Australian market licence exemption’, ‘managed investment scheme’, ‘MIS service’, ‘participant’ and ‘registered managed investment scheme’.

4. Legislative instruments

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

5. Likely impact

The amendment to Chapter 21 will have a positive impact on any reporting entity that issues new interests in registered MISs.

6. Assessment of benefits

These AML/CTF Rules will provide regulatory relief to reporting entities issuing interests in registered MISs covered by the item 35 designated service as it will remove duplication of AML/CTF obligations in relation to a common customer of two separate reporting entities providing two separate designated services (item 35

and item 33 (an agent acquiring or disposing of a security and derivative)) which relate to the issue of an interest in a registered MIS.

7. Consultation

AUSTRAC published the amendments to Chapter 21 of the AML/CTF Rules for public consultation on the AUSTRAC website from 20 December 2013 to 17 January 2014.

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

8. Ongoing consultation

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

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2014 (No. 2)

This Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

The Instrument amends Chapter 21 of the Anti-Money Laundering/Counter-Terrorism Financing Rules (AML/CTF Rules) by:

- inserting a new exemption in relation to the issue of interests in registered managed investment schemes; and
- updating the definitions in the chapter.

Human rights implications

It is considered that this Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Instrument is therefore compatible with human rights as it does not raise any human rights issues.

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