



Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2019 (No. 2)

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

I, Nicole Rose, 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 29 March 2019

[signed]

Nicole Rose PSM
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 2019 (No. 2)*.

2 Commencement

This instrument commences the day after the end of the period of 28 days beginning on the day this instrument is registered.

3 Authority

This instrument is made under section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

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

1 Chapter 1 (definition of *certified copy*, including the note)

Omit “*Statutory Declarations Regulations 1993*” (wherever occurring), substitute “*Statutory Declarations Regulations 2018*”.

Schedule 2—Amendments

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

1 Paragraph 4.4.2

Omit “An AML/CTF program”, substitute “Subject to paragraph 4.4.18, an AML/CTF program”.

2 Subparagraph 4.4.3(1)

After “full name”, insert “(if any)”.

3 At the end of subparagraph 4.4.3(5)(c)

Add:

; or

(d) the customer is a custodian.

Note: 'Custodian' is defined in subparagraph 4.4.19(1) of these Rules.

4 Subparagraph 4.4.5(1)

Repeal the subparagraph, substitute:

(1) the full name (if any) of the trust;

5 At the end of subparagraph 4.4.5(5)(c)

Add:

; or

(d) the customer is a custodian.

Note: 'Custodian' is defined in subparagraph 4.4.19(1) of these Rules.

6 Paragraph 4.4.9

Omit “An AML/CTF program”, substitute “Subject to paragraph 4.4.18, an AML/CTF program”.

7 After paragraph 4.4.17

Insert:

Trustees who are custodians

4.4.18 An AML/CTF program need not include the requirements specified in the following AML/CTF Rules in relation to the provision by the reporting entity of designated services to a customer who is a custodian:

- (1) subparagraph 4.4.2(2); and
- (2) subparagraph 4.4.9(2); and
- (3) in so far as they relate to the collection, verification, updating or review (as applicable) of information on the underlying customers to whom the custodian is providing a custodial or depository service:

- (a) Parts 4.12 and 4.13; and
- (b) paragraphs 15.2 and 15.3; and
- (c) subparagraphs 15.9(2), 15.10(1)(b), 15.10(1)(c), 15.10(2) and 15.10(4).

Note 1: The requirements in Parts 4.12 and 4.13 of the AML/CTF Rules continue to apply to reporting entities in relation to the collection and verification of information on the custodian customer.

Note 2: The requirements in paragraphs 15.2 and 15.3 and subparagraphs 15.9(2), 15.10(1)(b), 15.10(1)(c), 15.10(2) and 15.10(4) of the AML/CTF Rules continue to apply to reporting entities in relation to the collection, verification, re-verification, clarification, updating, review and detailed analysis of:

- (a) *KYC information of customers that are custodians; and*
- (b) *beneficial owner information, other than information relating to the underlying customers of custodians.*

4.4.19 For the purpose of Part 4.4 of these AML/CTF Rules:

- (1) ‘custodian’ means a company that:
 - (a) is acting in the capacity of a trustee; and
 - (b) is providing a custodial or depository service of the kind described in item 46 of table 1 in subsection 6(2) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act); and
 - (c) either:
 - (i) holds an Australian financial services licence authorising it to provide custodial or depository services under the *Corporations Act 2001*; or
 - (ii) is exempt under the *Corporations Act 2001* from the requirement to hold such a licence; and
 - (d) either:
 - (i) satisfies one of the ‘geographical link’ tests in subsection 6(6) of the AML/CTF Act; or

- (ii) has certified in writing to the relevant reporting entity that its name and enrolment details are entered on the Reporting Entities Roll; and
 - (e) has certified in writing to the relevant reporting entity that it has carried out all applicable customer identification procedures and ongoing customer due diligence requirements in accordance with Chapter 15 of the AML/CTF Rules in relation to its underlying customers prior to, or at the time of, becoming a customer of the reporting entity.
- (2) 'IDPS' has the same meaning as in ASIC Class Order [CO 13/763] – *Investor directed portfolio services*, or any legislative instrument that replaces that class order.
 - (3) 'MDA service' has the same meaning as in the *ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968*, or any legislative instrument that replaces that instrument.
 - (4) 'providing a custodial or depository service' has the same meaning as in section 5 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* and includes providing a custodial or depository service as part of an IDPS or MDA service.
 - (5) 'Reporting Entities Roll' has the meaning given by section 51C of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

8 Before paragraph 15.2 in Chapter 15 (after the *KYC information and Beneficial Owner Information* heading)

Insert:

Note: Reporting entities that provide designated services to customers who are custodians are exempt from the requirements specified in paragraphs 15.2 and 15.3 of these Rules in relation to certain beneficial owner information. These exemptions are set out in paragraph 4.4.18 of Chapter 4 of these Rules.

9 Before paragraph 15.8 in Chapter 15 (after the *Enhanced customer due diligence program* heading)

Insert:

Note: Reporting entities that provide designated services to customers who are custodians are exempt from the requirements specified in subparagraphs 15.9(2), 15.10(1)(b), 15.10(1)(c), 15.10(2) and 15.10(4) of these Rules in relation to underlying customers of custodians. These exemptions are set out in paragraph 4.4.18 of Chapter 4 of these Rules.

10 Paragraph 15.9

Omit “The reporting entity”, substitute “Subject to paragraph 4.4.18, the reporting entity”.

11 Subparagraph 15.10(1)(b)

Before “clarify”, insert “subject to paragraph 4.4.18,”.

12 Subparagraph 15.10(1)(c)

Before “obtain”, insert “subject to paragraph 4.4.18,”.

13 Subparagraph 15.10(2)

After “customer’s KYC information and”, insert “, subject to paragraph 4.4.18,”.

14 Subparagraph 15.10(4)

Before “verify”, insert “subject to paragraph 4.4.18,”.

Schedule 3—Amendments

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

1 Subparagraph 38.2(4)(a)

Omit “before the end of the financial year in which it receives the proceeds”.