

File Name: 2008/06

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23 January 2008

Dear General Manager

**DRAFT AML/CTF RULES FOR SAME-PERSON AND PERSON-TO-  
PERSON EFT INSTRUCTIONS**

The Association of Superannuation Funds of Australia (ASFA) would like to provide the comments below in relation to the Australian Transaction Reports and Analysis Centre's (AUSTRAC) document *Draft Anti-Money Laundering and Counter-Terrorism Financing Rules of same-person and person-to-person electronic funds transfer instructions*.

**General comments**

1. ASFA notes that the purpose of these rules is to extend the *funds transfer chain* beyond an ADI, bank, building society or credit union to also include an entity that provides certain designated services. ASFA's comments relate to these rules as they apply to superannuation entities providing designated services within the meaning of items 40, 41, 42, 43 and 48 of table 1 in section 6 of the Act.

It is understood that the intent of the change is to ensure that, in relation to electronic funds transfers, AUSTRAC has access to information about the beneficial owners of the money being transferred. Under current requirements, in the superannuation context AUSTRAC only has information about the entity (superannuation fund) not the member that requested the transfer.

As the provisions of Part 5 of the Act have not previously applied to superannuation entities, and this Part of the Act has been in operation since 13 December 2006, ASFA is concerned to ensure that reporting entities affected by the change have sufficient time to analyse the implications and to take appropriate steps to ensure compliance. It is anticipated that entities currently subject to the provisions will also need to review their procedures to ensure they comply with the requirements for an interposed institution.

**Recommendation 1**

**It is recommended that sufficient time be allowed between the publishing of the Rules and the date on which the Rules come into effect to permit the newly captured reporting entities to implement the Rules.**

2. As stated above, these provisions have not previously been applied to superannuation entities. As a result, ASFA, superannuation funds and their service providers have not previously undertaken an analysis of the relevant provisions of Sections 8 and 9 and Part 5 of the Act. As such these newly captured reporting entities will require



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assistance in interpreting the requirements. ASFA seeks assistance and guidance from AUSTRAC on the scope and application of the change.

## Recommendation 2

**It is requested that an AUSTRAC Guidance Note be published in conjunction with the Rule setting out in plain English the detailed requirements. The Guidance Note should contain examples that are relevant to the broader range of entities captured by the proposed rules.**

3. Sections 8 and 9 of the Act use ***bold italic*** typeface to indicate that the terms ‘payer’, ‘payee’, ‘ordering institution’ and ‘beneficiary institution’ are defined terms. However, the dictionary in section 5 of the act states that each of these terms ‘has the meaning given by’ various subsections of section 8 and 9, depending on the context of the transaction. The result is that each term has 4 meanings with the dictionary merely pointing the reader back to the sub-section which initiated the need to consult the dictionary.

Effectively, a reporting entity is required to determine what the terms mean by applying the provision to a specific transaction. This lack of clarity may lead to inadvertent application or misapplication of the law. This is particularly the case with the extension of the provision to entities beyond what are essentially banking institutions.

## Recommendation 3

**It is recommended that the Act be amended to include specific definitions of the terms ‘payer’, ‘payee’, ‘ordering institution’ and ‘beneficiary institution’.**

4. In the superannuation context, there are many instances where a single transaction involves multiple parties.

For example, an employer may undertake a single EFT to pay the superannuation contributions of multiple employees.

The lengthening of the funds transfer chain has turned what was a person-to-person EFT instruction (from the employer’s account to the superfund’s account) into a person-to-multiple-persons EFT instruction (from the employer’s account to multiple superannuation fund member accounts). Clarification is sought as to whether these transactions are still caught by section 8(1) which uses the singular ‘a person’ and ‘a third party’, or whether the chain still effectively starts and ends with the banking institution.

Similarly, a superannuation fund may rollover multiple members account balances in a single EFT to an eligible rollover fund or to another superannuation fund. For such a transaction is the fund the ordering institution or the payer?

## Recommendation 4

**It is recommended that the above issues be clarified/resolved prior to the Rules being finalised.**

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#### 4. Complete payer information

Section 64 of the Act requires an ordering institution to obtain 'complete payer information'. Section 71 defines 'complete payer information' as including 'the name of the payer'. Clarity is sought as to what information constitutes 'the name of the payer' and whether this information must be verified. This is an important issue for the superannuation industry due to the requirement to only identify post-commencement members and only when those members are taking money out of the superannuation system.

#### Recommendation 5

**What information constitutes 'the name of the payer' should be clarified, particularly in the superannuation context.**

#### Comments on specific rules

##### Rule 2(a)

It is noted that Item 45 (cashing all or part of an interest in an RSA) of table 1 in section 6 is not included. Item 45 is the equivalent of item 43 (cashing all or part of an interest in a superannuation fund). As an RSA institution can include an insurance company and other non-banking institutions it is difficult to understand the reason for the non-inclusion of the item.

#### Recommendation 6

**The exclusion of item 45 should be reviewed.**

If you have any questions or comments on this matter, please feel free to contact Robert Hodge, Principal Policy Adviser on 02 9264 9300 or by email [rhodge@superannuation.asn.au](mailto:rhodge@superannuation.asn.au).

Yours sincerely,

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