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Director

AML/CTF Rules

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**DRAFT AML/CTF RULES RELATING TO THE
FINANCIAL SECTOR (BUSINESS TRANSFER AND GROUP RESTRUCTURE) ACT 1999**

The Association of Superannuation Funds of Australia (ASFA) would like to provide the comments below in response to the Australian Transaction Reports and Analysis Centre's (AUSTRAC) draft AML/CTF Rules relating to the Financial Sector (Business Transfer and Group Restructure) Act 1999.

About ASFA

The Association of Superannuation Funds of Australia (ASFA) is a non-profit, non-political national organisation whose mission is to protect, promote and advance the interests of Australia's superannuation funds, their trustees and their members. We focus on the issues that affect the entire superannuation industry. Our membership, which includes corporate, public sector, industry and retail superannuation funds, plus self managed superannuation funds and small APRA funds through its service provider membership, represent over 90% of the 12 million Australians with superannuation.

Support for the AML/CTF Rules

We note that the draft AML/CTF Rules are intended to apply in circumstances where a failing financial institution is transferred to a sound financial institution under a 'compulsory transfer of business' determination by the Australian Prudential Regulatory Authority (APRA). Such a determination requires there to be a transfer of business between the institutions concerned under section 25 of the Financial Sector (Business Transfer and Group Restructure) Act 1999. Currently, when the transferring financial institution provides 'designated services' under section 6 of the AML/CTF Act, the acquiring reporting entity must conduct customer identification on the transferring customers before providing a designated service to those customers. The draft AML/CTF Rules enables the acquiring reporting entity to apply to the AUSTRAC CEO within 30 days of the transfer date for an appropriate extension period from carrying out customer identification in accordance with Division 4 of Part 2 of the AML/CTF Act on the customers being transferred.

ASFA supports this proposal. It is considered appropriate that in the situation where a business transfer is mandated by the regulator that the acquiring reporting entity be able to seek sufficient time to undertake an appropriate assessment and determine the ML/TF risk it faces in providing the designated service to the transferring customers. It is also considered appropriate to permit the acquiring reporting entity to use this assessment period to determine whether it is reasonable to either:

- (a) rely on the customer identification previously undertaken by the transferring reporting entity; or
- (b) treat a transferring customer as a pre-commencement customer (where the customer was a pre-commencement customer of the transferring reporting entity).

Extension of the draft AML/CTF Rules to cover superannuation trustees

In the superannuation context, it is the trustee of the superannuation fund that is the reporting entity for AML/CTF purposes and it is the trustee that provides 'designated services' to fund members under section 6 of the AML/CTF Act.

ASFA notes that, as drafted, the Rule only applies to the compulsory transfer of a business between ADIs, life insurance companies and general insurers to include the superannuation sector.

ASFA requests that consideration be given to either extending the scope of this rule to superannuation entities, or creating a similar rule for superannuation entities.

Under section 133 of the Supervision Industry (Supervision) Act 1993 (SIS Act), APRA is able to make a determination to suspend or remove a trustee. In such situations, where the entire trustee board is removed or suspended, APRA would appoint an acting trustee to replace the removed/suspended trustee under section 134 of the SIS Act. In effect, there is a compulsory transfer of business from the old to the new trustee. There are a number of recent examples where this has occurred, such as:

- the suspension in 2009 of Trio Capital Limited (formerly Astarra Capital Limited) as the trustee of its four superannuation funds and one pooled superannuation trust, and appointment of an acting trustee to manage these five entities;
- the removal in 2001 of Commercial Nominees of Australia Ltd as trustee of a number of superannuation funds; and
- the removal in June 2008 of some 32 trustees that failed to apply to APRA to be licensed etc.

ASFA considers that, given the similarity of this situation to that covered by the draft Rule, it is appropriate that the AML/CTF Rules be extended to also allow an acting trustee appointed by APRA to apply to the AUSTRAC CEO for an appropriate extension while it undertakes reasonable assessments of the ML/TF risks it faces in providing designated services to the fund members, including an assessment of the appropriateness or otherwise of the customer identification procedures previously undertaken by the suspended or removed trustee.

It should be noted that the Government's 'Stronger Super' reform package proposes to grant APRA greater administrative powers to regulate the superannuation industry. This includes giving APRA broader powers to take action against trustees for breaches of the SIS Act provisions. As a result of these enhanced regulatory powers, there may be greater scope for APRA to exercise its powers under section 134 of the SIS Act. ASFA suggests that, given the Government's policy position on strengthening the regulatory framework for superannuation entities as set out in its Stronger Super document, now is an appropriate time to consider amending the AML/CTF Rules so as to capture the compulsory transfer of a superannuation fund to a new trustee following an APRA determination.

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If you have any questions or comments on this matter, please feel free to contact Jon Echevarria, Policy Adviser on 02 8079 0859 or by email jechevarria@superannuation.asn.au.

Yours sincerely,



David Graus
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