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Director - Rules
AUSTRAC
PO Box 13173
Law Courts
MELBOURNE VIC 8010

Email: aml_ctf_rules@austrac.gov.au

Dear Sir/Madam,

Draft Amendments to the AML/CTF Rules relating to Customer Due Diligence

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission to AUSTRAC in relation to the draft amendments to Australia's anti-money laundering and counter-terrorism financing (AML/CTF) customer due diligence (CDD) regime.

About ASFA

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 system. 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.

Specific comments

Outlined below are specific issues or concerns we have identified with respect to the draft amendments to the AML/CTF Rules.

(i) Definition of politically exposed person

One of the most significant changes, from ASFA's perspective, is the new definition of politically exposed person in Chapter 1 (key terms and concepts). As stated in our previous submission dated 30 September 2013 in response to the AUSTRAC discussion paper, ASFA is supportive of the decision to define the meaning of politically exposed person. However, ASFA considers that some aspects of the definition need to be clarified in order to avoid capturing individuals not intended by the Rules. Not doing so would unnecessarily increase the resources required by reporting entities, such as superannuation funds, to undertake greater numbers of risk assessments and ongoing customer due diligence.

For example:

- In sub-paragraph 1(b) of the definition of politically exposed person, does “government ministers” refer to State as well as Commonwealth ministers? ASFA considers that this should be clarified. Assuming this is the case, some of our members have advised that this alone would represent a much larger population of PEP members than would otherwise be captured under the old definition (one fund has advised that in their case this would be at least 100 extra PEPs). This would require significant changes to funds’ enrolment/on-boarding processes.
- In sub-paragraph 1(c), it is unclear what exactly constitutes a “senior” government official. In particular, it is not apparent how “prominent” they must be or whether this includes senior public servants. Guidance will be necessary as to how to determine who is sufficiently senior or prominent to be included. It is not apparent whether this is intended to mirror part (h) of the definition regarding “State enterprises” which lists the CEO, CFO, Board Chair and equivalent or whether this would apply equally at a State or local government level. Some councils have significant financial resources and arguably present a ML/TF risk. ASFA suggests that sub-paragraph 1(c) needs to be clarified to remove any ‘grey areas’.
- In sub-paragraph 1(g), it is not apparent who would be a “high ranking” member of the armed forces. It is unlikely that many superannuation fund systems would be designed to have captured the rank of a customer (i.e. fund member) historically, although if the fund is made aware that a member is a PEP this should now be flagged in the system. The definition will need to be specific in this regard with respect to which ranks are to be treated as “high-ranking”.
- In sub-paragraph 1(h), ASFA considers that “State enterprise” should be defined. This has the potential to greatly inflate funds’ PEP lists if not carefully defined. For instance, it is not apparent whether this extends to any government body or just Government Owned Corporations (GOCs) or equivalent incorporated bodies. By way of example, government departments may have several dozen “bodies” within them – councils, trusts, committees, boards, GOCs, statutory bodies, authorities etc. and it is unclear whether the chief officers (CEO, CFO etc) of each of these bodies require consideration as politically exposed members. If so, tracking the chiefs of each of these bodies (plus their family members) would be extremely onerous for reporting entities, including superannuation funds.

Multiplying this across all government bodies in each State or Territory could result in thousands of PEPs requiring risk assessment and tracking. These bodies also tend to be restructured, amalgamated or split up, necessitating constant monitoring and frequent review. Some government bodies would, of course, have much less exposure to AML/CTF risk through lack of financial dealings, but ASFA contends that it would be extremely difficult and time consuming for fund trustees to risk-assess each body on a case-by-case basis.

Also, if the new definition remains as broad as it currently appears in the draft Rules, a commercial database might not capture every individual who meets the new definition.

(ii) Identification and verification of politically exposed persons

Paragraph 4.13.1 of Chapter 4 requires a reporting entity's AML/CTF Program to include appropriate systems and controls for the reporting entity to determine whether any individual customer or beneficial owner of the customer is a politically exposed person and collect and verify the identity of that person. The reporting entity must also determine whether the politically exposed person poses a high ML/TF risk.

With respect to superannuation, trustees (being the reporting entities for the superannuation funds/trusts), currently do not collect information from fund members that would allow them to determine whether they meet the definition of a politically exposed person. In order to satisfy the proposed requirement, superannuation trustees would need to start collecting this information from fund members at the commencement of the relationship, presumably via the Membership Application form or as part of the acceptance of a contribution from the member. However, an additional element of difficulty exists where the employer, as permitted under the law, enrolls the member and provides the customer 'KYC information' in respect of a member in the course of making a contribution on behalf of that member.

Superannuation trustees are currently exempted from the requirement to collect and verify the customer's identity when undertaking designated service 42 (accepting a contribution, roll-over or transfer in respect of a new or existing member of the fund) under section 39(6) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*. The requirement to identify and verify the identity of a politically exposed person upon provision of a designated service 42 would appear to be inconsistent with this exemption.

If superannuation trustees were required to comply with this proposed requirement, it would necessitate complex changes to funds' current information collection processes and potentially IT system changes as well in order to track this information.

ASFA therefore request that this requirement be reviewed with respect to superannuation trustees.

(iii) Additional factors to consider when conducting ML/TF assessment

Paragraph 4.1.2 of Chapter 4 proposes to require a reporting entity's AML/CTF Program to consider, amongst other things:

- the ML/TF risk of a customer who is a politically exposed person;
- the ML/TF risk of a customer's source of funds, source of wealth and beneficial ownership; and
- the ML/TF risk of a customer's business or occupation.

In the superannuation context, funds generally would not seek information about the member's occupation. While it may be captured in some funds where insurance is tailored to individual members according to their occupation, for multi-employer funds or public offer funds, and funds with broad group life insurance policies, the member's occupation would simply not be captured. The intent of

the business relationship between the fund and the member is still clear and uniform – the administration of superannuation monies and the provision of retirement benefits.

As well, ASFA contends that identifying and considering the customer’s source of wealth would be problematic for superannuation fund trustees. While funds can potentially infer an individual’s salary (broadly speaking) through the amount of standard employer contributions received from their employer, this would by no means be an accurate calculation in all instances. Voluntary contributions are commonly made and funds are largely not in a position to be able to determine the “source” of the member’s wealth.

(iv) Additional measures for customers who are foreign politically exposed persons

Paragraph 4.13.2 of Chapter 4 states that, where a customer has been identified as a foreign politically exposed person, the AML/CTF Program must require the reporting entity to:

- take reasonable measures to establish the source of wealth and source of funds of the customer;
- determine whether the reporting entity should establish a business relationship with the customer; and
- obtain senior management approval before commencing to provide a designated service to the customer.

In the context of the superannuation environment, ASFA contends that it would be difficult for fund management (acting on behalf of the trustee) to make a decision not to provide a designated service to a customer (i.e. fund member) who has been identified as a foreign politically exposed person. If a decision were taken not to provide a designated service to a customer, this could cause an employer to breach their obligations under the Superannuation Guarantee (SG) legislation, in respect of designated service 42, as a result of the fund not accepting an SG contribution in respect of a new or existing member of the fund. Such a decision could also result in the trustee of the fund breaching its obligations under the *Superannuation Industry (Supervision) Act 1993*, in respect of designated service 43, by not cashing the whole or part of an interest held by a member of the fund.

As above, we suggest that reporting entities be permitted to apply a risk-based approach to this proposed requirement.

(v) Enhanced customer due diligence program

Paragraph 15.9 of Chapter 15 requires reporting entities to apply the enhanced customer due diligence (ECDD) program when a customer is a foreign politically exposed person. Feedback received by ASFA from our membership suggests that this requirement will be difficult to implement due to the difficulty in obtaining information about foreign politically exposed persons.

ASFA therefore recommends that the wording in paragraph 15.10, which discusses the measures a reporting entity must undertake when one or more of the circumstances in paragraph 15.9 arises, be

amended along the lines of a reporting entity using its “best endeavours” in seeking/obtaining the relevant information required under the ECDD program.

(vi) Minor drafting errors/concerns

- In the definition of politically exposed person in Chapter 1, the words “who is” should be inserted immediately before “an immediate family member” in sub-paragraph (2) and also before “a close associate of a person” in sub-paragraph (3).
- Sub-paragraph 5(b) of the definition of politically exposed person in Chapter 1 is not very clear in its intent. ASFA suggests that this sub-paragraph be re-worded to provide greater clarity and avoid any potential confusion.

(vii) Implementation arrangements

Comments are sought regarding a commencement date for the changes. It is suggested that reporting entities are already undertaking measures in relation to politically exposed persons, so the new provisions could commence almost immediately.

However, ASFA’s view is that, for superannuation fund trustees, implementing the changes would not be so straightforward and would require funds to update their information collection processes (including forms) as well as IT/system changes to record and monitor the additional information. The proposed changes would involve additional costs that would need to be passed on to members in the form of increased administration fees. It would also require the modification of the soon to be implemented mandated ATO Superannuation Contributions Data Standard and the already implemented Rollover Data Standard. For example, the Superannuation Contribution Data Standard does not currently capture an individual’s occupation, and the Standard is not expected to be updated next until December 2015 at the earliest. Whilst this does not mean that some of the changes are unjustified, ASFA contends that any changes should not materially impact on the ability of superannuation trustees to act in the best interests of all fund members, and should be implemented with a view to minimising the compliance burden on the industry and the implementation costs.

In particular, if superannuation trustees are not permitted to apply a risk-based approach to many of the proposed requirements, but instead are compelled to comply with the proposed requirements unchanged, ASFA believes this would involve complex changes to current information collection requirements as well as costly changes to current IT systems and procedures for little or no benefit in terms of additional security.

Therefore, given the substantial resources that superannuation trustees have been forced recently to devote in order to implement the various (significant) changes required under the Stronger Super reforms, together with the fact that the Superannuation Contribution Data Standard will not be updated until at least December 2015, ASFA would suggest a start date with respect to superannuation trustees of no earlier than 1 July 2016.

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I trust that the information contained in this submission is of value. We would be pleased to meet with you to discuss our submission.

If you have any queries or comments regarding the contents of our submission, please contact ASFA's Senior Policy Adviser, Jon Echevarria, on (02) 8079 0859 or by email jechevarria@superannuation.asn.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Fiona Galbraith".

Fiona Galbraith
Director, Policy