

**Explanatory Statement – Anti-Money Laundering and Counter-Terrorism
Financing Rules exempting certain types of transactions relating to the over-the-
counter derivatives market**

1. Purpose and operation of Anti-Money Laundering and Counter-Terrorism Financing Rules (AML/CTF Rules) exempting certain types of transactions relating to the over-the-counter derivatives market

Section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) provides that the AUSTRAC Chief Executive Officer (CEO) may, by writing, make AML/CTF Rules prescribing matters required or permitted by any other provision of the AML/CTF Act.

Section 247 of the AML/CTF Act provides for general exemptions from that Act. Subsection 247(3) provides that the AML/CTF Act does not apply to a designated service provided in circumstances specified in the AML/CTF Rules.

These AML/CTF Rules provide conditional exemptions of certain types of derivatives transactions (in items 33 and 35 of table 1 in section 6 of the AML/CTF Act) from the AML/CTF Act in specified over-the-counter derivatives markets in Australia. Those derivatives markets relate to the wholesale price of electricity, gas or renewable energy certificates involving specified market participants in the National Electricity Market (NEM) and Wholesale Electricity Market (WEM). These AML/CTF Rules have arisen as a result of an exemption application from an industry association.

2. Legislative instruments

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

3. 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 2008 (No.3)*.

Section 2

This section specifies that the Instrument commences on the day after it is registered.

Section 3

This section contains a schedule which amends the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No.1)* as follows:

Schedule 1

This schedule inserts Chapter 22 ‘Exemption of certain types of transactions relating to the over-the-counter derivatives market’ after Chapter 21 of the AML/CTF Rules.

4. Notes on paragraphs

Paragraph 22.1

This paragraph states that these AML/CTF Rules have been made under section 229. Subsection 247(3) of the AML/CTF Act permits the making of these Rules.

Paragraph 22.2

This paragraph specifies that the AML/CTF Act does not apply to a designated service described in item 35 of table 1 in subsection 6(2) of the AML/CTF Act. Item 35 relates to the issuing or selling of a security or derivative to a person. This paragraph has the effect that the AML/CTF Act does not apply to the issuing or selling of a security or derivative on the over-the-counter derivatives market in Australia relating to the wholesale price of electricity, gas or renewable energy certificates.

Paragraph 22.3

This paragraph specifies that the exemption in paragraph 22.2 only applies to registered Market Participants in the NEM (comprising New South Wales, Victoria, Queensland, South Australia, Australian Capital Territory and Tasmania) and in the WEM (comprising Western Australia). Such Market Participants may provide an item 35 designated service in any of the following circumstances:

- (a) where they hold an Australian financial services licence; or
- (b) where they act through an agent who holds an Australian financial services licence; or
- (c) where they are appointed as an authorised representative of a holder of an Australian financial services licence; or
- (d) where they are exempt from holding an Australian financial services licence under section 134 of the *Electricity Industry Act 2004 (WA)*.

For the exemption to apply the customer of the Market Participant must themselves be registered as a Market Participant in the NEM or WEM, or be an agent of a customer registered in the NEM or WEM.

Paragraph 22.4

This paragraph specifies that the AML/CTF Act does not apply to a designated service described in item 33 of table 1 in subsection 6(2) of the AML/CTF Act. Item 33 relates to an agent who acquires or disposes of a security, derivative or foreign exchange contract. This paragraph has the effect that the AML/CTF Act does not apply to the acquiring or disposal of over-the-counter derivatives relating to the wholesale price of electricity, gas or renewable energy certificates by someone who is an agent of a participant in the NEM or the WEM.

Paragraph 22.5

This paragraph specifies that the exemption in paragraph 22.4 only applies to a provider of an item 33 designated service in any of the following circumstances:

- (1) where they act as an agent of a person who is registered as, or is taken to be, a Market Participant under the *National Electricity Rules* or *Wholesale Electricity Rules*; and
- (2) they comply with any of the following:
 - (a) holds an Australian financial services licence;
 - (b) acts through an agent who holds an Australian financial services licence;
 - (c) is appointed as an authorised representative of a holder of an Australian financial services licence; and
 - (d) is exempt from holding an Australian financial services licence under section 134 of the *Electricity Industry Act 2004* (WA).

For the exemption to apply the customer of the Market Participants must themselves be registered as a Market Participant in the NEM or WEM, or be an agent of a customer registered under the NEM or WEM.

Paragraph 22.6

This paragraph sets out definitions of ‘AFS licence’, ‘renewable energy certificates’, ‘National Electricity Rules’ and ‘Wholesale Electricity Market Rules’ for the purposes of Chapter 22.

5. Likely impact

These AML/CTF Rules will have a beneficial impact on any reporting entity that provides a designated service under item 33 or 35 of table 1 in subsection 6(2) of the AML/CTF Act in circumstances described in section 1 of this explanatory statement.

6. Assessment of benefits

Certain entities will benefit from being exempted from the operation of the AML/CTF Act.

Without these AML/CTF Rules a person providing a designated service under item 33 or 35 in circumstances described in section 1 of this explanatory statement would be subject to a financial and administrative burden of complying with the AML/CTF Act in markets which are subject to a significant degree of regulation and regulatory supervision and in which the risk of money laundering or terrorism financing is negligible. The burden in applying obligations under the AML/CTF Act would outweigh any AML/CTF benefits. These Rules reduce the regulatory impact of the AML/CTF Act.

7. Consultation

AUSTRAC has consulted with industry through the Australian Financial Markets Association, as well as with the Office of the Privacy Commissioner, the Australian Customs Service, the Australian Federal Police, the Australian Taxation Office and the Australian Crime Commission in relation to these AML/CTF Rules.

AUSTRAC also published a draft of these AML/CTF Rules on its website for public comment.

8. Ongoing consultation

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