Australian Government

Australian Transaction Reports and Analysis Centre

Explanatory Statement – Anti-Money Laundering and Counter-Terrorism Financing Rules for applicable customer identification procedures in relation to the assignment, conveyance, sale or transfer of businesses

1. Purpose and operation of Anti-Money Laundering and Counter-Terrorism Financing Rules (AML/CTF Rules) adding Chapter 28 of the AML/CTF Rules

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

These AML/CTF Rules relate to the transfer of customers under the AML/CTF Act through business restructuring. Where a customer of one reporting entity ceases to be a customer of that entity and becomes a customer of another reporting entity, then, under section 32 of the Act, the second reporting entity must conduct an applicable customer identification procedure on that customer *before* providing them with a designated service.

Such business restructures may result in the en masse transfer of customers (up to 200,000 in one instance) from one reporting entity to another. When such a mass transfer occurs, the customer identification requirements of the AML/CTF Act may have a significant business impact on the second reporting entity, which realistically will not be able to conduct the identification procedure before providing the designated service. It will also result in significant inconvenience to the customers as they will need to be identified for the first time (if they were previously pre-commencement customers) or re-identified (if they were post-commencement customers before the transfer took place).

This may occur in circumstances where no material change has occurred in the money laundering and terrorism financing risk (ML/TF) posed by the customers or the provision of the designated services as a result of the transfer.

These AML/CTF Rules exempt the second reporting entity from carrying out the applicable customer identification procedure on transferring customers, and allow the second reporting entity to treat pre-commencement customers of the first reporting entity as if they were its own pre-commencement customers, but only if the second reporting entity has properly considered the ML/TF risk and has appropriate policies and procedures in place regarding that risk.

2. 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 2009 (No.1).*

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 adds Chapter 28 of the AML/CTF Rules.

3. Notes on paragraphs

Paragraph 28.1

This paragraph specifies that these AML/CTF Rules have been made under section 229 of the AML/CTF Act for the purposes of subsection 39(4) which permits the Rules to exempt services provided in specified circumstances from specified provisions of Part 2 of the Act.

Paragraph 28.2

This paragraph specifies that Division 4 of Part 2 of the AML/CTF Act, relating to customer identification procedures, does not apply to designated services provided in circumstances which are set out on paragraph 28.3.

Paragraph 28.3

This paragraph sets out the circumstances that must apply for the exemption from the identification procedures to apply. Those circumstances relate to the acquisition of the whole or part of a business which is subject to the AML/CTF Act by another business which is also subject to the Act.

Paragraph 28.4

This paragraph specifies that certain action must be undertaken by the acquiring business if the circumstances set out in paragraph 28.5 below arise. The aim of these actions is to satisfy the acquiring business that the customers involved in the transfer to it, are who they claim to be.

Paragraph 28.5

This paragraph specifies the circumstances that will require the actions specified in paragraph 28.4 to be undertaken:

- when a suspicious matter reporting obligation arises in regard to a customer
- where the acquiring business suspects that the disposing business did not carry out the customer identification procedure when required, or
- when there has been a significant increase in ML/TF risk in relation to a designated service that is being provided to a customer who has transferred to the acquiring business.

Paragraph 28.6

This paragraph defines the terms ‘reporting entity one’, ‘reporting entity two’ and ‘transferring customer’ as used in the Chapter.

4. Legislative instruments

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

5. Likely impact

These AML/CTF Rules will not have an adverse impact upon reporting entities as they reduce the regulatory burden in relation to procedures which would otherwise have to be undertaken by industry when a business restructure takes place.

6. Assessment of benefits

These AML/CTF Rules will significantly reduce the regulatory burden to industry of identifying transferring customers as a result of business restructures, with a consequent reduction in compliance costs under the AML/CTF Act.

7. Consultation

AUSTRAC has consulted 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.