



Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2011 (No. 1)

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

I, John Lance Schmidt, Chief Executive Officer, Australian Transaction Reports and Analysis Centre, make this Instrument under section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

Dated 24 February 2011

[Signed]
John Lance Schmidt
Chief Executive Officer
Australian Transaction Reports and Analysis Centre

1 Name of Instrument

This Instrument is the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2011 (No.1)*.

2 Commencement

This Instrument commences on the day after it is registered.

3 Amendment

Schedule 1 amends the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.

Schedule 1 Amendment of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.

1. Chapter 1, paragraph 1.2.1

For the definition of *certified copy substitute*:

certified copy means a document that has been certified as a true copy of an original document by one of the following persons:

- (1) a person who, under a law in force in a State or Territory, is currently licensed or registered to practise in an occupation listed in Part 1 of Schedule 2 of the *Statutory Declarations Regulations 1993*;
- (2) a person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described);
- (3) a person listed in Part 2 of Schedule 2 of the *Statutory Declarations Regulations 1993*. For the purposes of these Rules, where Part 2 uses the term ‘5 or more years of continuous service’, this should be read as ‘2 or more years of continuous service’;
- (4) an officer with, or authorised representative of, a holder of an Australian financial services licence, having 2 or more years of continuous service with one or more licensees;

- (5) an officer with, or a credit representative of, a holder of an Australian credit licence, having 2 or more years of continuous service with one or more licensees.

Note: The Statutory Declarations Regulations 1993 are accessible through the Commonwealth of Australia law website, www.comlaw.gov.au

2. Chapter 1, paragraph 1.2.1

For the definition of *certified extract substitute*:

certified extract means an extract that has been certified as a true copy of some of the information contained in a complete original document, by one of the persons described in paragraphs (1)-(5) of the definition of ‘certified copy’ in paragraph 1.2.1 of these Rules.

3. Chapter 1, after paragraph 1.2.2

Insert

- 1.2.3 In these Rules, the terms ‘Australian credit licence’ and ‘credit representative’ have the same respective meanings as in the *National Consumer Credit Protection Act 2009*.

4. Chapter 17

1. For subparagraph 17.2(3) substitute

- (3) the identifier (if applicable), and/or the name and address (not being a post box address) of a non-financier (sender) that accepts the instruction from the transferor entity, for the transfer of money or property under the designated remittance arrangement;

2. For subparagraph 17.2(4) substitute

- (4) the date on which the non-financier accepts the instruction from the transferor entity;

3. For subparagraph 17.2(5) substitute

- (5) the name and address (not being a post box address) of the person at which money or property is accepted from the transferor entity, if different from subparagraph 17.2(3);

4. For subparagraph 17.2(6A) substitute

- (6A) the name and address of the person in the foreign country to which the sender and/or transmitter sent the instruction for the transfer of money or property;

5. For subparagraph 17.2(7) substitute

- (7) the identifier (if applicable), and/or the name and address of a person (disbursing entity) who arranges for the money or property to be made available or at which the money or property is, or is to be, made available to the ultimate transferee entity;

6. For subparagraph 17.2(12B) substitute

- (12B) any reference number allocated by the non-financier to the instruction;

7. For subparagraph 17.3(4) substitute

- (4) the date on which the foreign entity accepts the instruction from the transferor entity, if known;

8. For subparagraph 17.3(5) substitute

- (5) the identifier (if applicable), and/or the name and address (not being a post box address) of the foreign entity at which it accepts the instruction from the transferor entity, if applicable and known;

9. For subparagraph 17.3(7) substitute

- (7) the date on which the non-financier arranges for the money or property to be made available or makes or is to make the money or property available to the ultimate transferee entity;

10. For subparagraph 17.3(8) substitute

- (8) the name and full address (not being a post box address) of the non-financier (receiver) who arranges for the money or property to be made available or that makes or is to make the money or property available to the ultimate transferee entity in Australia;

11. For subparagraph 17.3(9) substitute

- (9) the identifier (if applicable), and/or the name and address (not being a post box address) of the person, if different from subparagraph 17.3(8), at which the money or property is made or is to be made available to the ultimate transferee entity in Australia;

12. After paragraph 17.4 omit

Reporting entities should note that in relation to activities they undertake to comply with the AML/CTF Act, they will have obligations under the Privacy Act 1988, including the requirement to comply with the National Privacy Principles, even if they would otherwise be exempt from the Privacy Act. For further information about these obligations, please go to <http://www.privacy.gov.au> or call 1300 363 992.

13. After paragraph 17.4 insert

17.5 In this Chapter:

- (1) 'identifier' means a Bank Identifier Code (BIC), a Bank-State-Branch identifying code (BSB) or Branch Registration Number (BRN) previously registered with AUSTRAC.

Reporting entities should note that in relation to activities they undertake to comply with the AML/CTF Act, they will have obligations under the Privacy Act 1988, including the requirement to comply with the National Privacy Principles, even if they would otherwise be exempt from the Privacy Act. For further information about these obligations, please go to <http://www.privacy.gov.au> or call 1300 363 992.

5. After Chapter 48

Insert

Chapter 49 International Uniform Give-Up Agreements

- 49.1. These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made under section 229 for subsection 39(4) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act).
- 49.2. Division 4 of Part 2 of the AML/CTF Act does not apply to a designated service that:
 - (1) is of a kind described in item 33 of table 1 in subsection 6(2) of the AML/CTF Act; and
 - (2) is provided by the reporting entity to a customer in the circumstances specified in paragraph 49.3.
- 49.3. The specified circumstances for the purposes of paragraph 49.2 are that the reporting entity:
 - (1) provides the designated service to the customer pursuant to the terms and conditions of an International Uniform Give-Up Agreement;
 - (2) is admitted as a Participant under the Operating Rules of a Licensed Market;

- (3) does not receive, hold or transfer money or property of the customer (other than applicable fees to the reporting entity) in connection with the provision of the designated service; and
- (4) the person to whom the reporting entity refers a transaction or transactions for clearing under the International Uniform Give-Up Agreement is:
 - (a) admitted as a Participant under the Operating Rules of a Licensed CS facility; or
 - (b) regulated by anti-money laundering and counter-terrorism financing laws in, or comparable to, those in Australia.

49.4. In this Chapter:

- (1) 'Participant' has the same meaning as in section 761A of the *Corporations Act 2001*;
- (2) 'Licensed Market' has the same meaning as in section 761A of the *Corporations Act 2001*;
- (3) 'Licensed CS facility' has the same meaning as in section 761A of the *Corporations Act 2001*;
- (4) 'International Uniform Give-Up Agreement' means a contract based on the terms and conditions in the template agreement developed by the US Futures Industry Association (FIA), the Futures and Options Association (FOA) and the London International Financial Futures and Options Exchange (LIFFE) pursuant to which a person (the customer) instructs the reporting entity to execute an order or orders, but settlement or clearance of which is or are conducted by another entity to whom the reporting entity 'gives up' or otherwise refers the order or orders.

Reporting entities should note that in relation to activities they undertake to comply with the AML/CTF Act, they will have obligations under the Privacy Act 1988, including the requirement to comply with the National Privacy Principles, even if they would otherwise be exempt from the Privacy Act. For further information about these obligations, please go to <http://www.privacy.gov.au> or call 1300 363 992.

Chapter 50 Exemption from applicable customer identification procedure in certain circumstances

50.1. These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made under section 229 for subsection 39(4) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act).

Exemption from customer identification provisions for a member of a designated business group where another member of the group treats the same customers as pre-commencement customers

50.2. Subject to paragraphs 50.4 and 50.5, Division 4 of Part 2 of the AML/CTF Act does not apply to a designated service that is provided in the circumstances specified in paragraph 50.3.

50.3. The specified circumstances for the purposes of paragraph 50.2 are that:

- (1) reporting entity one has assigned, conveyed, sold or transferred the whole or a part of its business to reporting entity two;
- (2) reporting entity three has commenced to provide a designated service to the customers of reporting entity two;
- (3) reporting entity three is a member of the same designated business group to which reporting entity two belongs; and
- (4) based on the assessed ML/TF risk and its risk-based systems and controls, it is reasonable for reporting entity three to treat a transferring customer who is treated as a pre-commencement customer of reporting entity two under Chapter 28 as if that customer is a pre-commencement customer of reporting entity three.

50.4. Reporting entity three must, within 14 days after any of the circumstances specified in paragraph 50.5 come into existence, take one or more of the actions specified below:

- (1) carry out the applicable customer identification procedure, or
- (2) based on the assessed ML/TF risk and its risk-based systems and controls, assess whether it is reasonable to rely upon any of the following as an appropriate means to identify and verify the identification of the customer if previously undertaken by reporting entity two:
 - (a) a prescribed verification procedure;
 - (b) an identification reference; or

- (c) a procedure approved by the AUSTRAC CEO; and
 - (d) any relevant identification obtained by reporting entity three in regard to subparagraph 50.4(2)(a)-(c), (if applicable); or
- (3) collect any KYC information in respect of the customer; or
 - (4) verify, from a reliable and independent source, KYC information that has been obtained in respect of the customer;

for the purpose of enabling reporting entity three to be reasonably satisfied that the customer is the person that he or she claims to be.

50.5. For the purposes of paragraph 50.4, the following circumstances are specified:

- (1) a suspicious matter reporting obligation arises in relation to the customer to which reporting entity three has commenced to provide a designated service; or
- (2) a significant increase has occurred in the level of ML/TF risk as assessed under the AML/CTF program of the designated business group to which reporting entity three belongs, in relation to the provision of a designated service by reporting entity three to a customer of reporting entity two or by the provision of a designated service by the second reporting entity to a customer of the first reporting entity.

Exemption from customer identification provisions for a member of a designated business group where the same customers are pre-commencement customers of another member of the group

50.6. Subject to paragraphs 50.8 and 50.9, Division 4 of Part 2 of the AML/CTF Act does not apply to a designated service that is provided in the circumstances specified in paragraph 50.7.

50.7. The specified circumstances for the purposes of paragraph 50.6 are that:

- (1) the second reporting entity has commenced to provide a designated service to a customer of the first reporting entity and the customer is a pre-commencement customer of the first reporting entity within the terms of section 28;
- (2) the second reporting entity is a member of the same designated business group to which the first reporting entity belongs; and
- (3) based on the assessed ML/TF risk and its risk-based systems and controls, it is reasonable for the second reporting entity to treat a customer who is a pre-commencement customer of the first reporting entity as if that customer is a pre-commencement customer of the second reporting entity.

50.8. The second reporting entity must, within 14 days after any of the circumstances specified in paragraph 50.9 come into existence, take one or more of the actions specified below:

- (1) carry out the applicable customer identification procedure, or
- (2) based on the assessed ML/TF risk and its risk-based systems and controls, assess whether it is reasonable to rely upon any of the following as an appropriate means to identify and verify the identification of the customer if previously undertaken by the first reporting entity:
 - (a) a prescribed verification procedure;
 - (b) an identification reference; or
 - (c) a procedure approved by the AUSTRAC CEO; and
 - (d) any relevant identification obtained by the second reporting entity in regard to subparagraph 50.4(2)(a)-(c)(if applicable); or
- (3) collect any KYC information in respect of the customer; or
- (4) verify, from a reliable and independent source, KYC information that has been obtained in respect of the customer;

for the purpose of enabling the second reporting entity to be reasonably satisfied that the customer is the person that he or she claims to be.

50.9. For the purposes of paragraph 50.8, the following circumstances are specified:

- (1) a suspicious matter reporting obligation arises in relation to the customer to which the second reporting entity has commenced to provide a designated service; or
- (2) a significant increase has occurred in the level of ML/TF risk as assessed under the AML/CTF program of the designated business group to which the second reporting entity belongs, in relation to the provision of a designated service by the second reporting entity to a customer of the first reporting entity.

50.10. In this Chapter:

- (1) 'reporting entity one' means the reporting entity that assigns, conveys, sells or transfers a whole or a part of the business to reporting entity two;
- (2) 'reporting entity two' means the reporting entity to which reporting entity one assigns, conveys, sells or transfers a whole or a part of the business;

- (3) 'reporting entity three' means the reporting entity which treats a customer of reporting entity two, as a pre-commencement customer;
- (4) 'first reporting entity' means a reporting entity which is a member of a designated business group;
- (5) 'second reporting entity' means a reporting entity which is a member of the same designated business group to which the first reporting entity belongs;
- (6) 'prescribed verification procedure', 'identification reference' and 'procedure approved by the AUSTRAC CEO' have the same meaning as in the *Financial Transaction Reports Act 1988* and the *Financial Transaction Reports Regulations 1990*;
- (7) 'transferring customer' means a customer who is a customer of reporting entity three in relation to a designated service solely because of the assignment, conveyance, sale or transfer of the whole or part of the business from reporting entity one to reporting entity two

Reporting entities should note that in relation to activities they undertake to comply with the AML/CTF Act, they will have obligations under the Privacy Act 1988, including the requirement to comply with the National Privacy Principles, even if they would otherwise be exempt from the Privacy Act. For further information about these obligations, please go to <http://www.privacy.gov.au> or call 1300 363 992.