

# EXPLANATORY STATEMENT

Issued by authority of the AUSTRAC CEO

*Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

*Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment  
(Chapter 21 Amendments) Instrument 2024*

## AUTHORITY

1. Section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) provides that the AUSTRAC CEO may, by legislative instrument, make Anti-Money Laundering and Counter-Terrorism Financing Rules (AML/CTF Rules). The AML/CTF Rules are set out in the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007* (No. 1).

## PURPOSE AND OPERATION OF THE INSTRUMENT

2. The *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment (Chapter 21 Amendments) Instrument 2024* (the Amendment Instrument) is a legislative instrument for the purposes of the *Legislation Act 2003*.
3. A Statement of Compatibility with Human Rights (the Statement) is included within this Explanatory Statement. The Statement was completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Amendment Instrument promotes the realisation of human rights, and as such, is compatible with them.

## *Background*

4. Section 247(3) of the AML/CTF Act allows the AML/CTF Rules to specify circumstances in which the AML/CTF Act does not apply to the provision of a designated service.
5. Chapter 21 of the AML/CTF Rules currently provides exemptions from the AML/CTF Act for the issuing or selling of securities or derivatives in certain circumstances. This includes the issuing or selling of securities or derivatives on certain financial markets where due to the use of electronic buy/sell orders, the issuer or seller does not have knowledge of the identity of the buyer or the person to whom the security or derivative is issued.
6. In 2012, as a result of public consultation on an amendment of Chapter 21 to include certain foreign financial markets, AUSTRAC was asked to clarify its position on whether the existing Chapter 21 exemption for ‘prescribed financial markets’ applied to the Sydney Futures Exchange Ltd (now the Australian Securities Exchange Limited (ASEL)).

7. AUSTRAC considered that the rationale for exempting prescribed and foreign financial markets applied similarly to ASEL. As a result, ASEL was included in the definition of a prescribed financial market for the purposes of Chapter 21 of the AML/CTF Rules.

### ***Amendment to Chapter 21***

8. The Amendment Instrument sets out amendments to Chapter 21 of the AML/CTF Rules to exempt from the operation of the AML/CTF Act, the issue or sale of securities and derivatives on specified low money laundering and terrorism financing (ML/TF) risk domestic financial markets.
9. The Amendment Instrument clarifies that ASEL is not a prescribed financial market under the *Corporations Act 2001*, but defines ASEL as a specified financial market.
10. The Amendment Instrument also includes FEX Global Pty Ltd (ACN 124 127 224) (FEX) in the definition of specified financial market for the purposes of the Chapter 21 exemption, based on a finding of low ML/TF risk and the difficulty associated with the issuer or seller of a security or derivative being able to identify the buyer of the security or derivative when the transaction occurs on FEX.

### **CONSULTATION**

11. Draft AML/CTF Rules amending Chapter 21 of the AML/CTF Rules were released on 15 November 2023 for a four-week period of public consultation.
12. AUSTRAC received two submissions and made a minor amendment to the draft AML/CTF Rules in response to the submissions received.

### **REGULATION IMPACT STATEMENT**

13. The Office of Impact Analysis has advised that an Impact Analysis Statement is not required as the amendments to the AML/CTF Rules are unlikely to have a more than minor regulatory impact.

### **SUNSETTING**

14. Under item 6 of Regulation 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* the Amendment Instrument is not subject to sunseting.
15. The AML/CTF Rules are designed to be enduring because they:
  - (a) complement and provide the detail for the broader obligations set out in the AML/CTF Act, aid in meeting Australia's international obligations and matters of international concern, and support the combatting of money laundering and terrorism financing,

- (b) assist industry in fulfilling their compliance with the AML/CTF Act and provide commercial and regulatory certainty for industry, and
- (c) are subject to an ongoing process of development, refinement and review, involving scrutiny and feedback from a wide range of stakeholders including industry, the Financial Action Task Force, Australian Government agencies, law enforcement agencies, and other interested parties.

## **ATTACHMENT A**

### ***Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment (Chapter 21 Amendments) Instrument 2024***

#### **Section 1—Name**

This section provides that the name of the Instrument is the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment (Chapter 21 Amendments) Instrument 2024*.

#### **Section 2—Commencement**

This section provides for the commencement of each provision in the Instrument, as set out in the table in subsection 2(1).

The amendments in Schedule 1 commence on the day after registration.

#### **Section 3—Authority**

This section provides that the Instrument is made under section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

#### **Section 4—Schedules**

This section provides that each instrument specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule concerned.

#### **Schedule 1 – Amendments**

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

#### **Notes on items**

##### **Item 1—Subsection 21.3(1)**

This item includes in subsection 21.3(1) a transaction that occurs on a specified financial market.

##### **Item 2—Subsection 21.4(8)**

This item omits the ‘Australian Securities Exchange Limited (ACN 000 943 377)’ from the definition of ‘prescribed financial market’.

##### **Item 3—Subsection 21.4(11)**

This item defines the term ‘specified financial market’ for the purposes of Chapter 21.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### ***Australian Human Rights Commission Regulations 2019***

1. This Disallowable Legislative Instrument (the **Instrument**) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Instrument**

2. Section 247(3) of the AML/CTF Act allows the AML/CTF Rules to specify circumstances in which the AML/CTF Act does not apply to the provision of a designated service. Chapter 21 currently specifies four circumstances in which the issue or sale of securities or derivatives are exempt, and includes transactions on a prescribed financial market.

3. The Amendment Instrument amends Chapter 21 by clarifying that the Australian Securities Exchange Limited (ACN 000 943 377) is not a prescribed financial market under the Corporations Act. The Amendment Instrument defines ‘specified financial markets’ to be Australian Securities Exchange Limited or FEX Global Pty Ltd (ACN 124 127 224) and provides that the issue or sale of securities and derivatives on specified financial markets is exempt from the operation of the AML/CTF Act.

#### **Human rights implications**

4. The *Human Rights (Parliamentary Scrutiny) Act 2011* requires that Statements of Compatibility must be made by the rule-maker with regard to disallowable legislative instruments, and must contain an assessment of whether the legislative instrument is compatible with the rights and freedoms recognised in the seven core international human rights treaties that Australia has ratified.

5. The Instrument engages the right to privacy in Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR). Article 17 of the ICCPR provides that no one shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence. The right to privacy also requires respect for private and confidential information, including the storing, use and sharing of such information.

6. The use of the term ‘arbitrary’ means that any interference with privacy must be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the given circumstances. The United Nations Human Rights Committee has interpreted ‘reasonableness’ to imply that any limitation must be proportionate and necessary in the circumstances. The right to privacy can be limited by necessity in a democratic society in the interests of national security or public order.

7. AUSTRAC collects personal information under the requirement of the AML/CTF Act to mitigate and manage the risk of money laundering and financing of terrorism. AUSTRAC considers that the collection of personal information under the AML/CTF Act, and by the operation of Chapter 16, is therefore not an arbitrary or unlawful interference with privacy.

8. Nonetheless, the effect of the amendment reduces the amount of personal information required to be collected from buyers on the FEX Market each time a security or derivative is issued or sold, where that information is already required to be made available to FEX as part of market participant compliance with the FGL Operating Rules. Therefore, the amendment has an overall positive impact on individuals right to privacy.

9. Reporting entities must continue to comply with the *Privacy Act 1988* when collecting and disclosing personal information for the purposes of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

### **Conclusion**

10. This Instrument is compatible with human rights.