

24 January 2014

Director
Rules
AUSTRAC
PO Box 13173
Law Courts
MELBOURNE VIC 8010

Email: aml_ctf_rules@austrac.gov.au

Dear Sir/Madam,

Re: Draft AML/CTF Rules relating to customer due diligence

The Australian Institute of Superannuation Trustees (AIST) is an independent, not-for-profit professional body whose mission is to protect the interests of Australia's \$600 billion not-for-profit superannuation sector. AIST's members are the trustee directors and staff of industry, corporate and public-sector superannuation funds, who manage the superannuation accounts of two-thirds of the Australian workforce.

AIST and our members support the commitment of Australia to halt the spread and proliferation of organised crime. We support efforts to improve the customer due diligence methods utilised by superannuation funds in dealing with their customers.

In our submission to AUSTRAC of September 2013, we pointed to issues and costs that could have arisen with regards to the payment of death benefits as well as the proposed requirement to understand the purpose of a business relationship.

Requirements for beneficial ownership and control

We note from the proposed changes to the rules that some of our concerns regarding the payment of death benefits to deceased estates still remain. The requirement to identify the trustee(s) of an estate is understandable, however there are practical issues present in the instance that a superannuation fund is to make a payment to a deceased estate.

By way of context, it should be noted that superannuation funds do not, as a rule, make payments to estates, unless other avenues of payment (usually payments to beneficiaries directly) are exhausted first. Requirements to identify executors are therefore a last resort and it would be reasonable to conclude that executors should be considered to be a low ML/TF risk. We would consider it to be appropriate that where a payment of a death benefit is being made by a superannuation fund to an executor of a deceased estate, an additional safe harbour might be to sight probate or letters of administration. Alternatively, a proposal could be to add estates

with those documents to the simplified trustee verification procedure outlined in the proposed rule 4.4.8, where payments are death benefits from superannuation funds.

Purpose of business relationship

There appear to be two possible requirements with regards to this question. The first relates to the nature of the business or occupation of customers. The second relates to the nature of why these customers transact with reporting entities.

In the case of the second, we are uncertain why anything other than the following should be assumed as the nature of the business relationship between superannuation funds and their client:

1. An employer is required, by law, to make contributions into a regulated superannuation fund on behalf of their employees through the superannuation guarantee, as well as such other payments that form part of an employer-employee relationship.
2. Employees who are members of superannuation funds utilise those funds to make appropriate provision for retirement. The ability to make contributions themselves is highly regulated, and restrictions apply to how much one may contribute through contribution caps, as well as whether this is before or after tax, that is, contributing concessionally or non-concessionally.
3. Additional constraints apply to when an employee is eligible to draw on their retirement savings, however there are no reasonable set of circumstances where an employer is able to draw on amounts contributed on behalf of its employees.

We would like to draw attention that collecting information regarding this business relationship beyond the points above would be both a statement of the obvious, as well as unnecessary red tape for employees and employers.

In the case of the first, we have difficulty in understanding what the requirements will actually be with regards to understanding the nature of the business or occupation of customers. Without knowing more about what this means for superannuation funds and their members, we are unable to support this requirement. We urgently recommend that these requirements be deferred to a later stage, to enable a clearer picture of what the requirements will mean for superannuation funds. Furthermore, we would strongly recommend that further information be provided in explanatory statements which accompany these draft rules.

Implication for members of superannuation funds

We are concerned about the cost that may be imposed on superannuation funds that have members who are receiving income streams. Income streams are subject to the ongoing customer due diligence provisions of chapter 15. Presently, industry practice requires

identification to be taken at the commencement of an income stream, or in situations where payment arrangements change, such as changes to the BSB/account number where payments are to be made, if requested by a member.

The new rules provide for information that verifies ongoing customers and beneficial owners to be continually maintained, updated and reviewed. In ordinary circumstances, income stream recipients can go for years without either varying the terms of their income streams or drawing additional amounts. It would be entirely reasonable to consider this group, to present a low ML/TF risk, however super funds would be required to frequently update records belonging to this low risk group.

We would therefore request for further guidance to be provided with regards to members of superannuation funds in receipt of income streams are to be treated with regards to the requirement to re-collect identifying documentation and re-verification. We would recommend that this only be collected at the triggering of two points:

1. Changes to income stream payment information, such as amounts, frequencies, method of payment or changes to BSB/account number information; or
2. Requests for payment of lump sums, or requests to close or rollover income streams.

Identification of Politically Exposed Persons (PEPs)

Lastly, AIST has some concerns around identifying PEPs in practice. Feedback from trustees would appear to indicate that not all are familiar with the requirement to ensure that PEPs are appropriately identified, or other requirements associated with PEP information.

We would therefore request that additional guidance with regards to identification of PEPs and other requirements is provided.

If you have any further questions regarding this submission, please contact Richard Webb, Policy & Regulatory Analyst on 03 8677 3835 or at rwebb@aist.asn.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Tom Garcia', written over a light blue horizontal line.

Tom Garcia
Chief Executive Officer