



Abacus
Australian Mutuals

Association of Building Societies and Credit Unions

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Ms Atkins,

AUSTRAC draft Rules – ongoing customer due diligence & threshold reporting

Abacus Australian Mutuals, the association for credit unions and mutual building societies, appreciates the opportunity to respond to the recent series of AUSTRAC draft Rules.

These materials are a timely reminder that the AML/CTF regime is risk-based and reporting entities can minimise their compliance costs by implementing responses and focusing their resources on areas of greatest ML or TF risk. We believe this is best achieved by reference to clear and certain regulatory requirements, strongly supported by AUSTRAC through the provision of instructive and detailed guidance materials.

In that context we offer the following observations:

Draft AML/CTF Rules in respect of ongoing customer due diligence

We reiterate the comments made in our earlier submission (dated 18 July 2007) in relation to the Rule on ongoing customer due diligence.

In summary, it is our continued view that reporting entities would benefit from the Rule containing instruction about how to identify *“complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or visible lawful purpose.”* This might, for example, be achieved by reference to volume and frequency. We also seek instruction on how to comply with these requirements in a technology-neutral way. This is particularly the case in response to paragraph 7 and 10 of the draft Rule.

Naturally, a comprehensive Guidance Note, further detailing these particular elements, should supplement the Rule. Understanding AUSTRAC’s expectations about transaction monitoring, for example, is fundamental to designing and implementing appropriate response that do not expose our members to excessive costs, which is likely to occur if they must rely on externally sourced solutions or make expensive systems changes.

We seek clarity in terms of the additional analysis of KYC information referred to in paragraph 10(2) compared to the elements already set out in paragraph 10(1)(a) – (d). We also believe AUSTRAC should clarify what is an acceptable *“third party source”* as referred in paragraph 10(1).

Draft AML/CTF Rules for reportable details relating to threshold transaction reports

Section 43 continues to enforce the SCTR obligation to report certain transactions and updates this obligation to be consistent with FATF Recommendation 19(b). However, we are concerned the detail set out in the draft Rule places a range of new obligations, some of which represent a substantial growth and a practical challenge for reporting entities:

- We seek clarification from AUSTRAC around the breadth and operation of the *“e-currency”* definition in s.6 of the Act and its impact on the threshold transaction report. This should include an indication about whether AUSTRAC will seek to make further Rules pursuant to sub-clauses (a)(iv) and (b)(iii) of the *“e-currency”* definition.

One view is that the *“e-currency”* definition is only intended to cover a limited variety of non-traditional retail payment methods, which typically (although not always) do not rely on traditional payment systems to transfer value between individuals or organisations.

This more limited characterisation in terms of the coverage of *“e-currency”* is also reflected in the Attorney General's Department's *Fact Sheet - What are the new anti-money laundering and counter terrorism financing reforms*¹, which outlines the following as a new obligation under the Act:

*Extension of existing significant cash transaction reporting obligations to **some** non-cash transactions such as e-currency.* (emphasis added)

Accordingly, we also seek AUSTRAC's views about the applicability of the *“e-currency”* definition and hence the threshold transaction report in relation to more traditional electronic payment methods such as some online banking activity or direct entry payments, which are also addressed by the Part 5 provisions. If these were captured then this represents a potentially significant burden for industry in terms of systems design and implementation.

- We note the expectation to record the customer's full name. We accept this is best practice but such an obligation can present a problem when the information currently recorded on many identity documents issued by private and public sector organisations do not always contain the full name. In many instances, these documents provide the first and last name but can rely on an initial for any other names and in some cases an initial may also record the first name. We have raised this issue in separate correspondence to AUSTRAC (dated 05/09/07).

¹ www.ag.gov.au/aml

- We believe cl.2(a) and (b) could be presented as “either/or” options. Similarly, we believe cl.2(d) and 2(e) could also be presented as either/or options. Further, cl.2(f) could largely replicate the response to cl.2(b).
- We welcome the references to the words “if known” in respect of cl.2(e) and (d), although we do not see a reason for stating both “if applicable” and “if known”. If it is not applicable then it does not matter whether it is known, if it is applicable but unknown then why list it?
- Guided by cl.2(d) and 2(e) and cl.16, we ask whether cl.2(a), 2(c) and cl.4 could be amended to include the words “if known” to place appropriate limits on the level of inquiry required to complete the report. We believe the passive collection of this information represents the least intrusive and most cost effective approach.
- A significant concern arises in terms of cl.4. Presently, many cash dealers have the flexibility to rely on free text to describe a customer’s business or occupation. Mandating that this information be reported by reference to ANZSIC or ANZSCO industry codes presents a new compliance challenge. Additionally, the obligation to record industry codes appears to exceed the minimum KYC information requirements.

These codes are incredibly detailed and offer many permutations of different industries or occupations. This makes adherence to cl.4 problematic. For example:

- *registered nurse* has no less than 20 different sub-classifications covering occupations such as nurses involved in pre-operative care, mental health, disability and rehabilitation and aged care among others.
- ignoring educational aids, health care educators and education managers among others, a *school teacher* could fall within any of the following:
 - o teachers of English to speakers of other languages;
 - o private tutors and teachers;
 - o education advisers and reviewers;
 - o miscellaneous education professionals;
 - o vocational education teachers;
 - o university lecturers and tutors;
 - o tertiary education teachers;
 - o special education teachers;
 - o secondary school teachers;
 - o middle school teachers;
 - o primary school teachers; or
 - o early childhood (pre-primary school) teachers.

We also note that it may be very difficult to apply an appropriate code for a customer identified as a *public servant*, which does not easily fit within any single occupation category. Similarly, the code reference for a *housewife*, *pensioner* or *student* might be equally vexed.

The proposition that our members will need to select an appropriate code from a listing of over 3000 options is an impractical burden. Pre-populating this data from a system-generated list would also add enormous storage and currency obligations.

Instead, we urge AUSTRAC to consider straightforward compliance measures, such as:

- retaining the current free text method;
 - inserting the words "*if known*" within cl.4 to limit its application – the current implication is that if it is not known then the onus is on the reporting entity to ask and collect this information so as to be able to report it; and
 - referring to a simplified listing of industries or occupations.
- We query the words "*if applicable*" as drafted in cl.8(a)(iv). The words "*if applicable*" lack certainty and are applied inconsistently throughout the draft Rule. We are unsure when a transferee's date of birth would be "*applicable*" to a physical transfer of currency?
- We note the new inclusion of questions about an agent of the customer in cl.16 and 17. These were not included in the July 2006 *Draft Consolidated AML/CTF Rules for Discussion*. We understood this to be a deliberate omission at the time to balance the widening of the report to include e-currency (as defined) and the maintenance of the \$10,000 threshold rather than limiting its application and raising the limit to \$20,000 as in other jurisdictions. In that context, we query the rejuvenation of these customer's agent clauses in the current draft Rule.

Finally, we reiterate our view that AUSTRAC provide a consultation schedule for future draft Rules and Guidance Notes to give reporting entities modest prior notice of their release. This will allow for more informed submissions in reply.

Thank you for the opportunity to make these comments. We look forward to being included in continuing consultations. In the meantime, if you would like further information about *Abacus* or the comments in this response, please contact me on (02) 8299 9033 or at jmoyes@abacus.org.au.

Yours sincerely,



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