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AML/CTF Rules
Director
Rules
AUSTRAC

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FSC Submission on draft amendments to Chapter 21 AML/CTF Rules - exemption for certain item 35 designated services (issues of registered schemes) where the issue is facilitated by a market participant providing an item 33 designated service via an MIS service operated by ASX (or other prescribed or exempt financial markets)

The Financial Services Council represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, trustee companies and public trustees. The FSC has over 125 members who are responsible for investing more than $2.2 trillion on behalf of 11 million Australians.

We welcome the opportunity to comment on the draft amendment to Chapter 21 of the AML/CTF Rules (relating to issuing or selling a security or derivative), released for consultation on 20 December 2013.

1. Terms or phrases used in this submission which are defined in the draft amendment, have the same meaning as defined in the draft amendment. The definitions will not be repeated here.

2. Paraphrasing the amendment, the amendment only applies where a market participant is the agent/broker for a customer, and the market participant applies for units in a registered scheme via an MIS service which is operated by ASX or another prescribed financial market or an exempt financial market. That is the exemption is limited to ASX (and other) market operators (or exempt market operators) MIS services. The exemption is limited to "stock brokers" (i.e. ASX market participants or participants of other financial markets) and would not apply to other agents (such as a financial advisor which is not a market participant). **We have competitive neutrality concerns with these limitations**, albeit we accept that the draft rule amendment is we understand initiated in light of the proposed ASX mFund service, so we understand why, initially, the amendment has been drafted with that context in mind.

3. FSC has competitive neutrality concerns with the draft amendment. This is because the amendment only applies (in effect, and paraphrasing the draft amendment) in respect of issues of unlisted registered schemes applied for by ASX market participants (or participants of other prescribed financial markets) via an MIS service operated by ASX (or another prescribed or exempt financial market) where the (relevantly, ASX) market participant is acting as agent/broker for its customers. The amendment is limited to ASX or certain other financial markets, and it is also only limited to ASX (or other) market participants, and it is only limited to MIS services operated by ASX (or certain other financial markets).

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4. However, subject to our competitive neutrality concerns (that is, the amendment should be expanded to be agnostic as to the operator of the MIS service or the category of agent (i.e. the category of the second reporting entity providing the item 33 service)), FSC does not object to the draft amendment in so far as the amendment encapsulates an exemption from item 35 of table 1 in subsection 6(2) of the *Anti-Money Laundering and Counter-Terrorism Financing Act* in the case of an item 33 designated service where the provider of the item 33 service has undertaken the applicable customer identification procedure ("**CIP**"). The exemption – albeit only applying to a particular type of agent (i.e. a market participant) and a particular type of MIS service (i.e. only MIS services operated by prescribed or exempt financial markets) - therefore removes duplication where a customer is a common customer of the agent/broker and the responsible entity (of the registered scheme) and the other conditions of the draft amendment are met. We support the removal of the duplication but the amendment should be expanded as mentioned above to ensure it is competitively neutral.

5. We acknowledge the exemption is not worded, strictly speaking, to limit it to ASX, and that it refers to any MIS service operated by any prescribed financial market (or an exempt financial market). Nonetheless, the exemption only applies to issues of registered schemes via one medium (namely via *MIS services operated by ASX* or other prescribed or exempt financial markets).

6. The on-boarding process (including AML "KYC" and CIPs) for unlisted managed funds is heavily paper based (including "wet", or hard copy signatures). Currently advisors/brokers/agents can readily set up accounts of other asset classes such as listed equities and bank accounts using electronic mechanisms. The CIP process is in order to verify the customer in the process of setting up an account or customer relationship. This AML CIP is distinct from the process or method of trade execution and settlement (i.e. AML CIP is distinct from the type of MIS service or the category of operator of the MIS service).

7. **Any relief or exemption granted to item 35 providers (issuers of registered schemes) to reduce duplication of AML CIP processes where an agent/broker/advisor applies for the issue (as agent of the common customer of the broker and responsible entity) and has undertaken the applicable CIP, should be independent of the network through which (or the operator of the network) the agent/broker/advisor then executes the transaction.** That is, the draft rule amendment should not be limited to ASX and other prescribed or exempt financial markets nor limited to ASX market participants or other market participants.

8. **For competitive neutrality, the draft amendment should apply to any MIS service (where CIP has been undertaken by the agent/broker (i.e. the provider of the item 33 designated service). The draft amendment should not only be able to be availed in respect of issues of registered schemes facilitated by ASX market participants via the MIS service operated by ASX or other MIS services operated by prescribed or exempt financial markets.**

9. The exemption to issuers of registered schemes (item 35 providers) where an agent – whether a financial advisor or a market participant – has undertaken the applicable CIP and the processing and settlement occurs via an MIS service, should apply to any MIS service (or analogous arrangement) irrespective of which entity or class of entity operates the MIS

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service or is the user of the MIS service (e.g. a financial advisor which is not a market participant). It may be that an extension of the exemption to other MIS services (not just those operated by ASX or a prescribed or exempt financial market) may well be subject to other regulatory considerations in relation to such other MIS service. Obviously, we do not suggest that non-market participants should have access to a licenced market operator's MIS service; rather the rule amendment should – subject to other (non-AML related) regulatory considerations - be agnostic to the operator of the MIS service or the category of the item 33 provider (which may be a licensed financial advisor, another agent, or a stock-broker/market participant).

10. FSC would be happy to facilitate with the applicable FSC members, appropriate amendments to the draft Chapter 21 rule amendment to address our competitive neutrality concerns. As a commercial reality, we do not suggest the proposed draft amendment should be delayed pending AUSTRAC's consideration of our competitive neutrality point; but we consider AUSTRAC ought to consider expanding, in due course, the draft Rule so it addresses any competitive neutrality implications. We accept AUSTRAC may wish to engage (or request FSC to facilitate that engagement) with other prospective operators or users of MIS services in respect of appropriate amendments to the draft Rule to ensure competitive neutrality in light of AML and other regulatory considerations.

11. Competitive neutrality and efficiency (by facilitating electronic-applications and straight through processes) are inter-related in that any regulatory relief (in this case the AUSTRAC Chapter 21 rule amendment) should as a general principle be broadly available to the industry at large and not just to a sub-set of the industry (namely, processing and settlements of applications for unlisted schemes operated by ASX or other market operators). (We acknowledge that in the case of *settlement*, other regulatory considerations may come into play, but these are of course not matters of concern to AUSTRAC as the AML regulator.)

12. Our comments in this submission are not, and should not be taken as, a comment or criticism of any MIS service operated by ASX. Rather, our submission is that other operators of MIS services (or analogous services) should also be able to facilitate the processing and settlement of the issue of unlisted managed funds in a manner which is seamless to common customers of the agent/broker/financial advisor and responsible entity of the registered scheme by removing duplication of AML/CTF obligations. Expanding the application of the Chapter 21 rule amendment to other MIS services where an agent (the second reporting entity) has undertaken the applicable CIP, will further facilitate more seamless access to investments by customers and facilitate industry efficiency.

We thank AUSTRAC for the opportunity to comment on the draft Chapter 21 Rule amendment. If you have any questions on our submission, please contact Stephen Judge on (02) 9299 3022.

Yours sincerely

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