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23 October 2014

Discussion Paper - AUSTRAC Industry Contribution
Legal and Policy Branch
PO Box 13173 Law Courts
MELBOURNE VIC

By email to Policy_Consultation@austrac.gov.au
and aml_ctf_rules@austrac.gov.au

Dear Sir/Madam,

AUSTRAC INDUSTRY CONTRIBUTION: SECOND STAKEHOLDER CONSULTATION PAPER; DRAFT AMENDMENTS TO CHAPTERS 63 AND 65 OF THE AML/CTF RULES

We refer to the Second Stakeholder Consultation Paper dated 25 September 2014 seeking stakeholder views on the final form of the calculation model for the AUSTRAC Industry Contribution; to the draft amendments to Chapter 63 and Chapter 65 of the AML/CTF Rules consequential to the legislation that imposes the Industry Contribution; and to the draft Ministerial Determination attached to the Consultation Paper.

This letter is written on behalf of members of the Australian Finance Conference, the Australian Equipment Lessors Association, the Australian Fleet Lessors Association and the Debtor and Invoice Finance Association of Australia and New Zealand. We refer to our submission dated 25 July in response to the Industry Contribution Discussion Paper dated 23 June 2014 and to the background information in that submission about our members.

We do not have any comments on the proposed amendments to Chapter 63 and Chapter 65 of the AML/CTF Rules.

Our concerns are as follows:

1. We re-iterate our disagreement with the underlying principle of AUSTRAC cost recovery and the Industry Contribution. The philosophy behind requiring reporting entities to fund AUSTRAC's costs is flawed because the providers of designated services are not the perpetrators of money laundering, tax evasion or terrorism offences merely by providing their services.

   The terminology of "reporting entity" in the AML/CTF legislation reflects the fact that the providers of "designated services" are required to collect, monitor and report certain information to AUSTRAC. They are not directly regulated in how they provide financial services to customers. This is in contrast to regulation under the National Consumer Credit Protection legislation of the providers of credit products to consumers and under various legislation of those that offer investment products and advice on those products.

2. The Discussion Paper appears to contemplate the inclusion of only domestic "earnings" in calculating whether an entity is subject to the earnings component. However it appears that once a reporting entity reaches that threshold, both domestic and foreign earnings are taken into account in calculating the earnings component. This is inappropriate and may discriminate against reporting entities that carry on business overseas via the same entity that provides designated services in Australia, rather than via a non-leviable entity.

3. The draft Determination does not address our concerns about calculation of the industry contribution based on **all** earnings of a reporting entity, not just those attributable to the provision of designated services. As we pointed out in our letter of 25 July, for some of our members, a significant portion of their "earnings" (or those of their corporate group) are attributable financial products that are not "designated services" (for example general insurance products; operating leases; and finance leases and hire-purchase offered to "consumers"). We repeat our submission that the earnings component should only apply to services that are "designated services" under the AML/CTF Act, without the need for a reporting entity to go through the waiver process to avoid paying the levy on non-designated services.

4. Neither the draft Determination nor the amendments to the AML/CTF Rules accommodate a simpler or more transparent process for waiver applications. We previously made the point that preparation of waiver applications each year is time consuming and that the waiver process lacks transparency.

If you have any questions or would like to discuss these matters, please contact me on
or by email to .

Yours sincerely,

Associate Director - Legal
Australian Finance Conference