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25 July 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

Dear Sir/Madam,

AUSTRAC INDUSTRY CONTRIBUTION DISCUSSION PAPER

We refer to the Discussion Paper dated 23 June 2014 seeking stakeholder input and feedback on the proposed model for the calculation of the AUSTRAC Industry Contribution.

1. BACKGROUND

The Australian Finance Conference is a finance industry body comprising 60 plus member companies. Our affiliated body the Australian Equipment Lessors Association comprises around 80 members and the Australian Fleet Lessors Association has 16 members. Members include finance companies; banks; specialist equipment and motor vehicle financiers; general financiers providing consumer, commercial (including small business) and wholesale credit facilities; and specialist fleet lessors. The Debtor and Invoice Finance Association of Australia and New Zealand represents 19 major providers of factoring and discounting services, also known as receivables finance. Membership lists can be provided on request¹. This submission is made on behalf of all four bodies.

Our financier members vary considerably in their size, customer profiles and the complexity of the lending and investment products they offer. Their ownership structures range from:

- a) comparatively small regional fundraising/lending entities; to
- b) entities within large Australian corporate financial services groups; to
- c) the subsidiaries of large foreign-owned specialist financiers; to
- d) comparatively small foreign-owned specialist financiers.

AUSTRAC has been made aware of the concerns of some of our Members about anomalies and inequities in the application of the current supervisory levy. We note that the Discussion Paper proposes that some of these concerns be addressed in the proposed new funding model. In particular, the proposal that the "foreign entity component" no longer apply to small foreign-owned entities that are part of a large offshore corporate group is welcome, as is the proposal that the earnings component only apply if domestic earnings are \$100 million or more. However we detail below some remaining concerns about the proposed new funding model.

¹ Membership lists are also available at http://www.afc.asn.au/afc_info; <http://aela.asn.au/>, <http://www.afla.com.au/members.htm> and <http://difa.asn.au>.

2. BASIS OF THE AUSTRAC INDUSTRY CONTRIBUTION

We have previously submitted that 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 those services. In fact the terminology of "reporting entity" in the AML/CTF legislation reflects the underlying concept that these entities are to collect, monitor and report certain information to AUSTRAC, rather than that they are directly regulated in how they provide financial services to customers.

It is criminals who use the financial system to disguise their activities who have created the need for Australia's AML/CTF regime. We have previously pointed out that there may be an argument that reporting entities should be reimbursed by the Government for assisting it to meet Australia's obligations as a member of the Financial Action Task Force by implementing customer identification procedures, transaction monitoring and reporting procedures beyond what they would otherwise have in place for commercial risk-management and prudential purposes. These requirements place impose a significant compliance burden on many of our Members for no perceivable direct benefit to them or their law-abiding customers. This is particularly the case for products with a low money-laundering/terrorism financing risk such as secured equipment and motor vehicle loans offered to low risk customers, such as established small businesses.

These arguments apply more strongly to the recovery of costs associated with AUSTRAC's financial intelligence role. At least part of the cost of the industry contribution will be passed on to customers, either directly via transaction fees or indirectly via higher interest rates on borrowings or lower interest rates on deposits. This means that even more of AUSTRAC's costs will be borne by customers who do not engage in illegal activities, but who happen to be heavy users of the financial system. This is particularly the case in relation to the transaction reporting component.

We re-iterate our previous submissions that AUSTRAC's costs should be recovered from general taxation revenue so that they are spread more evenly across the whole community.

3. EARNINGS COMPONENT

The Discussion Paper appears to contemplate the inclusion of only domestic "earnings" in calculating whether an entity is subject to the earnings component. This is welcome, however it is not clear whether, once a reporting entity reaches that threshold, both domestic and foreign earnings are taken into account in calculating the earnings component. We ask that this be clarified.

We are aware that some financiers have been granted a waiver of part of the current supervisory levy on the basis that a significant portion of their "earnings" (or those of their corporate group) are not attributable to income derived from "designated services" as defined in the AML/CTF Act. Examples of financial products that are not "designated services" include general insurance products; operating leases; and finance leases and hire-purchase offered to "consumers" where the price of the goods is less than or equal to \$40,000, or where the goods are ordinarily acquired for personal, domestic or household use or are a commercial road vehicle. We submit that the earnings component should only apply to services that are "designated services" under the AML/CTF Act.

4. WAIVERS

We submit that the AUSTRAC CEO should continue to have a discretionary power (similar to the power under the current supervisory levy provisions) to waive all or part of the industry contribution where recovery would be inequitable or would cause ongoing financial hardship to a reporting entity.

Preparation of waiver applications is time consuming, as is the examination of waiver applications by AUSTRAC staff. We are aware that some financiers have been granted waivers of the current levy on more than one occasion. We submit that once the AUSTRAC CEO has accepted that an entity is eligible for a waiver, this should continue to apply if the entity confirms to AUSTRAC each year that there has been no material change to its money laundering/terrorism financing risk profile or the basis on which a previous waiver was granted.

In our response to the 2013 Review of the Supervisory Levy, we requested more transparency in the waiver process and that AUSTRAC publish its reasons for granting waivers (subject to keeping confidential any commercially sensitive information contained in a waiver application) so that reporting entities can operate on a more level playing field when deciding whether to go to the trouble of making a waiver application. At present, there is some degree of secrecy around who is granted waivers and the basis for waivers. We submit that this is not appropriate and may result in an unfair competitive advantage for reporting entities with the knowledge and resources to apply for a waiver.

4. CONCLUSION

- a) The proposal to exclude the foreign entity component from the industry contribution is welcome.
- b) The earnings component of the industry contribution should only apply to earnings derived from the provision of designated services in Australia.
- c) The current waiver process should continue to apply, enhanced to avoid the need for a full new application to be made each year if a reporting entity's circumstances have not changed.
- d) There should be more transparency about the basis for the granting of waivers.

If you have any questions or would like further information in relation to the matters raised above, please contact me on _____ or by email to _____.

Yours sincerely,



Catherine Shand
AFC Corporate Lawyer