Australian Government

AUSTRAC

Explanatory note for consultation purposes – proposed amendment to Chapter 38

A broker that sell shares as an agent of a Public Ancillary Fund (PuAF) is a reporting entity under the Anti-Money and Counter-Terrorism Financing Act 2006 (AML/CTF Act), as they provide a designated service under Item 33 of Table 6 of subsection 6(2).

Chapter 38 of the AML/CTF Rules provides these brokers with an exemption from Division 4 of Part 2 of the AML/CTF Act where they perform this service as an agent of a PuAF, subject to a number of conditions. One condition is that the proceeds of the sale of any security must be given to a PuAF that provides an undertaking to distribute proceeds of the disposal of the security to a deductible gift recipient before the end of the financial year in which it receives the proceeds.

This condition is inconsistent but not incompatible with the Public Ancillary Fund Guidelines (PuAF Guidelines) issued under the Taxation Administration Act 1953, which require PuAF's to make distributions of a minimum percentage of the fund's net assets annually.

This condition is having unintended administrative consequences as it affects a PuAF's ability to adopt a structured and planned approach to donating to charity. The month of June is the peak giving period for donations to charity, and the requirement to dispose of the proceeds of the sale of any security prior to June 30 can generate a more ad hoc approach to donating.

The proposed amendment will remove this condition under subparagraph 38.2(4)(a) of the AML/CTF Rules. However, PuAF's will still be required to comply with obligations for distributing its net assets under the PuAF Guidelines, and maintain registration with the Australian Charities and Not-for-profit Commission (ACNC).

Additions are in **bold** with deletions in ~~strikethrough.~~

Calculation of Regulatory Costs

These draft amendments may result in regulatory savings if implemented. The Australian Government has implemented an annual $1 billion red tape reduction target to which agencies such as AUSTRAC are required to contribute if regulatory action by an agency results in a cost reduction to businesses, community organisations or individuals. Any identified savings may also be used by an agency to 'offset' regulatory action which may impose regulatory costs.

Further details on the Australian Government policy are available at [Cutting Red Tape](www.cuttingredtape.gov.au) (www.cuttingredtape.gov.au).

AUSTRAC requests that industry provide, in any submission on these draft amendments, an estimate of any savings that may result from their implementation. It is preferred that such estimates use the Regulatory Burden Measure (RBM) as a basis for the calculation, as the RBM has been mandated by the Australian Government for use by agencies. Further details on the RBM are available at Commonwealth Regulatory Burden Measure (https://rbm.obpr.gov.au).

Proposed commencement date for these amendments

Subject to no substantial issues being raised during public consultation, it is expected that these amendments will be included in the next omnibus AML/CTF Rules amendment instrument and will commence operation 28 days after that amendment instrument is registered.

Human Rights (Parliamentary Scrutiny) Act 2011 requirements

The *Human Rights (Parliamentary Scrutiny) Act 2011* requires that Statements of Compatibility must be made by the rule-maker with regard to disallowable legislative instruments, and must contain an assessment of whether the legislative instrument is compatible with the rights and freedoms recognised in the seven core international human rights treaties that Australia has ratified.

It is considered that the draft amendments are compatible with the human rights and freedoms recognised or declared in the international instruments listed in the definition of ‘human rights’ in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Australian Government

AUSTRAC

Proposed amendment

CHAPTER 38 Exemption from applicable customer identification procedures for the sale of shares for charitable purposes

38.1 These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made under section 229 for subsection 39(4) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act).

38.2 Division 4 of Part 2 of the AML/CTF Act does not apply to a designated service that:

(1) is a disposal of the kind described in item 33 of table 1 in subsection 6(2) of the AML/CTF Act; and

(2) the disposal occurs on a prescribed financial market; and

(3) the value of the security does not exceed $10,000; and

(4) the agent gives the proceeds of the disposal directly to an ancillary fund that provides an undertaking to:

(a) distribute, by cheque and/or electronic funds transfer, the proceeds of the disposal of the security to a deductible gift recipient~~ before the end of the financial year in which it receives the proceeds~~; and

(b) list on its public website within 14 business days, for a period of 12 months, the details of the distribution of the proceeds of the disposal of the security to the deductible gift recipient.

38.3 The ancillary fund must be a registered entity.

38.4 In this Chapter:

(1) 'ancillary fund' has the meaning given by the *Income Tax Assessment Act 1997*;

(2) 'deductible gift recipient' has the meaning given by the *Income Tax Assessment Act 1997*;

(3) 'prescribed financial market' has the meaning given by section 9 of the *Corporations Act 2001*;

(4) ‘registered entity’ has the meaning given by section 300-5 of the *Australian Charities and Not-for-profits Commission Act 2012*.

Reporting entities should note that in relation to activities they undertake to comply with the AML/CTF Act, they will have obligations under the Privacy Act 1988, including the requirement to comply with the Australian Privacy Principles, even if they would otherwise be exempt from the Privacy Act. For further information about these obligations, please go to http://www.oaic.gov.au or call 1300 363 992.