



Level 3
95 Pitt Street Sydney
GPO Box 3655 Sydney NSW 2000
Telephone: (61 2) 9776 7911
Facsimile: (61 2) 9776 4488
Email: info@sdia.org.au
Web: www.sdia.org.au
ABN 91 089 767 706

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The Senate Standing Committee on
Legal and Constitutional Affairs
Parliament House
Canberra
ACT 2600
Australia

By Email : LegCon.Sen@aph.gov.au

Securities & Derivatives Industry Association Submission on the revised AML/CTF Bill 2006 and draft AML/CTF Rules.

Issues

1. Politically Exposed Persons

It is not helpful that no definition of a Politically Exposed Persons is given under the Bill and this situation places industry participants in the position of making a subjective decision. Although there are systems developed to assist in Know Your Client requirements our members had an expectation that guidance would be provided on these types of individuals and the related associates.

A definition was in the original Draft Exposure Bill but was discarded.

2. Part 5 - International (Electronic) Funds Transfer Reporting –

Starts day 1

In respect to 'reporting entities' under the Bill, there should be a carve out / exemption to comply with this obligation for those reporting entities who are **not** ADI's, Credit Unions or similar as defined under relevant APRA regulations (Bank).

As it stands it would appear there will be a complete double up in the Bill in regards to these reporting obligations i.e. Every reporting entity is obliged to make the relevant reports and one would assume the relevant ADIs that these reporting entities use, will be required to make the same report.

This part of the legislation should be re-worded in such a way that reporting entities who are NOT ADIs or similar, can rely on their relevant ADI to do the reporting for them. In the event extra information is required by AUSTRAC they may / would have the power (one would assume) to look through the ADI and ask further questions of the underlying 'reporting entity' who initiated the instruction(s) and go back to that entity.

Example

Financial Planner A uses Bank B;

Financial Planner A receives instruction from client to transfer funds to an account in the U.S.A,

Financial Planner A enters these instructions into their system (Bank Bs on-line system) and thus Bank B transfers these funds from Financial Planner A's account to the relevant account in the U.S.A

Under the current Bill, one assumes both Fin Planner A and Bank B must make the relevant report to AUSTRAC under Part 5. This would mean AUSTRAC would receive two (2) reports for the one transaction.

3. Table 1 Item 54 Designated Services

Under the revised Bill the government has now introduced a NEW designated service. Wording below

' in the capacity of a holder of a AFSL, making arrangements for a person to receive a designated service (other than a service covered by this item)'

This new 'designated service' is very unclear and could potential cover almost any service provided by a reporting entity. It could also revert back to the designated service of 'provision of financial advice' which was discussed in numerous submissions as being totally unworkable and outside the FATF 40 recommendations. Our understanding was, that based on these submissions and industry consultation, the 'provision of financial advice' was removed as a 'designated service'. One appears this is back on the agenda again.

This new designated service could also impact on multiple parties, e.g. in the context of referral arrangements between two / more reporting entities.

4. Enforceable Undertakings

The AML/TF Bill gives AUSTRAC the power to agree enforceable undertakings from reporting entities. It does not appear that AUSTRAC is restricted as is ASIC (under *ASIC Act* s93A) in publicising information that:

- Contains an individuals personal information;
- Confidential information; and /or
- Information not in the public's interest.

It is thought that similarity of provisions and restrictions would be helpful to industry regarding Undertakings while not compromising the requirements of such an Undertaking.

The SDIA thanks the Senate Standing Committee on Legal and Constitutional Affairs for the opportunity to provide a further submission on this impending legislation.

Yours faithfully,



David Horsfield
Managing Director/CEO
Securities & Derivatives Industry Association

ABOUT SDIA: The Securities & Derivatives Industry Association (SDIA) is the industry body that represents over 67 stockbroking firms across Australia, who in turn represent over 98% of the market by value on the ASX. The SDIA includes organisations of all sizes across the entire breadth of the industry, both institutional and retail, which enables the SDIA to have a comprehensive understanding of the challenges and opportunities facing our industry. The SDIA actively liaises with our members, regulators and other market participants to further strengthen our profession in Australia. The SDIA has representation on the Minister for Justice & Customs AML/CTF Advisory Group.

For information about the SDIA go to www.sdia.org.au.