



17 November 2006

Ms. Jackie Morris
Secretary Senate Legal and Constitutional Affairs Committee
Department of the Senate
P.O. Box 6100
Parliament House
CANBERRA ACT 2600

Dear Ms. Morris

**Anti-Money Laundering and Counter Terrorism Bill – Currency Exchange
Threshold and Electricity Derivatives Exemption**

We make the following submission on behalf of our members with respect to the Anti-Money Laundering and Counter-Terrorism Financing Bill 2006 (AML-CTF Bill).

While the matters raised may appropriately be the subject of legislative rules/regulations and/or exemptions which would fall within the purview of the Australian Transaction Reports and Analysis Centre (AUSTRAC), it is nevertheless incumbent on AFMA to make this submission to the Legal and Constitutional Affairs Committee (LCAC) so the Committee is aware of the concerns of our members on these issues.

Apart from these specific issues, AFMA endorses the submissions presented on behalf of the finance sector Technical Working Group by the Australian Bankers' Association and the separate submission by the Investment & Financial Services Association.

1. Thresholds for Currency Exchange and Other Services (s.6)

We enclose attachments to our submission of 4 August 2006 to the Minister for Justice and Customs, the Hon. Senator Chris Ellison, which have been updated to refer to the relevant sections of the AML-CTF Bill. In particular, we refer you to Attachment 1. We are awaiting the Minister's response with respect to this submission.

Section 1, clause 6, item 26 of the AML-CTF legislation provides that "provision of a designated service" includes "cashing or redeeming a travellers' cheque" and item 50 includes "exchanging one currency (whether Australian or not) for another (whether Australian or not), where the exchange is provided in the course of carrying on a currency exchange business".

Division 2 of the AML-CTF legislation requires a reporting entity, in this case a money exchanger cashing travellers' cheques or exchanging currency, to report the customer's full name, date of birth and residential address.

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The issue here relates to the minimum threshold value of travellers' cheques and currency exchange below which customer identification would not need to be recorded by a reporting entity. This threshold is necessary for currency exchangers, particularly at international airport terminals. On a practical level, where reporting entities are required to identify every customer for every such transaction, it is submitted that queues at airports for departing and incoming passengers would be unmanageable.

It is also submitted that (FATF) Interpretative Note to Recommendation 12 prescribes a sum of EUR 15,000 as the threshold (approximately AUS \$24,000). While this is well above the \$10,000 figure prescribed by the AML-CTF legislation, a reasonable threshold figure below that level needs to be set, up to which currency exchangers would not be required to identify customers.

It was indicated to us at the AML-CTF Advisory Group meeting in Canberra on 10 August 2006 that the threshold amount for travellers' cheques and currency exchange, would be included in the latest version of the Bill. However, there is no reference to such a threshold amount for these products. It is AUSTRAC's and the Federal Attorney-General's Department's position that the threshold is intended to be the subject of an AUSTRAC Rule or may appear in Regulations. However, we have not been informed when that Rule/Regulation might be available or what the threshold amount might be.

We would be grateful if the LCAC would take note of this issue in its deliberations concerning the AML-CTF Bill.

2. Electricity Derivatives Market (s.6)

We refer the LCAC to our enclosed Attachment 3 of our submission of 4 August 2006 to the Minister for Justice and Customs, the Hon. Senator Chris Ellison, which has been updated to refer to the relevant sections of the AML-CTF Bill.

The Electricity Derivatives Market is an Australian-specific, discrete and highly regulated market. Market spot prices are dictated by factors such as weather and generation availability. Many of its participants are government owned and all participants are subject to due diligence processes, credit ratings and/or bank guarantees. It is submitted that, in the circumstances, the Electricity Derivatives Market is not amenable to either money laundering or terrorist financing activities.

We have inquired of AUSTRAC as to its position on potentially issuing a Rule exempting the Electricity Derivatives Market from the operation of the AML-CTF legislation. Given the status of the AML-CTF Bill, this issue is now becoming critical for market participants which may need to set up compliance processes, procedures and implement training programs in the event an exemption were not to be granted. This would be an unnecessary expense in the event that an exemption was to be granted subsequently. The cost of compliance would also be a significant burden


to industry and, for the reasons provided above, with no perceivable public benefit.

Further, in the event an application/submission for exemption may be required from electricity derivatives market participants, we are also awaiting advice from AUSTRAC as to the form and procedures necessary to effect such a process. Clearly, the preparation of such an industry application/submission would take time and the AML-CTF legislation may come into force in less than two month's time.

We have arranged to meet with AUSTRAC on this issue before the end of November and are hopeful the process may now be expedited.

We would be grateful if the LCAC would take note of this issue in its deliberations concerning the AML-CTF Bill.

Yours sincerely



Duncan Fairweather
Executive Director

Copy to: Judith Pini, Commonwealth Attorney-General's Department
Neil Jensen, AUSTRAC
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ATTACHMENT 1

Thresholds for Currency Exchange and Other Services (s.6)

The Australian Financial Markets Association includes banks and currency exchange providers among our 130 members. These businesses service Australian and foreign travellers by exchanging currency and issuing or cashing travellers cheques.

AFMA, and our members who provide currency exchange, strongly support the Government's efforts to combat money laundering and the financing of terrorism, to ensure that Australia meets its international obligations. Our members co-operate with the authorities in complying with the existing AML legislation and will continue to do so in the future when the AML/CTF Bill is introduced.

Under the risk-based approach that the Government has adopted, it is important that the resources of both industry and government agencies are directed towards areas and activities of greater risk.

In some respects, the draft exposure AML/CTF Bill will impose requirements on currency exchange businesses and their customers that are not risk-based and will not be effective.

Issue: In requiring foreign exchange providers to confirm the identity of customers before exchanging any amount of their money, the AML-CTF Bill will impose unnecessary cost and inconvenience on the providers and their customers. This requirement is not a FATF obligation and is out of step with comparable countries. In our members' view, this requirement will impose unnecessary compliance costs, reduce productivity, lead to a loss of business and make no practical contribution to the fight against money laundering and terrorism financing.

Solution: The Bill should apply a realistic and practical threshold to the requirement on currency exchange providers to check the identity of customers. The value of the threshold should be set in a considered review having regard to the FATF recommendation, the practice in comparable jurisdictions, the experience of Australian law enforcement agencies with misuse of currency exchange and input from providers based on their business experience. Further, in our view the threshold should not be specified in the AML/CTF Bill but set by regulation or by Rule that can be varied more easily from time to time to take into account changes in AML/CTF risk factors, customer usage and transaction values.

Proposed Legislation

Section 6 of the AML/CTF Bill includes as designated services in Table 1:

Item 25 – issuing or selling a traveller's cheque (of any value)

Item 26 – cashing or redeeming a traveller's cheque (of any value) (if an ADI)

Item 50 – exchanging of currency (of any amount) in the course of carrying on a currency exchange business

Section 29 requires the identification and verification of customers before commencement of a designated service.

Chapter 2 of the AML/CTF Rules requires a reporting entity to have a program to identify and verify the identity of customers to enable it to be reasonably satisfied that an individual customer is the person he or she claims to be. Chapter 2.2.2 specifies that the minimum customer information to be collected is:

- (a) the customer's full name
- (b) the customer's date of birth
- (c) the customer's residential address

Also, a reporting entity must have risk-based systems and controls in place to determine whether, in addition to the above information, more customer information may need to be collected from a list of 13 other identifying factors listed as 'customer KYC information'.

Sections 107 and 108 require a designated service provider to retain a record of the service for 7 years.

Section 108 requires that any document provided by the customer must be retained for 7 years.

It follows from the above that currency exchange providers will have to check and verify at least minimum customer identification, have systems in place to collect more information on the basis of risk and to retain transaction records for 7 years. These requirements will apply to any amount of currency exchanged.

FATF Requirements

FATF Recommendation 5 says:

Financial institutions should undertake customer due diligence measures, including identifying and verifying the identity of their customers, when:

- *carrying out occasional transactions above the applicable designated threshold.*

The Interpretive Note to Recommendation 5 says:

If, in conducting occasional transactions, a financial institution suspects they relate to money laundering or terrorism financing then the institution should seek to identify and verify the identity of the customer and make a suspicious transaction report to the authorities.

The Interpretive Note to Recommendation 12 says:

The designated thresholds for transactions (under Recommendations 5 and 12) are as follows:

- *Financial institutions (for occasional customers under Recommendation 5) – US/EUR 15,000.*

This threshold level for occasional transactions is confirmed in section 5.2 (b) of the FATF Methodology for Assessing Compliance with the 49 Recommendations.

EUR 15,000 is approximately \$24,600, well above Australia's current mandatory level for reporting international funds transfers.

Clearly, unless money laundering or terrorism financing is suspected, FATF does not oblige countries to require identity checks for occasional transactions below EUR 15,000.

Comparable Countries

The proposed Australian requirement is out of step with equivalent jurisdictions.

Country	Threshold	Approx. \$A value
United Kingdom	EURO 15,000	\$24,600
Germany	EURO 2,500	\$4,150
USA	\$US1,000	\$1,350
Canada	\$C3,000	\$3,500
Japan	Y2m	\$23,500
Hong Kong	\$HK20,000	\$2,500
Singapore	\$S5,000	\$4,300
Indonesia	IDR100m	\$14,600
New Zealand	\$NZ10,000	\$8,100
Australia - current	\$10,000	\$10,000
Australia - proposed	\$0	\$0

Industry provided data

Customer Impact

The people who typically use currency exchange services and travellers cheques are either foreign visitors or Australians travelling overseas. They exchange money at airports, city currency bureaux, duty free stores, over the counter in banks and at hotels.

At present, travellers are not required to be identified when they exchange money, although for transactions above \$2,000 it is common industry practice to sight and record details of identifying documents such as a driver's licence or passport. Transactions of more than \$10,000 are reported under existing law.

If the proposed Bill becomes law, everybody who exchanges currency will have to provide at least their name, address and date of birth and this information will have to be collected and verified by the service provider, a process that will take some additional time.

At high traffic locations such as airports, this is likely to cause longer queues, customer inconvenience and stress, particularly at peak times for passenger arrivals and departures. This is not conducive to airport security or for Australia's reputation with tourists.

Likely customer responses are to change their money elsewhere – at their originating or destination airport outside Australia – or to find an ATM where they can withdraw cash without having to provide any identification.

The result will be a loss of business for Australian-based currency exchange providers.

That travellers are subject to identity verification if they exchange currency across the counter at an airport, yet can withdraw cash from an ATM located nearby without providing identity is a significant practical anomaly.

Productivity Impact

An AFMA member engaged in the currency exchange business estimates that it will take approximately 2.5 minutes on average to conduct an identity check for an over the counter retail customer. Assuming that each visitor to Australia makes two currency exchange transactions on average, the 5.5 million tourists who arrive in Australia each year would generate 458,000 extra hours of staff effort. A similar amount of effort could be entailed in servicing outgoing Australian travellers. At a conservative \$20 per hour wage cost for front line staff, this amounts to a productivity decline of approximately \$18.4 million. These are indicative figures to illustrate the point, but they suggest there will be a significant productivity impact for currency exchange providers.

This will be on top of the additional compliance cost for providers of collecting, verifying, storing and, where necessary, reporting customer information.

AML/CTF Risk

A realistic threshold should not offer an opportunity for money laundering or terrorism financing on any serious scale.

Incoming and outgoing travellers are subject to immigration control – a more rigorous identity check than will be provided by collecting basic customer information at currency exchange counters.

For transactions above the threshold, the appropriate customer information will be collected and stored for law enforcement purposes if required. Any suspicious transactions and those above \$10,000 will continue to be reported to AUSTRAC, as they are under the present law.

Comparable Designated Services

The AML/CTF Bill recognises that occasional transactions below certain thresholds may be excluded from regulation as “designated services”. In particular, the following items in Table 1 are subject to a monetary qualification threshold of \$1,000 or such other amount as may be prescribed):

- Items 23 and 24 - issuing or increasing the value on a stored value card
- Item 27 – issuing or selling a money order
- Item 28 – redeeming a money order

When issued in amounts less than \$1,000, these services are not designated services, and their supply is exempted from the broad range of obligations discussed above. AFMA observes that international money orders, denominated in US dollars, are currently available to Australian consumers.

AFMA members fail to understand why these services should attract a threshold while foreign exchange, and other directly comparable services listed below, do not. As pointed out above in relation to foreign exchange, this will place the providers of these services at an apparently unfair competitive disadvantage.

AFMA understands that the Australian Bankers' Association has submitted that the Government should extend the threshold treatment to these services, and supports that submission:

- Item 17(a) – issuing a bill of exchange, so far as this covers the issue of a bank cheque or international draft
- Item 25 – issuing or selling a traveller's cheque
- Item 26 – cashing or redeeming a traveller's cheque
- Item 50 – exchanging one currency for another
- Item 29 – accepting a funds transfer instruction as an originating institution
- Items 30 and 31 – making money available, in the capacity of a destination institution, to the recipient of a funds transfer
- Items 31 and 32 - making money available, in the capacity of an originating institution, to the recipient of a same-institution funds transfer

These services are all likely to be supplied in the course of "occasional transactions" for the purposes of FATF Recommendation 5.

In drawing attention to these anomalies, we are not proposing that the \$1,000 threshold that applies to Items 23, 24, 27 and 28 should also apply to exchanging currency or to the other items mentioned above. As proposed in this submission, thresholds should be set at levels appropriate to the product.

Conclusion

As drafted, the designated services of issuing/cashing traveller's cheques and exchanging currency, will impose unnecessary cost and inconvenience without materially enhancing Australia's AML/CTF capability. The cost and customer impact will be concentrated at airports where official scrutiny of incoming and outgoing passengers is already high. Productivity will be reduced. Travellers who wish to avoid queues and delays caused by the need to give customer information can easily do so either by exchanging money at a foreign airport or using an ATM to withdraw cash, resulting in loss of business to our members.

We recommend that these potential problems be overcome by applying a realistic and practical threshold to the requirement to record customer identification and verify customer identity with regard to occasional transactions which would otherwise be designated services, including the issuing/cashing of traveller's cheques and exchanging currency. The threshold should be set following a considered review taking into account the FATF recommendation, thresholds set in comparable jurisdictions, the experience of Australian law enforcement agencies and the input of currency exchange providers based on their business experience. Once set, the threshold should not be specified in the AML/CTF Bill, but applied by regulation or Rule so that it can more easily be varied from time to time as needed.

We would be pleased to discuss this submission with the Attorney-General's Department and with AUSTRAC.



ATTACHMENT 3

Exemptions Relating to the Market for Electricity Derivatives (s.6)

The Australian Financial Markets Association includes in our membership participants in the Australian National Electricity Market who use derivatives to manage their risks from spot price volatility caused by fluctuating demand for electricity.

AFMA members that participate in the National Electricity Market wish to indicate to the Government, via this submission, their intention to apply for exemption from aspects of AML/CTF compliance under the exemption powers in the AML/CTF Bill.

The exemptions sought will relate to Item 35 in the list of designated services in Table 1 of Section 6 of the AML/CTF Bill – the issuing or selling of a derivative in the course of carrying on a business of issuing or selling securities or derivatives.

The main reasons for seeking exemption are that our members operate in a highly-regulated market that presents negligible AML/CTF risk and that compliance will be an unnecessary cost to them and make no meaningful contribution to Australia's efforts to combat money laundering and terrorism financing.

We seek an indication from the Government that applications for exemption for AFMA members who trade electricity derivatives are within the scope of the intended purpose of the exemption provisions in the AML/CTF Bill.

National Electricity Market (NEM)

The NEM was formed in 1998 by the governments of New South Wales, Victoria, Queensland, South Australia, Tasmania and the ACT. These governments jointly own the National Electricity Market Management Company (NEMMCO) which regulates and manages the NEM.

Operation of the NEM is governed by the National Electricity Law and Rules.

Participants in the NEM must be registered with NEMMCO. This process includes credit evaluations, prudential requirements (typically at call bank guarantees) and ensuring the participant has appropriate systems and competent staff.

Participants in the NEM are both government and privately owned corporations and are subject to Commonwealth and State law. *Appendix 1* is a list of AFMA member participants.

Payments between participants in the NEM must be effected through the Sydney Futures Exchange (SFE) Austraclear system.

Electricity Derivatives

Electricity derivatives are either exchange traded on the SFE or in over-the-counter (OTC) transactions negotiated bilaterally between counterparties either through a broker or directly between the counterparties.

Electricity derivatives are traded between registered participants in the NEM. There are three broad types of participants: electricity generators, whose income is determined by the spot price; retailers, whose electricity cost is determined by the spot price; and intermediaries, whose exposure to the spot market arises from their derivatives dealing.

Market participants that deal in electricity derivatives must hold an Australian Financial Services Licence (AFSL) and must therefore satisfy ASIC that they meet the requirements for the granting of an AFSL and are subject to on-going supervision by ASIC.

Exchange traded derivatives are subject to SFE rules and oversight.

The broad terms of OTC derivative transactions are determined by the International Swaps and Derivatives Association's (ISDA) global Master Agreement on a bilateral basis between participants. The economic terms of each transaction under a Master Agreement are agreed between the parties by exchange of confirmations.

AFMA, through our Electricity Committee, promulgates Market Conventions to ensure efficient and orderly markets in electricity derivatives. In addition, AFMA Financial Markets members (who must have an AFSL to become members) undertake to abide by the AFMA Code of Ethics/Code of Conduct which provides a framework for ethical and transparent market conduct.

AML/CTF Risk

AFMA considers the AML/CTF risk from electricity derivatives to be negligible, given that:

- The NEM and related electricity derivatives trading are highly regulated, as outlined above.
- The NEM operates only in Australia. Trading in electricity derivatives is confined to Australia and there are no cross-border (international) transactions.
- Many of the participants in the NEM and associated derivatives trading are government owned.
- Derivatives trading is related to the volatility of spot market electricity prices which are driven by the weather and other demand/supply factors and are set every 30 minutes. It would be extremely difficult, if not impossible, to engineer a particular flow of funds for money laundering or terrorist financing purposes.
- Participants only deal with other participants if they are confident of the credit worthiness of the counter-party as supported by a credit rating and/or bank guarantee.

Exemption Process

The draft AML/CTF Bill contains general exemption provisions to the effect that parts of the Bill do not apply to a designated service of a kind specified in the AML/CTF Rules or provided in circumstances specified in the Rules.

Specific services or circumstances have not been included in the Rules released to date.

We understand that the administrative process for making and determining an application for exemption under the Rules has not yet been developed.

It will be important for the Government, and in particular AUSTRAC, to advise industry as soon as possible:

- How exemptions are to be expressed in the Rules;
- The administrative process to be followed in applying for an exemption;
- The criteria AUSTRAC will take into account in determining an application for exemption; and
- Whether exemptions will be granted to all providers of a designated service or just those covered in the application.

Exemptions will need to be granted well before the AML/CTF Bill becomes law so participants have certainty of regulatory treatment and will know in advance whether they will or will not have to invest in systems and procedures to comply with the law.

We would be pleased to meet with the Attorney-General's Department and with AUSTRAC to discuss the points raised in this submission.

APPENDIX 1

AFMA Financial Markets Members registered with NEMMCO (government-owned in **bold**):

Aurora Energy Pty Ltd

NewGen Power Pty Ltd [Braemar Power Project Pty Ltd]

Country Energy**CS Energy Ltd****Delta Electricity****ENERGEX Retail Pty Ltd****EnergyAustralia****Eraring Energy****Ergon Energy****Hydro-Electric Corporation****Integral Energy Australia**

InterGen (Australia) Pty Ltd

Hazelwood Power [International Power (Australia) Pty Ltd]

Loy Yang Marketing Management Company Pty Ltd

Macquarie Generation

NRG Flinders

Origin Energy

Queensland Power Trading Corporation [Enertrade]**Snowy Hydro Limited****Stanwell Corporation Limited****Tarong Energy Corporation Limited**

The Australian Gas Light Company

TRUenergy Pty Ltd

Victoria Electricity P/L
