Submission on the Revised Exposure Draft of the Anti-Money Laundering and Counter-Terrorism Financing Bill 2006

The comments in these submissions on the Exposure Draft of the Anti-Money Laundering and Counter-Terrorism Financing Bill 2006 (the ***Bill***) are those of Allens Arthur Robinson. They do not necessarily reflect the views of our clients.

Expressions of opinion or statements of interpretation in these submissions are not intended as legal advice.

These submissions are drafted on the basis of the material publicly released for comment. We may wish to comment further on the Bill as Rules, Regulations or Guidelines are released and amendments made.

The Bill

1. Part 1 Introduction

1.1 Section 5.

Designated business group – We welcome the introduction of the concept of a related group which will facilitate sharing customer identification information and allow for a group wide compliance program. The definition at present only includes corporate groups but allows for further 'designated business groups' to be included in the AML/CTF Rules.

To ensure that other entities, who may be linked to corporates (or to each other) such as incorporated joint ventures and trustees, partnerships with common partners and bodies corporate controlled by partners in a partnership can be included we submit that the following be added either to the definition of 'designated business group' in section 5 or specified in the AML/CTF Rules:

Any group of individuals; and/or companies; and/or trusts; and/or partnerships; and/or corporations sole; and/or bodies politic that registers with AUSTRAC as a designated business group.

Loan - "Repay" where used in paragraph (c) is probably narrower than it should be. In the context of bill financings, letters of credit and bank guarantees the borrower doesn't strictly "repay" – they provide cash cover or give an indemnity (or both). In order for the provision to achieve its desired effect, the words "or indemnify in respect of or reimburse" should be added after "repay" in paragraph (c).

We also submit that "borrower" should be separately defined, in particular to cover the issuer or drawer of a bill of exchange (see 1.2(g) below).

Providing a custodial or depositary service – The definition, which is not exclusive, refers to section 766E(1) of the *Corporations Act 2001* ***(the Corporations Act)*** which in turn relates to interests in "financial products" (which is also a defined term in the Corporations Act). It is not clear whether the service also includes providing a custodial or

depositary service in respect of products which are not "financial products". See our comments below on designated service 54. This should be clarified.

Stored value card – Stored value arrangements are regulated by other legislation including the *Payment Systems Regulation Act 1998* (where they constitute a "purchased payment facility") and chapter 7 of the Corporations Act (where they constitute a "non-cash payment facility"). We suggest that any terminology used in relation to stored value should be consistent to the extent possible with other legislation. Does the definition mean that a retail store gift card which has a magnetic strip or a computer chip containing data is a "stored value card", but a traditional paper retail store gift voucher is not? It should be clear just which methods of making non-cash payments are intended to be included in this definition.

1.2 Section 6(1).

(a) Designated services 1, 2, 3, 4 and 5 have the potential to apply to the trust account activities of lawyers. To avoid this, we submit that lawyers and law firms should not be named in the AML/CTF Rules for the purposes of designated service 1 - 5.

(b) Designated services 14,15 and 16. We are concerned that designated services 15 and 16 overlap with designated service 14 and that for the sake of clarity designated service 14 should exclude the activities covered by designated services 15 and 16.

(c) Designated service 17. It appears to us that the wrong party is shown as the customer for all 3 instruments.

(i) Bills of Exchange – in our view the designated service should be "accepting, endorsing, purchasing, discounting or otherwise acquiring a bill of exchange or agreeing to do any of those things". The customer should be the issuer or drawer of the bill.

(ii) Promissory notes – in our view the designated service should be "purchasing, discounting or otherwise acquiring a promissory note or agreeing to do any of those things" and the customer should again be the issuer or drawer of the promissory note.

(iii) Letters of Credit – in our view the customer should be both the person who has agreed to indemnify or reimburse the issuer of the letter of credit in respect of payments under it and the beneficiary of the letter of credit, as the beneficiary will receive funds if a payment is made under the letter of credit.

(d) Designated services 23 to 26. The reference to "selling" is not clear. For example, if Westpac Banking Corporation were to sell travellers cheques issued by American Express we assume it would be a "seller" for this purpose. American Express, as the issuer, is providing a designated service, but because the cheques are sold through another entity it won't even know the identity of the purchaser. Should both Westpac and American Express be reporting entities in relation to such sales of travellers cheques?

It is also unclear, in designated service 24, whether "the service" refers to the cashing or redeeming by an ADI or a bank of its own travellers cheque, or whether it can include cashing or redeeming a travellers cheque issued by someone else.

(e) Designated services 27-31 deal with the transfer of funds and are drafted in wide enough terms to apply to trust accounts.

When lawyers receive instructions to:

- transfer funds to a third party's bank account or a third party's lawyer's trust account for payment to the third party;
- draw a trust cheque in favour of a third party;
- transfer trust funds to a client's bank account; or
- draw a trust cheque in favour of client,

they may be doing so in the capacity of an 'originating institution'.

When lawyers receive funds into their trust account from a third party for payment to their client they may do so as a 'destination institution'.

To avoid this unintended consequence, we submit that lawyers should not be specified in the AML/CTF Rules for the purposes of designated services 27 -31.

(f) Designated services 32 – 33 deal with 'designated remittance arrangements'.

Lawyers are constantly involved in remittance arrangements (as defined) without in any way competing with providers of financial services. For example, at the settlement of a simple conveyance the lawyers involved (typically one for the purchaser, one for the vendor, one for the outgoing mortgagee and one for the incoming mortgagee) will be handing over and receiving cheques, certificates of title and transfer documents. It appears that all four lawyers would be providing either designated service 32 or 33.

We submit that lawyers should be specified in the AML/CTF Rules for the purposes of section 9(1)(a) and (b). In the alternative, the AML/CTF Rules should specify conditions, in accordance with section 9(1)(c), that would exclude conveyancing and other asset sales from the definition of a 'designated remittance arrangement'.

(g) Designated services 36. This service deals with the issue or sale of securities (defined with reference to section 92 of the Corporations Act which includes a number of different definitions of that term, depending on the context). This services excludes issues 'by a trust of a unit in itself or of an option to acquire a unit in itself'. We submit that this should refer to an issue by a trustee of the relevant trust. We also query whether this exclusion was intended – given that this would seem to cover all unit trusts and mean that the issue of units in any trusts are not covered by this service.

(h) Designated services 44 and 45. The Bill contains no definition of the terms 'pension' or 'annuity'. We are concerned that without a precise definition of the terms, organisations that make payments to retired personnel may be providing a designated service.

We submit that a definition of 'pension and annuity' should be included in the Bill to make it clear that designated services 44 and 45 are aimed at organisations that provide pension or annuity financial products for sale to customers.

(i) Designated services 54 and 55, which deal with the provision of a custodial or depository service, safe deposit boxes and other similar facilities have the potential to apply to lawyers unless they are exempted by the AML/CTF Rules. Lawyers have traditionally provided safe custody facilities for clients and will often hold

- deeds;
- wills; and
- certificates of title

on behalf of clients. The items held for safe custody will generally be documentation, rather than goods or assets and will also usually relate to the work done on behalf of client. For example, if a lawyer drafts a will for a client, the lawyer will often retain the original for safe keeping. We submit "exempt legal practitioner services" should include all such services provided by lawyers or, in the alternative, should include the holding of all property other than negotiable instruments by lawyers on behalf of clients.

(j) Designated services 56 and 57. As presently drafted designated service 56 would make a natural person who provides any guarantee a reporting entity if that natural person happens to carry on a business (for example, as a plumber or shopkeeper). Designated service 57 would operate to the same effect. We submit that the effect of these designated services should be restricted to guarantees provided and payments made under guarantees where the guarantees were provided in the course of carrying on a business of providing guarantees.

1.3 Section 10.

Section 10 defines a "control test" in relation to an unlisted company or a trust by reference to sections 1207Q and 1207V of the *Social Security Act 1991*. Relevantly the test is applied in determining the residency of companies and trusts in section 13(2) and (3) and in determining what is a shell bank in section 14(3).

We submit that the application of the *Social Security Act* test in these contexts is inappropriate. The test is complicated (and not generally used in the financial services sector) and requires the collection of information on individuals and more importantly, their associates (who are very widely defined), which the customer may not have and which the reporting entity may not be able to obtain.

It may well be very difficult to apply the test to companies/trusts/individuals in another country where for example a different test of beneficial ownership may apply or where the information on individuals (and more importantly their 'associates") may not be readily available or may be subject to confidentiality constraints

1.4 Section 11

The definition of an internal agent still only extends (in the case of non-natural persons) to officers or employees of that person, and despite the introduction of the concept of a designated business group does not extend to officers or employees of a related organisation. We submit that the definition of an "internal agent" should be extended to include employees and officers of other members of a designated business group.

1.5 Section 12.

We welcome the amendment to permit disclosure not only to the reporting entity but also to other members of the designated business group.

1.6 Section 13(2)and (3)

See our submissions on the use of the "control test" (at paragraph 1.3 above).

1.7 Section 13(4)

We are concerned that a partnership that operates entirely in a foreign jurisdiction will be required to comply with the Bill just because one partner of the partnership is a resident of Australia. This appears to be the effect of section 6(4)(b). For example, a partnership that operates solely in a foreign country may have all but one partner resident in that foreign country and one partner resident in Australia. Under section 13(4), the partnership would be a resident of Australia and under section 6(4)(b) its activities in the foreign country could be designated services as they are provided at or through a permanent establishment of the partnership in that foreign country. We submit that, in these circumstances, it is not appropriate to subject all of the activities of the partnership to regulation by the Bill. Alternative approaches could be to have only the activities of the Australian resident partner or the designated services provided in Australia or to Australian residents regulated by the Bill.

1.8 Section 17

The last line of this provision refers to translating a currency to Australian currency at "the exchange rate applicable at the relevant time". There is no one exchange rate – rates are offered by a whole range of organisations and they are offered for buy and sell transactions. It would be prudent to specify which exchange rate should be used.

2. Part 2. Identification procedures.

2.1 Groups

As a general point and as indicated above (in paragraph 1.1) we welcome the introduction of the concept of a designated business group. Some practical problems remain. In particular:

- Reporting entities within the same group who provide designated services to each other, such as Treasury operations, will be required to carry out customer identification on each other.

- Reporting entities in the same designated business group will **each** have to carry out customer identification/verification on each other's customers (although this may be tempered by section 34A)
- Customers of one reporting entity in a designated business group may not be "an existing customer" of another member of the group. If the customer is "new" for one member, that member as a reporting entity will have an obligation to identify it. This will apply even if the customer is "existing" for another member of the group.

In the UK guidance issued by the JMLSG suggests that, where a customer is introduced by one part of a financial sector group to another, it is not necessary for the customer's identity to be re-verified or for the identification records to be duplicated, provided that;

- the identity has been verified by the introducing part of the group in line with AML/CTF standards; and
- a group introduction confirmation is obtained and held with the customer's records, (although this confirmation is not necessary where firms have day to day access to all group customer information and the identity of the customer has been previously verified to AML/CTF standards).[1]

We submit that:

- Reporting entities within a designated business group should not be required to carry out customer identification procedures on a member of the same group;
- Customers who are existing customers of one member of the designated business group should be treated as existing customers of all members; and
- Reporting entities within a designated business group should be able to rely on customer identification procedures already carried out by or on behalf of other members of the designated business group.

2.2 Section 27.

We submit that the scope of this section should be extended to apply to customers who have been provided with a designated service prior to commencement of the Act by another member of the designated business group of which the reporting entity is a member .

2.3 Section 27A

As for section 27.

We also note that the re-verification requirement for existing customers only applies if a suspicious matter reporting obligation arises[2].

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[1] The JMLSG Guidance for the UK Financial Sector PART 1 paragraphs 5.5.22- 5.5.25

[2] This occurs when the reporting entity (or an authorised third party) suspects on reasonable grounds that either:

- the person who receives or will receive the designated service is not who he or she claims to be:
- information concerning the provision or the prospective provision of the designated service may be:

We suggest this requirement to re-verify existing customers does not go quite as far as the Financial Action Task Force ***(FATF)*** requirements which, applying the Basle Principles, suggest[3] that a review of the identification of existing customers identification is appropriate where:

- a transaction of significance takes place;
- customer documentation standards change; or
- there is a material change in the operation of the customer's account.

Where a re-verification obligation arises, a reporting entity must not continue to provide a designated service to the customer until the customer (or if, applicable, the customer's agent) is identified either by the reporting entity or an authorised third party (or such other action as required by the Rules is taken).

Practical issues arise. For example how does a reporting entity not 'continue to provide' a home loan or a deposit account – must the loan be immediately repaid in full or the account be closed? How will a reporting entity cease to provide a custodial service?

One way to resolve this problem would be to amend the reverification requirement so that the payment of funds to the customer (rather than the cessation of all services) is blocked pending reverification.

2.4 Section 27B

As for section 27A.

Additionally we suggest that section 27B(1)(c) should refer to a suspicious matter reporting obligation in relation to an agent. There should be no need to reverify the agent if the suspicion relates to the customer.

There appears to be a typographical error in Note 2 to this section which should refer to section 95 (not section 39).

2.5 Section 28.

We understand the exemption for low risk products and services from the customer identification requirements is still under consideration. We refer to our earlier submissions dated 13 April 2006 to the Attorney-General's Department ***(our earlier submissions)*** on this issue.

  - connected to a breach of a tax law;
  - connected to a CW or State offence;
  - of assistance to a Proceeds of Crime investigation; or
- the provision or the prospective provision of the designated service may be:
  - preparatory to a money laundering or terrorist financing offence; or
  - relevant to an investigation into a money laundering or terrorist financing offence.

[3] at Article 8 of the Interpretative Notes to the Recommendation 5 of the 40 Recommendations

2.6 Section 28A

We repeat our comments on re-verification requirements at paragraph 2.3.

2.7 Section 28B

We suggest that section 28B(1)(c) should refer to a suspicious matter reporting obligation in relation to an agent. There should be no need to reverify the agent if the suspicion relates to the customer.

2.8 Section 29 (1)(b)

We submit that s29(1)(b) should be extended as follows:

(i) neither the reporting entity; nor

(ii) a member of any designated business group of which the reporting entity is a member; nor

(iii) a person acting on the reporting entity's behalf or on behalf of a member of the designated business group of which the reporting entity is a member,

has previously carried out the applicable customer identification.

2.9 Section 29 (2)(c)

We submit this should be extended in the same terms as is suggested in paragraph 2.8.

2.10 Section 31(1)(c) and (d)

We submit this should be extended in the same terms as is suggested in paragraph 2.8.

2.11 Section 31(2)(d) and (e)

We submit this should be extended in the same terms as is suggested in paragraph 2.8.

2.12 Section 31.

We note that Section 31 still provides that where the exemptions apply the reporting entity can only provide the designated service for a period of 5 business days. We refer to our earlier submissions on that time frame.

2.13 Section 32(1)(a)

We submit this should be extended in the same terms as is suggested in paragraph 2.8.

2.14 Section 33(1)(a)

We submit this should be extended in the same terms as is suggested in paragraph 2.8.

2.15 Section 33A

This section does raise the issue identified by industry in the consultation period on the first Exposure Draft of the Bill that every reporting entity must maintain full knowledge of AML/CTF regimes and money laundering and terrorist financing risks in all other jurisdictions.

This is because the definition of "money laundering" and "terrorist financing" includes money laundering and terrorist offences committed overseas (corresponding to Australian offences). As a consequence, the monitoring of the provision of designated services in Australia must include (on a risk basis) measures to identify, manage and mitigate the risk of facilitating overseas money laundering and terrorist financing offences as well as Australian offences. We appreciate that the program required under section 74 also must address overseas offences but submit that, while the establishment and maintenance of such a program is appropriate, active monitoring of all Australian designated services for facilitation of overseas offences is not. We note that this issue is recognised in paragraphs (g) and (h) of section 39(1) by the exclusion of corresponding foreign offences from those provisions.

We suggest also this is inconsistent with the transaction monitoring requirements in Chapter 6 of the Rules. The transaction monitoring program, which is the cornerstone of the ongoing customer due diligence requirement, only applies to those transactions that are suspicious within the terms of clause 39 of the Bill. As that clause only refers, inter alia, to Australian offences[4], it does not include foreign money laundering and terrorist financing offences and does not go as far as appears to be required by the ongoing customer due diligence requirements in section 33A.

We suggest this should be clarified.

2.16 Section 34.

Section 34 facilitates the use of intermediaries by reporting entities and is therefore welcome.

We refer to paragraph 1.4 and submit that the extension of the definition of an internal agent to include the internal agents of any member of a designated business group would facilitate the customer identification process referred to in section 34(2) and (3).

We note that the Rules (at 5.3.1) provide that a section 34 authorised person can only undertake an identification procedure on behalf of a reporting entity in accordance with that particular reporting entity's customer identification program. Conversely, the reporting entity cannot authorise the section 34 authorised person to use its own system or to make any risk based decision other than in accordance with the reporting entity's program.

As a consequence, section 34 authorised agents may be faced with the prospect of complying with a number of disparate programs, depending on how many reporting entities authorise them.

2.17 Section 34A

This section contemplates the Rules may provide for reporting entities to rely on customer identification procedures already carried out by another reporting entities or accredited persons. The Rules on this are pending and we may wish to comment at a later date.

[4] paragraphs (g) and (h) of section 39 exclude overseas money laundering and financing of terrorism offences.

3. Part 3 Reporting obligations.

3.1 Section 39

We have some concerns.

- We consider that the requirement to report a suspicion that a customer is not who they claim to be goes beyond Recommendation 13 of the Financial Action Task Force which only requires a report to be made if the regulated person suspects (or has reasonable grounds to suspect) that funds are the proceeds of criminal activity or are related to terrorist financing. This is a laudable policy. It does not, however, appear consistent with the objects of the Bill set out in paragraphs (a) and (b) of section 3(1).
- The obligation to report extends to section 34 authorised persons. It applies when a reporting entity proposes to provide a designated service, or a person requests the reporting entity to provide a designated service so or merely inquires of the reporting entity whether it would be prepared to do so.

  These scenarios contemplate that the relationship will be between the reporting entity and the person. However in many instances, the enquiry will be made of the section 34 authorised person (acting as agent for one or a number of reporting entities).

  Is it the intention that the obligation on a section 34 person will arise when the request or inquiry is made to the section 34 authorised person (rather than directly to the reporting entity). This should be clarified.
- A section 34 authorised person may well be a financial planner and therefore not a reporting entity. It will not have in place a transaction monitoring program or an AML/CTF program. As such it will not have the tools to enable it to recognise a suspicious matter.
- Section 34(6) provides the section 34 authorised person can report either to AUSTRAC or to the reporting entity. This raises 2 issues. Should the section 34 authorised person not be able to report to both? Also, if the section 34 person is dealing with a prospective customer at an early stage (for example, at the inquiry stage) he may be acting as agent for more than one reporting entity. Is he supposed to report to all of them?
- Of concern also is the timing requirement. Specifically the Bill requires matters where the designated service is preparatory to the commission of, or relevant to, an investigation into a domestic money laundering offence or a terrorism financing offence to be reported within 24 hours.

  It is difficult to see why there is a need for a 24-hour time frame for money laundering offences (the original Bill only applied the 24 hour time frame to suspicious matters relating to terrorism financing offences).

  Generally, industry has lobbied for the three business days and 24 hours reporting period to be relaxed in line with the FTRA which requires reports to be made 'as

soon as is practicable'.[5] We support this and refer to our earlier submissions on the point.

- If the section 34 authorised person takes three days to make a report to the reporting entity, the reporting entity is still obliged to make a report to AUSTRAC within three days of the section 34 authorised person forming the suspicion, not within three days of being notified of that suspicion. Presumably, this is a drafting oversight and will be corrected in the final version of the Bill.

There are also inconsistencies between the obligation in the Bill and the obligation in the Rules (5.2.3). Section 34 authorised persons who are carrying out customer identification procedures on behalf of a reporting entity (and who are not internal agents of the reporting entity) must notify the reporting entity if they have **'reasonable grounds for suspicion'** that a suspicious matter obligation has arisen[6]. The inconsistencies include:

- the obligation in the Rule arises only where the section 34 authorised person is actually carrying out a customer identification procedure. The obligation in the Bill is not so restricted;
- the obligation in the Rule arises if the section 34 authorised person has 'reasonable grounds for suspicion', whereas the obligation in the Bill arises where there is an actual suspicion;
- in contrast to the obligation in the Bill for a suspicious matter report to be made within three business days (or 24 hours for money laundering or terrorism financing offences), the obligation in the Rule requires the section 34 authorised person to notify and provide the reporting entity with sufficient information and within sufficient time so that the reporting entity can make a suspicious matter report to AUSTRAC.

3.2 Section 43B.

Very little information has been provided on this section and public comment has been invited. As a preliminary view (and based on the limited information available) it is not clear to us what it aims to achieve. If every reporting entity is required to report (say on an annual basis) the practical effect would be to swamp AUSTRAC with information.

Compliance reporting is not a specific FATF requirement and is not required in comparable jurisdictions[7]. Given the AML/CTF Program Rules require reporting entities to keep appropriate records so they can document to AUSTRAC that their AML/CTF program is compliant, it is difficult to see why it is necessary.

Additionally the obligation applies to individual reporting entities and there is no mechanism whereby a 'designated business group' can report on a group basis.

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[5] This is line with overseas requirements. The United Kingdom and Hong Kong reporting regimes require reports to be made 'as soon as is practicable'. The US allows a period of 30 days.

[6] This obligation does not apply where the reasonable grounds for suspicion are that the provision, or the prospective provision, of the designated service may be preparatory to a money laundering or terrorism financing offence.

[7] such as the United Kingdom, Hong Kong or the United States

3.3 Section 47

We consider this should be extended to include the terrorism financing offences in the Criminal Code.

3.4 Section 60

We submit this section goes beyond the FATF requirements in that they do not apply to same institution wire transfers.

4. Part 7. The AML/CTF program

We note the specific requirement in section 75 of the original Bill for AML/CTF programs to monitor against the risk of foreign AML/CTF offences has been removed.

However, because the extended definition of "money laundering" and "financing of terrorism" includes money laundering and terrorist financing offences committed overseas that correspond to Australian offences, an AML/CTF program will still have to identify, manage and mitigate against the risk that the reporting entity might (through a designated service in Australia) be involved in or facilitate an ML/TF offence committed overseas.

We accept however that this is tempered by the fact that an AML/CTF program applies to risk the reporting entity might "reasonably face".

5. Part 10 Record keeping

We suggest that reporting entities who are members of a designated business group should be able to use a centralised record keeping system maintained by the group.

6. Part 11 Secrecy and access

We welcome the extension of the section 95 exceptions to include obtaining legal advice and making disclosure to reporting entities who are members of the same designated business group. We submit this exception should go further to allow disclosure to other members of the group who are not themselves reporting entities, such as the parent entity, members who perform an administrative function or overseas members (so long as there are adequate precautions to prevent tipping off).

There are some anomalies however.

- If a section 34 authorised person makes a section 39 report to the reporting entity he cannot tell anyone else, including AUSTRAC. This is in line with the requirement that he can only report to either AUSTRAC or the reporting entity but seems unnecessarily restrictive.
- The exceptions in subsections 95(4) to (8) apply to:
  - information that a reporting entity (or section 34 authorised person) has formed the relevant suspicion or information from which that could be inferred; and

- information from which it could be inferred that a report has been made to AUSTRAC (or the reporting entity)

but does not apply to the fact that a report has actually been made. This appears illogical.

7. Part 12. Offences

We suggest section 110(1)(b) should be amended as follows:

"(b) the person commences to provide a designated service to a customer who it suspects on reasonable grounds is using a false customer name."

8. Part 13. Audit

There do not appear to be any mechanisms in sections 129A or 129B requiring AUSTRAC to advise a reporting entity of the grounds on which suspicion is based, or allowing the reporting entity to appeal against the terms of the notice or to decline to have an auditor appointed. We submit that there should, for example, be a right to appeal to the Administrative Appeals Review Tribunal.

9. Part 15. Enforcement

In relation to AUSTRAC's power under section 155A to give remedial directions, we note the Australian Communications and Media Authority has similar powers under the Telecommunications Act 1997 (Cth) and the Interactive Gambling Act 2001 (Cth). Significantly, both of those Acts provide that those affected by a direction can apply for review to the Administrative Appeals Review Tribunal. There is no such provision for review in the AML/CTF Bill.

10. Part 18. Miscellaneous

We note that there is no requirement that either the Government or AUSTRAC should consult with industry prior to making regulations under section 205. This is a matter of concern given that Item 1 of table 4 provides that designated services can be prescribed by regulation. In effect this gives the Government the tool to capture all parties not included in the first tranche without due consultation with interested parties and the potential for proper parliamentary debate. We are aware that amendments to regulations need to be tabled in Parliament and can be disallowed by Parliament. Nonetheless, during the period between commencement and disallowance any additional designated services would be legally enforceable.

We submit that Item 1 of Table 4 should be removed. In the alternative, we submit that the following be added to section 205 immediately after sub-section (1):

(2) Prior to including any designated service in the Regulations the Minister must:

(i) consult with persons who provide or are likely to provide the proposed designated service; and

(ii) duly consider any comments made in the course of those consultations.

The Rules

11. Chapter 1 – Introduction and key terms

11.1 Rule 1.3.1

beneficial owner: Since the abolition of par value on shares in 1998 the concept of issued capital has had little meaning. The term used in the Corporations Act in place of "issued capital" is "share capital". We submit that "share capital" should replace "issued capital" in this definition.

domestic unlisted public company: We submit that the words "a public company but is" should be inserted before "not".

KYC information: Paragraphs (e) and (f) of the Section on unincorporated associations should be deleted.

Reliable and independent data: This should be defined.

11.2 Rule 1.3.2

We submit that "company" should be defined in the Rules. Ideally that term should have the same meaning it has in the Bill. However, so providing will require some consequential changes to the Rules in clauses 2.3, 2.6 and 2.7. The latter two clauses relate to entities that are companies as defined in the Bill but their respective clause headings are based on the premise they are not.

12. Chapter 2 – Customer identification program *(CIP)*

12.1 Rule 2.1

There does not appear to be any provision expressly stating that complying with Rules 2.2 to 2.8 meets the requirements of the Bill. We submit that a new rule 2.1.4 should be added along the following lines:

> A procedure for the identification and verification of a customer which is carried out in accordance with a customer identification program that meets the requirements of these Rules for that class of customer is an "applicable customer identification procedure."

12.2 Rule 2.2.8

This requires systems to be put in place to determine whether other KYC information should be verified from reliable and independent documentation, reliable and independent electronic data or a combination of both. We query how items (h) –(n) of the KYC information for individuals can be verified from reliable and independent documentation

which is defined as types of identification documents. We are aware that this definition is not exclusive but we suggest that to use it in this context is confusing.

12.3 Rule 2.2.10

We suggest this should refer to material/ relevant or unresolved discrepancies rather than all discrepancies.

12.4 Rule 2.3.2

We suggest that "director" is defined. It is not sufficient to rely on the Corporations Act definition of "director" as it does not readily apply to all foreign companies. We also note that the term "private company" is used but is not defined. Is the meaning intended to be equivalent to "foreign proprietary company"?

12.5 Rule 2.3.7

We suggest that 'subsidiary' should have its meaning in the Corporations Act.

12.6 Rule 2.3.10

The word "proprietary" appears to be required in the second line before "company".

12.7 Rule 2.3.13

We note that Rule 2.3.13 requires that the verification of information about a company must be based as far as possible on reliable and independent documentation. As indicated above the definition (although not exclusive) refers only to identification documentation which would not be relevant to a company. We think it should be clarified (either in the definition, or perhaps in guidelines) that reliable and independent documentation for companies would require something different.

An amendment to "reliable and independent documentation or electronic data relating to the company" might be sufficient.

12.8 Rule 2.3.14

Disclosure certificates should be defined. It should be clarified that they can be provided by the customer.

We suggest that the requirement in Rule 2.3.14(b) to have appropriate systems and controls should extend to domestic companies.

12.9 Rule 2.4.14

We note that Rule 2.4.14(b) refers to reliable and independent documents relating to the trust. We query if these are the same as reliable and independent documentation. If so our comments at paragraph 12.7 apply.

12.10 Rule 2.9.3

We note that Rule 2.9.(3)(c) contemplates reporting entities may rely on copies of "reliable and independent documents". This appears inconsistent with the requirement in Rule 2.2.7

which indicates verification must be based on "reliable and independent documentation" (the definition of which does not allow copies).

"Authentication service" should be defined.

We query whether "independently" is necessary in (f).

12.11 Rule 2.9.4

The same comments apply as for Rule 2.9.3.

12.12 Rule 2.10.2

We suggest the reference in Rule 2.10.2(b) and (c) to the reporting entity should be extended to include any commercial provider the reporting entity might use.

13. Chapter 4 –Re-verification of identity

The test in 4.2.1 should be the same subjective test used in the Bill ie. suspects on reasonable grounds.

14. Chapter 5: Third party identification

14.1 Rule 5.2

We have already commented on the inconsistencies between this Rule and the reporting obligations in the Bill, at paragraph 3.1.

14.2 Rule 5.3

We have already commented on the difficulties that we anticipate will arise from the requirements of this section, at paragraph 2.16.

15. Chapter 8 – AML/CTF Programs

15.1 Rule 8.6.1

It should be made clear that the AML/CTF Compliance Officer can be appointed as Compliance Officer for all members of a designated business group who share a joint AML/CTF program.