

**ASIC**

Australian Securities & Investments Commission

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8 March 2006

Mr Jonathan Curtis
Committee Secretary
Senate Legal and Constitutional Legislation Committee
Department of the Senate
Parliament House
CANBERRA ACT 2600

By facsimile: 6277 5794

Dear Sir

Inquiry into the Exposure Draft of the Anti-Money Laundering and Counter-Terrorism Financing Bill 2005 (Bill)(Inquiry)

Thank you for your email dated 15 February 2006 to Mr Jeffrey Lucy, Chairman of ASIC, inviting ASIC to make a submission to the Inquiry. Mr Lucy has asked me to respond on his behalf.

ASIC enforces and regulates corporate governance and financial services laws with respect to financial markets, securities, futures and companies. ASIC is also responsible for consumer protection in superannuation, insurance, deposit taking and credit.

ASIC has devoted considerable resources to reviewing previous drafts of the Bill and in assisting with Australia's response to the Financial Action Task Force mutual evaluation of Australia's anti-money laundering and counter-terrorism financing regime. ASIC relies on information provided by the Australian Transaction Reports and Analysis Centre (AUSTRAC) in many of its investigations, and wishes to ensure that the ability of ASIC to access AUSTRAC information is not diminished.

ASIC is currently in the process of analysing the Bill and associated AML/CTF Rules and AUSTRAC Guidelines, and will be providing detailed comments about the administration of the anti-money laundering regime proposed in these documents to the Attorney-General's Department (AGD) and AUSTRAC on or before 13 April. On

the basis of ASIC's examination of the Bill to date, ASIC intends to make comments along the following lines:

- the Bill establishes AUSTRAC as the regulatory agency with responsibility for ensuring compliance by Australian bodies with the Bill (once enacted). ASIC supports AUSTRAC's role in this regard. Related to this, ASIC notes the new functions and powers of AUSTRAC will require the existing Memorandum of Understanding and relationship between ASIC and AUSTRAC to be renewed and possibly expanded;
- in a submission to AGD on 14 January 2005, ASIC suggested it be made clear (by way of a miscellaneous amendment to the *Corporations Act 2001* (Cth) (Corporations Act)) that the verification and confirmation enquiries under the Bill do not of themselves mean that a person is providing personal financial product advice under the Corporations Act because they have considered a personal circumstance of the client. ASIC notes that the requirement in the Bill to *know your customer* may be confusing to reporting entities that are also licensed under Ch 7 of the Corporations Act; and
- clause 95 of the Bill, on its own, may prevent a reporting entity advising ASIC that the reporting entity has formed the suspicion in cl 39 of the Bill. ASIC requests that consideration be given to amending the *Australian Securities and Investments Commission Act 2001* (Cth) (ASIC Act), in similar terms to the current s243D of the ASIC Act, to ensure that a reporting entity may advise ASIC of the matters in cl 39 of the Bill. Currently, s243D of the ASIC Act ensures that there is no restriction on the reporting of suspicious transactions to ASIC merely because those suspicious transactions have been reported to AUSTRAC. ASIC is strongly of the view that an amendment to the ASIC Act is required to ensure that there is no restriction on suspicious matters being reported to ASIC once the Bill is enacted.

Should you wish to discuss this matter, please contact me on 9911 2014.

Yours faithfully



pc Louise Macaulay
Director, Enforcement Policy & Practice