7 March 2006 **PRIVATE AND CONFIDENTIAL**

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

Sent via email to LegCon.Sen@aph.gov.au

Dear Mr Curtis

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

Thank you for inviting us to make a submission to the Senate Legal and Constitutional Legislation Committee.

Platinum Asset Management Limited ("**Platinum**") is an Australian domiciled investment manager specialising in international equities. We offer our ASIC licensed investment services to, predominantly, the Australian and New Zealand retail markets and provide wholesale investment services to non-related financial service firms (e.g. banks, Investor Directed Portfolio Services, superannuation funds and insurance companies). We also export our investment services to American, European and Asian investors. Some 25% of our clients are non-Australian. Platinum looks after the investments of in excess of 225,000 investors amounting to some A$19 billion.

Platinum has previously voiced its concerns about the proposed Anti-Money Laundering ("**AML**") and Counter-Terrorism Financing ("**CTF**") laws and its potential effect on Australian society and its economy. This submission will not reiterate those concerns, but will focus on the content of the AML/CTF Draft Bill (released 13 December 2005) ("**Bill**") and its likely effect on intermediary businesses such as Platinum.

In brief:

- we do not see any benefit to the Australian government and AUSTRAC by obligating intermediaries, that directly interface with banking institutions (who are obligated to carry out such procedures) and who do not accept physical cash, to establish and carry out **onerous, unnecessary** and **duplicated** client identification proceeds;

- it would be extremely difficult for us, if not legally and commercially impossible, to ascertain *know your client* ("**KYC**") information on the underlying clients of our wholesale (IDPS) investors (who do not act in an agent capacity for us); and
- the administrative and compliance costs associated with obtaining initial and ongoing KYC information from our investors, implementing the required AML/CTF program, and carrying out reporting which is duplicated by the banking system, is unnecessarily detrimental to our small client base (who will ultimately bear such compliance costs).

We are concerned at the powers the Bill delegates to AUSTRAC, enabling the agency to make wide-ranging and binding laws on intermediaries and small specialist firms such as Platinum. It is of concern, constitutionally, that Parliament sees fit to delegate such powers to AUSTRAC.

Our comments and concerns set out in the attachment.

Yours faithfully

M Halstead
Secretary

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1. Identification Procedures - Part 2 of the Bill

Under the Bill, Platinum (as a "reporting entity" who provides a "designated service") will be obligated to verify an investor's identity before (or in some circumstances, subsequent to) issuing investment interests (e.g. units in a managed investment scheme).[1] The process for verifying an investor's identity is not defined in the Bill, but delegated to AUSTRAC to define in their AML/CTF Rules (yet to be released). The Bill suggests some concession for existing investors (deemed "pre-commencement customers") and "low-risk services", but leaves it to AUSTRAC to define the content of these exemptions in the AML/CTF Rules (yet to be released).[2]

Platinum is a non-cash intermediary business. By this we mean we do not accept the delivery of physical cash (i.e. currency) from investors or potential investors ("**clients**"), nor do we pay physical cash on withdrawal of such investments. All monetary transactions with our clients are executed through an Australian bank, building society or credit union. These entities are already subject to the requirements of the *Financial Transaction Reports Act 1988 (Cth)*, which prescribes customer verification procedures (e.g. 100-point checks on bank account holders), and these entities will be similarly obligated under the Bill. These entities do not act in an agent capacity to Platinum.

Our comments/concerns:

- Given that all investment money comes to Platinum via the Australian banking system (which is subject to rigorous regulation), what benefit will be gained from requiring us to further scrutinise of the identity of our clients?
- The Bill provides for lesser identification procedures for "pre-commencement customers". This concession is subject to the reporting entity and customer having maintained a "continuous relationship". The concession can also be limited by AUSTRAC's AML/CTF Rules (yet to be released) that can define the events or circumstances where continuity of the relationship is broken.

  Firstly, what is deemed to be a continuous relationship is not defined. We have clients that have been invested with us for over 10 years, but which we have had minimal contact (other than the posting of annual reporting requirements). Would such limited interaction be considered a continuous relationship?

  Secondly, the Bill provides no limit on AUSTRAC declaring numerous circumstances where the relationship is broken, thereby subjecting a broader number of our current client base to full identification review.
- The Bill provides for lesser identification procedures for "low-risk designated services". Such services are not defined in the Bill, but left to AUSTRAC's AML/CTF Rules, which are not yet available. As a non-cash intermediary business, we **strongly suggest** to you that our services are low-risk and should be included in a definition contained within the Bill.
- Under the Bill, AUSTRAC may determine the events and circumstances that would prompt re-verification of the identity of a customer.[3] What prevents AUSTRAC from over-burdening small and mid-size businesses with unwarranted administrative and compliance costs?

[1] Sections 26 to 37 of the Bill.
[2] Sections 27 and 28 of the Bill respectively.
[3] Section 32 of the Bill.

2. Reporting Obligations - Part 3 of the Bill

Under the Bill, Platinum (as a "reporting entity") will be required to report to AUSTRAC any suspicious matters, threshold transactions, and international funds transfer instructions.[4] The latter two requirements will be new to Platinum, given we are not currently captured under the *Financial Transaction Reports Act 1988 (Cth).*

Our comments/concerns:

- Given that all monetary transactions with our clients are executed through an Australian bank, building society or credit union, what benefit will be gained from requiring us (a non-cash intermediary) to replicate the reporting of threshold transactions and international funds transfer instructions that will be carried out (and also reported) by the bank, building society or credit union concerned?
- Meeting these additional reporting requirements will incur costs in terms of system development and administrative process changes, which will be borne by our small client base.
- System re-engineering is time-consuming and will impede our compliance with the new reporting obligations.

3. AML/CTF Programs - Part 7 of the Bill

Under the Bill, Platinum (as a "reporting entity") will be required to develop an AML and CTF Program that:

- ensures appropriate action is take to identify and materially mitigate the risk that the provision of our services might (inadvertently or otherwise) involve or facilitate a transaction that is connected with the commission of a money laundering offence or the financing of a terrorism offence;
- encapsulates monitoring of the above;
- requires us to take such action as is specified in the AML/CTF Rules in relation to any services provided by us to politically exposed persons, or at or through an entity in a foreign country; and
- ensures our compliance with the AML/CTF Act (once enacted) and the AML/CTF Rules (including those relating to ongoing customer due diligence).[5]

AUSTRAC's draft AML/CTF Rules provide the AML/CTF Program must include appropriate risk based systems and controls, a customer due diligence program, an enhanced customer due diligence program, suspicious matter reporting systems and controls, an AML/CTF risk awareness training program, an employee due diligence program, a third party due diligence program, a compliance program, and a system for regular independent review.

In relation to the customer due diligence program, AUSTRAC's draft AML/CTF Rules prescribe minimum KYC information that must be obtained from each new client (and existing clients that are deemed by AUSTRAC to be caught by the identification procedures requirements), as well as additional KYC information that must be collected from higher risk customers.

Leaving aside the perplexing issue of determining who is a higher risk customer, the minimum KYC information that Platinum must collect (over and above current legal requirements) is:

[4] Sections 38 to 47 of the Bill.
[5] Sections 72 to 76 of the Bill.

- *from each individual investor,* his/her place of birth, country of citizenship, and country of residence; and
- *from each company investor,* the company's date and place (country) of incorporation, the name of each of its directors and secretaries, the names of its members who have a substantial shareholding (if the company is listed) or the names of its members who meet the control test (if the company is not listed), and evidence of the company's authorisation to its officers.

Our comments/concerns:

- Given that all monetary transactions with our clients are executed through an Australian bank, building society or credit union, our clients will have already been scrutinised and verified (as to their identification and collection of KYC information) by their respective bank, building society or credit union. A duplicated review by a non-cash intermediary, such as Platinum, is superfluous and does not add any value.
- If we are required to collect such minimum KYC information from our clients, how will we know that the information they give us is correct? For instance, a client could complete any country of citizenship and we would have no way of confirming whether it is correct. Doesn't this make the collection of such information pointless?
- Platinum's managed investment schemes are offered to Australian investors via a number of platforms (investor directed portfolio services, master trusts and superannuation funds). Under these arrangements, which are defined by written contract in accordance with the applicable ASIC Class Order, the platform becomes the registered unit holder (investor / client) of the scheme, and the platform separately records its clients who have a beneficial interest in that unit holding or related inter-funding scheme. Typically, under the terms of these agreements, Platinum is not privy to the platform's clients. Nor do we wish to obtain (or be required to obtain) information on these clients (the total of which could be many thousands). These platforms are not operating as an agent for Platinum and only utilise our products as part of a service to their clients.

  How are we to identify, measure, and mitigate the risk that our services, on-sold by a wholesale investor, are not involved or connected with money laundering or financing of terrorism offence? How can we rely on, and be satisfied, that our wholesale investors have carried out proper KYC checks to meet our obligations?

  This type of arrangement is not currently addressed by the Bill, and should be a stated exemption in the legislation.
- The implementation of reviews by intermediaries will cause a great deal of cost in terms of preparing, printing and reissuing product disclosure statements and application forms (the method used to collect such KYC information), system changes to capture the recording and storing of such KYC information, and establishing and carrying-out administrative processes for the re-verification of stored KYC information. These costs will be borne by our small client base.
- We can foresee much frustration to our clients, in terms of holding-back and rejecting applications for investment which do not contain the minimum KYC information, thus causing client investment monies to be out of the market.
- The Bill is yet to prescribe a deadline by which reporting entities will be obligated to have such an AML/CTF Program in place. Given that the associated AML/CTF Rules are yet to

be finalised, we would suggest at a minimum a 36 month implementation time-frame would be required.