



## **IFSA/FPA Industry Guidance Note No. 24**

### **Managing mutual obligations under Chapter 7 of the Anti-Money Laundering and Counter-Terrorism Financing Rules**

**November 2007: Updated February 2010**

## **1. TITLE**

- 1.1 This Guidance Note may be cited as IFSA/FPA Guidance Note No. 24 - Managing Mutual Obligations Under Chapter 7 of the Anti-Money Laundering and Counter-Terrorism Financing Rules.**
- 1.2 This Guidance Note is equivalent to IFSA/FPA Guidance also entitled “Managing Mutual Obligations Under Chapter 7 of the Anti-Money Laundering and Counter-Terrorism Financing Rules”.**

## **2. DATE OF ISSUE AND EFFECTIVE DATE**

- 2.1 This Guidance Note was approved for issue on 16 October 2007.**
- 2.2 This Guidance Note should be applied on or after 12 December 2007. Earlier application of this Guidance Note is permitted and encouraged.**

## **3. INTRODUCTION**

- 3.1 Chapter 7 of the AML/CTF Rules provides that where an applicable customer identification procedure has been conducted by a financial planner (this term includes an Australian Financial Services Licence (AFSL) holder and an authorised representative as used in the Corporations Act), it can be deemed to have been conducted by another entity in certain circumstances. This has the effect of removing potential duplication and permits greater streamlining of AML/CTF obligations.
- 3.2 This Guidance Note aims to encourage the use of a common set of processes and procedures for the implementation of Chapter 7 of the Rules. This should facilitate the efficient and effective implementation of AML/CTF obligations for financial planners and other entities that may seek to rely on the customer identification procedures conducted by them.
- 3.3 The expectation is that financial planners or other reporting entities will not seek to impose AML/CTF obligations or procedures on each other, except as contained in the Guidance Note or as contained in a separate agreement between the reporting entities.
- 3.4 In addition, where a party has acted in good faith in attempting to comply with this Guidance Note, the Guidance Note does not create any contractual or other liability as between financial planners and reporting entities to which the Guidance Note applies (unless a prior agreement has been reached between the reporting entities).<sup>1</sup>

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<sup>1</sup> Note protection from liability under section 235 of the AML/CTF Act in similar circumstances.

#### 4. APPLICATION

- 4.1 From 12 December 2007, this Guidance Note applies where a financial planner makes arrangements for a person to receive a designated service from another reporting entity (such as a product issuer or platform administrator).<sup>2</sup>
- 4.2 This Guidance Note does not apply where a financial planner prepares a financial plan, Record of Advice or Statement of Advice involving recommendations about a designated service and does not subsequently arrange for the implementation/execution of that advice.
- 4.3 Therefore, this Guidance Note applies *when a financial planner arranges for a client to:*

<i>Activity Financial Planner Arranges for Client</i>	<i>Designated Product or Service Provided<sup>3</sup></i>
Obtain or be issued with new or additional...	Interests/units in a managed investment scheme
Open or make a deposit...	Cash management trust
Buy/sell...	Shares/options in a listed company or trust
Pay a premium or be issued with...	Investment life insurance policy – <ul style="list-style-type: none"><li>• Regular premium policy: with an annual premium greater than \$1,500; or</li><li>• Single premium policy: with a single premium greater than \$3,000.</li></ul>
Obtain or be issued with...	Annuity
Obtain or be issued with...	Pension
Obtain an interest in or have the ability to transact through...	WRAP/Platform/IDPS
Cash out all or part...	Superannuation interest

#### 5. TREATMENT OF EXISTING CUSTOMERS

- 5.1 From 12 December 2007, compliance with this Guidance Note will require financial planners to conduct a customer identification procedure whenever a circumstance in Part 4 above arises, irrespective of whether they are a new or existing customer of the financial planner.
- 5.2 However, in order to make it easier for financial planners, once a customer has been identified this obligation can be met by the planner providing either:
- a copy of a completed ‘customer identity form’;
  - a relevant record of the procedure conducted; or
  - by making a record of the procedure accessible to the ‘new’ product issuer as agreed.

This effectively ensures that financial planners are not unnecessarily conducting a customer identification procedure *every time* they interact with the same customer.

<sup>2</sup> It should be noted that in the first 15 months following 12 December 2007, a prosecution-free period applies to all reporting entities in the event of a failure to comply with the customer identification requirements contained in the AML/CTF Act so long as they are making reasonable steps to comply with the Act.

<sup>3</sup> This Guidance Note does not cover every possible designated service that financial planners may actually provide under the AML/CTF Act. The Guidance Note only covers the designated services (and related customer ID procedures) provided by financial planners that IFSA members will be seeking to rely upon. Financial planners are free to determine their own customer ID and record keeping procedures for any other designated services they may provide or arrange.

## **6. RE-IDENTIFICATION PROCEDURES**

- 6.1 Part 7 of this Guidance Note contains details of documentation which financial planners should use to re-identify the customer.<sup>4</sup> The re-identification procedure conducted should be based on documentation additional to that used in the original customer identification procedure.
- 6.2 Any required re-verification of a customer's identity should take place within 14 business days from the time any doubts arose.

### **Product issuer initiated re-identification procedures**

- 6.3 Where a product issuer has reason to doubt the identity of a previously identified customer, they should approach the relevant financial planner for assistance in confirming the accuracy of customer identity details held by the product issuer, and if necessary the re-verifying of the customer's identity on a case by case basis.
- 6.4 If the product issuer has determined that a re-identification procedure needs to be conducted, the financial planner should advise the product issuer of the course of action they intend to take including the time frame of any re-identification procedure.
- 6.5 It would be expected that the financial planner will assist the product issuer in meeting their obligations under the AML/CTF Act to the extent that it is reasonably practicable to do so in the circumstances. Should the financial planner be unable to assist, the product issuer may then approach the client directly.
- 6.6 Any information ultimately provided to that product issuer need not be provided to all other product issuers who may share the same customer.
- 6.7 Due to prohibitions under the AML/CTF Act, the product issuer is generally not permitted to advise the financial planner of the reasons for the need to re-identify a customer.

### **Financial planner initiated re-identification procedures**

- 6.8 If circumstances arise such that a financial planner has reason to doubt that a previously identified customer is the person they claim to be, the financial planner should confirm the accuracy of customer identity details held, and if necessary re-verify the customer's identity (notifying their AFS licensee as soon as possible).
- 6.9 Due to prohibitions under the AML/CTF Act, the financial planner is generally not permitted to advise the product issuer or any other party of the reasons for the need to re-identify a customer.

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<sup>4</sup> The purpose of the processes that follow is to ensure that:

- financial planners are complying with their legal obligations; and
- product issuers are able to maintain a reasonable expectation that the customer identification information they are being provided is accurate and reasonably current.

## **Updating Records**

- 6.10 If, following a re-identification procedure conducted by the financial planner the financial planner arranges for the customer to receive a new financial product, then the new product issuer should receive, or have access to, an updated copy of the records of this procedure.
- 6.11 Further, at any time that a financial planner is arranging for the provision of a service covered by this Guidance Note, they should:
- take reasonable steps to ensure customer details recorded by them are current; and
  - update and re-verify existing information kept on record where they are aware that customer identification details that they previously verified have changed.

## **7. CUSTOMER IDENTIFICATION PROCEDURES**

### **Legal Standard to which Customer ID Procedure Must be Performed.**

- 7.1 The customer identification procedures outlined in this Guidance Note must be performed prior to the arranging of the designated service.
- 7.2 Irrespective of the actual customer ID procedure conducted, the person conducting the procedure must be reasonably satisfied that the customer is the individual he or she claims to be.
- 7.3 If, after a financial planner conducts a customer identification procedure, they are not reasonably satisfied that the customer is the individual he or she claims to be, and the financial planner is unable to conduct a further customer identification procedure to address this doubt, then they should not arrange for the provision of the financial service or product.
- 7.4 At the same time, the financial planner, if acting as an Authorised Representative, should notify their AFS Licensee as soon as possible (preferably within 24 hours) of this fact.

### **Customer Type Schedules**

- 7.5 To comply with this Guidance Note, financial planners are required to follow the customer identification procedures outlined in each respective Schedule depending on the customer type they are dealing with.
- Schedule 1: Individuals
  - Schedule 2: Companies
  - Schedule 3: Trustees of a trust
  - Schedule 4: Partners in a partnership
  - Schedule 5: Associations (incorporated and unincorporated)
  - Schedule 6: Registered co-operatives
  - Schedule 7: Government bodies
  - Schedule 8: Customer Agents

Further, **Schedule 9: Verifying Officers** is included from 2010. This Identification Form is included for use for non-individual customers (eg company, trust etc) who appoint a verifying officer to identify the customer's agents/signatories. This form is to be completed each time the customer appoints a new verifying officer.

## **Customer identification procedure to be applied where a procedure outlined in the relevant Schedule is unable to be conducted**

7.6 In the event that a customer identification procedure as specified in a Schedule is unable to be conducted, the financial planner should contact the relevant product issuer and conduct a procedure as agreed between that product issuer and the financial planner in respect of that transaction.

### **8. ADDITIONAL INFORMATION TO BE OBTAINED ABOUT THE CUSTOMER**

8.1 Due to the more extensive obligations placed on product issuers under the AML/CTF Act, it is likely that financial product application forms will contain new information fields to enable product issuers to be able to conduct a more effective ML/TF risk assessment.

8.2 This information may include, for example, the customer's occupation or, if not an individual, their type of business or organisation.

### **9. RECORD KEEPING**

9.1 Irrespective of the actual customer identification procedure conducted, the product issuer should be able to determine the sources from which the customer's identity was verified and the type of procedure conducted.

9.2 The copy of the record of the customer identification procedure should therefore include the following details of the sources from which the customer identity was verified:

- name of the issuer of the document;
- date of issue (where applicable);
- date of expiry (where applicable);
- document number (where applicable);
- whether it was verified from an original or certified copy.

### **Acceptable record keeping procedures**

9.3 This Guidance Note canvasses three possible methods by which financial planners and product issuers can seek to meet their respective record keeping obligations under the Act and this Guidance Note. These include:

- (a) Attaching to any application form a copy of the sources from which the customer's identity was verified.
- (b) The financial planner completing a "customer identity form", where agreed with the product issuer, and sending it to the product issuer.
- (c) Under a commercial agreement for the management of records between the product issuer and financial planner, the record is retained by either the financial planner or another authorised intermediary, with the authorised entity agreeing to provide the other entity(s) with the necessary access to the record.

### **Default industry record keeping procedure**

9.4 In the absence of an express commercial agreement for the management of records between the product issuer and financial planner, record keeping obligations under this Guideline should be met through the provision of a copy of the sources from which the customer's identity was verified (i.e. Option 9.3(a) above).

## **10. ONGOING INTERACTION BETWEEN FINANCIAL PLANNERS AND PRODUCT ISSUERS**

- 10.1 It is not intended that product issuers and financial planners will impose additional AML/CTF obligations on each other outside the scope of this Guidance Note. However, due to the additional the obligations imposed on product issuers by the AML/CTF Act and Rules, there may be circumstances where a product issuer requests that a financial planner obtain additional information from an existing or new customer.
- 10.2 In such circumstances, the financial planner should be contacted directly by the relevant product issuer in order to reach a commercially viable arrangement as to how the financial planner can assist the product issuer in meeting their obligations under the AML/CTF Act.
- 10.3 It would be expected that the financial planner will assist the product issuer in meeting their obligations under the AML/CTF Act to the extent that it is reasonably practicable to do so in these circumstances. Should the financial planner be unable to assist, the product issuer may then approach the client directly.
- 10.4 Any information ultimately provided to that product issuer need not be provided to all other product issuers who may share the same customer.

## **11. APPROPRIATE RELIANCE**

- 11.1 A product issuer is deemed to have appropriately relied on the customer identification procedure conducted by the financial planner where they are reasonably satisfied that the procedure conducted was:
- in accordance with this Guidance Note; and
  - they have a copy of, or access to, records which demonstrate that the above procedure was conducted in a manner consistent with this Guidance Note.
- 11.2 Product issuers may also include a section in their application form seeking confirmation from the financial planner that they have conducted a procedure in accordance with this Guidance Note.

## **12. GUIDANCE NOTE REVIEW**

- 12.1 This Guidance Note has been drafted with significant input from both product issuers and financial planners. The Guidance Note therefore represents the industry's views on an appropriate, standardised and robust framework for the management of AML/CTF obligations between financial planners and product issuers.
- 12.2 However, as this is the first AML/CTF Guidance Note developed by IFSA and the FPA, it has been agreed that it should be reviewed at an appropriate interval during 2009 to ensure that any significant learnings from practical implementation, as well as any technological developments that may impact on the Guidance Note, can be considered at that time.