24 January 2014

AML/CTF Rules
Director
Rules
AUSTRAC

By Email Only: **aml_ctf_rules@austrac.gov.au**

FSC Submission on draft AML/CTF Rules relating to Customer Due Diligence

The Financial Services Council (**FSC**) represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, trustee companies and public trustees. The FSC has over 125 members who are responsible for investing more than $2.2 trillion on behalf of 11 million Australians.

We welcome the opportunity to comment on the draft amendments to the AML/CTF Rules relating to Customer Due Diligence (**CDD**), released for consultation on 9 December 2013. In this submission, we refer to these draft rules simply as the "**draft CDD Rules**".

FSC made a submission (on 30 September 2013) to the AUSTRAC consultation paper *Consideration of possible enhancements to the requirements for customer due diligence Discussion Paper*. Many of the points made in that submission remain applicable to the draft CDD Rules.

This submission is necessarily constrained by the limited time available to review the draft CDD Rules (we acknowledge that timelines are in the context of Australia's upcoming mutual evaluation and we acknowledge AUSTRAC extended the time to make submissions on the draft CDD Rules). It is likely that further, and unintended impacts or consequences of the draft CDD Rules will only become apparent after or during any implementation of the final CDD Rules. FSC reserves the right to raise such matters with AUSTRAC in future (acknowledging that AUSTRAC has always been open to engagement with reporting entities and industry groups such as FSC).

Executive summary

1. The risk based requirements under the current AML/CTF regime (as contained in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)* (**AML/CTF Act**) as amended and the related AML/CTF Rules) remain appropriate as they accommodate customer due diligence ("**CDD**"), enhanced customer due diligence ("**ECDD**") and transaction monitoring requirements commensurate with the risk of money laundering or terrorism financing ("**ML/TF**").

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2. (**Implementation and Transition**) The package of CDD reforms are extensive. A transition period of 24 months will be needed to implement the reforms given that the reforms will require, among other matters:

   (a) Updating of AML/CTF Programs;
   (b) Updating of collection documents and disclosure documents and other customer facing documentation;
   (c) Updating of IT systems and search capabilities;
   (d) Updating of business procedures;
   (e) Training of employees;
   (f) Education of Australian consumers in relation to the new CDD requirements and managing their expectations as to why consumers need to meet additional CDD requirements; and
   (g) Engagement by AUSTRAC with reporting entities providing AUSTRAC guidance in relation to the reforms.

3. FSC has practical concerns with the proposed CDD reforms which are set out in this submission. We acknowledge nonetheless that the draft CDD Rules have been prepared in light of the 2012 FATF Recommendations *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation.* We also note that the AML/CTF regime, as specified by FATF and reflected in the AML/CTF Act, is a risk-based regime. FATF's 2012 Recommendations emphasise the risk-based aspect to ensure efficient allocation of resources to the highest AML/CTF risks.

4. (**Application of CDD reforms to existing customers**) The CDD reforms should only apply to existing customers where a risk based trigger would otherwise require enhanced customer due diligence (**ECDD**).

5. (**Guidance and rule refinements as CDD reforms are implemented**) Given the details of the CDD reforms, during the implementation and transition period there is likely to be the need for AUSTRAC guidance as well as potential Rule refinements to address any unintended consequences of the CDD reforms.

6. Our detailed comments on the draft CDD Rules are set out below.

Transition/Implementation Approach

7. The proposed reforms will introduce new requirements to the wealth management industry, rather than refer to information already collected as part of the customer identification process. Information such as a customer's occupation or source of funds/wealth is likely to be collected by a reporting entity that is providing a loan as this is required to assess a customer's creditworthiness. This information is however not required and is unlikely to be currently collected as part of a wealth management transaction (such as an investment in a managed investment scheme or superannuation fund). So, in the case of the wealth management industry broadly, the draft CDD Rules require the introduction of new processes, rather than the use of information which is already collected for other purposes.

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8. As noted in our Executive Summary above, the package of CDD reforms are extensive. A transition period of 24 months will be needed to implement the reforms given that the reforms will require, among other matters:

   (a) Updating of AML/CTF Programs;
   (b) Updating of collection documents and disclosure documents and other customer facing documentation;
   (c) Updating of IT systems and search capabilities;
   (d) Updating of business procedures;
   (e) Training of employees;
   (f) Education of Australian consumers in relation to the new CDD requirements and managing their expectations as to why consumers need to meet additional CDD requirements; and
   (g) Engagement by AUSTRAC with reporting entities providing AUSTRAC guidance in relation to the reforms.

9. FSC member organisations are currently in the process of implementing a wide range of regulatory reforms, including FATCA, FOFA, SuperStream, Privacy and settling down APRA Prudential Standard processes, resulting in limited ability to implement any additional material regulatory reforms in the short to medium term. However the need for a 24 month transition is also a function of the depth and complexity of the CDD reforms.

10. Of the proposed reforms, the requirement to identify whether the customer is a politically exposed person (**PEP**) is one that could potentially be implemented earlier than within 24 months (as many organisations are currently complying with this requirement). Nonetheless, many organisations will need to change their procedures in relation to screening for both foreign *and* domestic PEPs and amend customer acceptance processes accordingly. Aspects of the PEP requirements (such as for example, relating to whether a PEP is a *beneficial owner* of other customers of the reporting entity) would require extensive implementation effort (and could not reasonably be implemented earlier than our requested 24 month transition period).

11. FSC's engagement with its members indicates that broadly, industry requires a period of not less than 24 months (from finalisation of the draft CDD Rules) to make the necessary changes to implement the proposed reforms. A shorter implementation time frame (of say 12 months) is not achievable given the breadth of the proposed changes. Further, changes proposed by AUSTRAC are exacerbated by the sheer volume and complexity of other regulatory reforms currently in progress, or about to be implemented, across the wealth management industry and financial services providers generally.

12. The implementation approach should seek to apply a reasonable transition period consistently to all reporting entities, rather than applying an aggressive transition period with widespread exemptions being granted for delayed implementation. An aggressive transition period with widespread exemptions creates an uneven playing field and will hinder any industry wide initiatives (such as updates to the FSC/FPA Industry Guidance Note

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No. 24 - *Managing mutual obligations under Chapter 7 of the Anti-Money Laundering and Counter-Terrorism Financing Rules*).

13. The explanatory statement for the final CDD Rules, or indeed the final CDD Rules, should set out the application of the CDD Rules in relation to existing customers (that is, those customers in place at the time that the CDD Rules become effective).

    (a) (***New customers***) Additional information required under the draft CDD Rules to be collected from customers should only apply to *new* customers (commencing at the end of a 24 month transition period).

    (b) (***Existing customers***) Ongoing customer due diligence requirements to update information should only be applicable to *existing* customers where the reporting entity believes it is reasonable to do so (particularly in relation to high risk customers).

14. Given the extensive nature of the CDD reforms, it may be that unintended consequences become apparent which may necessitate AML/CTF Rule amendments or refinements after the introduction of the CDD reforms.

Cost/Benefit of Proposed Reforms (in terms of ML/TF risk reduction)

15. In many cases, the limited ability of a reporting entity to verify the additional information proposed to be collected under the draft CDD Rules will limit the benefits of collecting this information (in terms of ML/TF risk reduction), including source of funds and beneficial ownership information. Those who are entering into transactions to commit ML/TF offences are less likely to honestly provide factually correct information.

16. To realise the benefits of the proposed CDD enhancements, these enhancements should be implemented in conjunction with enhancements to the sources available to reporting entities to verify the additional CDD information collected, particularly enhancements to ASIC's company register to reflect the beneficial ownership information required to be collected and the implementation of a government maintained register of trust information.

17. FSC notes that verification of beneficial owner information with respect to foreign customers (e.g. foreign companies) may not be possible where company registers are not publically available or information on such registers is inadequate for the purpose of verifying the identity of beneficial owners.

18. In addition to compliance implementation costs, additional customer identification and verification requirements will introduce ongoing costs to industry (such as transactional costs related to verification of information and PEP screening). These costs feed into the cost of providing designated services and the costs of these reforms should be assessed against benefits achieved in terms of ML/TF risk reduction.

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Recognition of existing exemptions and inherently low or lower risk services

19. The existing exemptions and simplified procedures in place for superannuation, life insurance and annuities should continue such that the draft CDD Rules do not compromise the existing exemptions for designated services related to these products. These

exemptions include (but are not limited to) Section 39 of the AML/CTF Act and Chapters 41 and 47 of the AML/CTF Rules.

20. As a general comment, the draft CDD Rules should maintain the risk based approach previously implemented in Australia's AML/CTF regime and should recognise the low risk nature of these products and services (namely, those currently recognised as such, such as superannuation, life insurance and annuities). The application of the draft CDD Rules should also recognise the overriding AML/CTF controls in place. Examples of such controls which a reporting entity may implement to mitigate AML/CTF risks include not dealing in cash (for initial applications and redemptions) and only accepting cheques drawn from an Australian ADI.

21. FSC suggests that it would be appropriate, in the case of customers to which only these low risk designated services are provided, to be exempted (subject to risk triggers) from:

(a) draft CDD Rule 4.1.2;
(b) draft CDD Part 4.12;
(c) draft CDD Rule 8.1.5(1) / 9.1.5(1);
(d) draft CDD Rule 8.1.5(2)(b) / 9.1.5(2)(b); and
(e) draft CDD Rule 15.9(2).

22. The comments above particularly relate to superannuation products which were provided a general exemption when the AML/CTF Act was originally introduced. However, FSC continues to support a risk based approach. Where the manner in which other products are offered incorporates effective measures to mitigate and manage the ML/TF risk, FSC suggests that it may still be appropriate for the Australian regime to provide relief from obligations in such cases from the requirement to obtain information on the purpose and intended nature of the business relationship, or the source of the funds to be invested, where that information may be reasonably inferred from the nature of the product or the circumstances of the establishment of the relationship.

Chapter 1 (Definitions)

23. The new definition of "beneficial owner" includes the concept of control. Guidance on AUSTRAC's interpretation of how the concept of control is to be implemented would assist reporting entities understand how to apply this concept to different entity types. This guidance should also clarify the definition of control and its relationship with other 'control tests' set out in Australian legislation such as the *Corporations Act* 2001 (section 50AA) and the *Social Security Act 1991*.

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24. A definition of beneficial owner should be tailored for each customer type by providing a definition in each applicable Chapter of the Rules.

25. The draft CDD Rules contain a number of references to "reasonable measures" (such as draft CDD Rules 4.1.2(5)(d), 4.12.1, 4.12.9, 4.13.2(1) and 15.3). The term "reasonable measures" is not defined in the AML/CTF Act or AML/CTF Rules (or the draft CDD Rules). This term is defined by FATF as "appropriate measures which are commensurate with the money laundering and terrorist financing risks". We suggest that a definition of "reasonable measures" consistent with the FATF definition should be inserted into the AML/CTF Rules.

26. The definition of "politically exposed person" in rule 1.2.1 should be amended to be an exhaustive definition rather than an inclusive definition by removing the two instances of the word "including" and adding the words underlined, as marked up below:

> *"politically exposed person* means an individual:
>
> (1) who holds a prominent public position or function in a government body or an international organisation as~~, including~~:
>
> (a) Head of State or head of a country or government; or
>
> ……
>
> (2) an immediate family member of a person referred to in paragraph (1)~~, including~~ who is:
>
> (a) a spouse; or
>
> **…"**

Expansion of ML/TF risk factors that must be considered before providing a designated service to a customer

27. Chapter 4 of the draft CDD Rules proposes to amend the risk assessment performed by reporting entities and appears to suggest that risk assessments must be performed at a customer level, prior to a designated service being provided to a customer. This contrasts with the current approach that a risk assessment is to be performed based on the risk factors associated with a reporting entity's business. In addition, under the draft CDD Rules new risk factors are to be considered, such as occupation and source of funds/wealth, implying that this information must be collected from customers prior to providing the designated service.

28. Clarification is required regarding the term "must consider" as it is not clear whether reporting entities are able to consider these matters in the context of a risk-based approach. Does the proposed draft Chapter 4.1.2 Rule now require that all five aspects must be considered as part of the initial ML/TF risk assessment of the customer prior to the provision of a designated service? Clarification is required as to whether it will be mandatory to collect the source of funds/wealth for every customer or whether a risk-based approach can be applied in deciding whether or not, from a risk-based perspective, it is appropriate to

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collect the source of funds/wealth for every customer. We refer to our comments at paragraph 20 that the draft CDD Rules should recognise the overriding AML/CTF framework and controls of the reporting entity in place as part of a risk-based approach.

29. The proposed reforms will introduce significant impacts for reporting entities seeking to revisit their risk assessment models and implement system capability to comply with the draft CDD Rules. For these and other reasons, a transition period of not less than 24 months is appropriate.

30. It is further noted that currently source of funds and source of wealth information are specific requirements under an ECDD Program (i.e. to be applied in high risk scenarios). The proposed changes to CDD Rule 4.1.2 appear to imply that such information is now required as part of *standard* customer due diligence, even though the applicable customer identification procedures do not specifically require the collection of such information. We note that New Zealand adopts a risk-based approach as the source of funds and wealth is only required in New Zealand under their enhanced due diligence requirements. Therefore, in Australia, the collection of this information should also be risk-based.

31. In many cases, these risk factors cannot be considered in full prior to the provision of a designated service. FSC members request that the proposed wording in draft CDD Rule 4.1.2 be amended to allow for ML/TF risks to be considered at or within a reasonable time (e.g. *as soon as practicable*) of providing a designated service to a customer. (This timing point is separate from our observations above as to whether reporting entities must consider in all cases all five factors set out in draft CDD Rule 4.1.2, irrespective of risk-assessment, or instead must consider the factors *where appropriate to do so from a risk-based perspective*.)

32. For certain designated services to which existing KYC exemptions apply (e.g. superannuation rollovers and contributions) reporting entities may not be in a position to assess these ML/TF risk factors until the time that the applicable customer identification procedure is carried-out (i.e. at the time of cash-out). It is appropriate that all existing exemptions continue as per our comments above under the heading "Recognition of existing and inherently low or lower risk services".

Identification and verification of beneficial owners

33. The draft CDD Rules define "beneficial owner" of a customer in Chapter 1 as "an individual who owns or controls (directly or indirectly) the customer". We assume that reporting entities need only establish "ownership" or "control", and not both. We consider it essential, to avoid doubt, that AUSTRAC confirm that interpretation. To achieve this, FSC suggests that the definition should be amended by replacing "owns or controls" in paragraph (2) of the definition with "owns, or where ownership cannot reasonably be established, controls".

34. FSC requests that AUSTRAC consider expanding the applicable customer identification procedure so that for each entity type it specifies those individuals that would normally be considered "beneficial owners" (for example, who would the *beneficial owners* of a trust be

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considering that *beneficiary* information is already collected). Alternatively, AUSTRAC may consider providing guidance to reporting entities to assist them in suitably identifying beneficial owners.

35. FSC requests that the proposals in draft CDD Rule 4.12 in relation to the collection and verification of beneficial owner information (Rule 4.12.1 and 4.12.7) be amended to include the option of collecting and verifying either:

    (a) name and address; **OR**
    (b) name and date of birth.

    This approach is consistent with existing verification requirements for Individuals and reflects that a date of birth may be more appropriate to collect as this does not change and assists with PEP screening procedures. Providing for date of birth also allows passports to be used for verification.

Simplified verification procedure for foreign entities

36. (**Foreign regulated entities**) Chapter 4.12.2 provides that the obligation to identify and verify the beneficial owner need not be applied to those companies and trusts to which the existing simplified verification procedures apply (i.e. regulated entities). FSC requests that AUSTRAC consider extending the application of these simplified procedures to foreign entities that are subject to comparable regulation overseas, such that the relevant beneficial owner(s) need not be identified and verified.

37. (**Foreign listed entities**) Currently the AML/CTF Rules provide for a simplified verification procedure for Australian listed companies, but not foreign listed companies. Given the expanded requirements under the CDD rules, it seems appropriate to update the AML/CTF Rules to allow for a simplified verification procedure for foreign listed companies. We request AUSTRAC to update the AML/CTF Rules accordingly to provide for a simplified verification procedure for foreign listed companies.

Requirement to identify and verify the settlor of a trust

38. FSC understands this requirement to mean that reporting entities must collect the name of the settlor *and* verify the name (such as from the trust deed or other reliable and independent documentation). If our understanding is incorrect, then we request AUSTRAC consult further on, and clarify, this requirement. We also request that AUSTRAC provide guidance in respect of what needs to be considered in respect of "the material asset contribution".

39. Consistent with a risk-based approach, FSC requests that any trusts to which the existing simplified verification procedure may be applied, be exempt from this requirement (namely any requirement to identify or to verify the identity of the settlor).

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Requirement to determine whether any individual customer or beneficial owner is a PEP (and if so, carry out specified due diligence steps)

40. While general industry practice is to screen customers for PEP identification, to our knowledge the wealth management industry may not generally screen whether a beneficial owner of a customer (as opposed to the customer) is a PEP. The draft CDD Rule changes relating to PEPs (to the extent they require identification of whether a customer identified as a PEP is a beneficial owner of any other customer of the reporting entity) would require *significant* system development and expense. As such, the transitional period needs to

provide sufficient time for industry to undertake the required systems development. This is just one of the reasons why a transition timeframe of at least 24 months is needed for the wealth management industry to be in a position to implement these reforms. To be clear, 12 months (if AUSTRAC is considering such period) is insufficient – we think it is important that AUSTRAC is aware of this prior to AUSTRAC (or Government) deciding the transition period.

41. The Interpretative Notes to FATF Recommendation 10 of the FATF 2012 Recommendations recognises that the timing of verification may be affected by the need to not interrupt the normal conduct of business and further that financial institutions should also adopt risk management procedures with respect to procedures under which a customer may use the business relationship prior to verification.

42. FSC notes that the process by which FSC members currently establish whether a customer is a PEP may generally be a process undertaken shortly after the provision of the designated service and therefore the ML/TF risk could not be considered before commencing to provide the designated service (as required by draft CDD Rule 4.1.2(5)(b)). FSC suggests that the applicable wording be amended to allow for these risks to be considered "within a reasonable time following provision of the designated service". This is specifically allowed for under FATF Recommendation 10 subject to appropriate risk management procedures.

43. FSC considers the new requirement to determine whether a new customer (or beneficial owner) who is a PEP is also a beneficial owner of another (existing) customer of the reporting entity is difficult to implement, particularly across existing customers because systems may not be set up to provide for the appropriate search functionality and/or the information may be maintained across various platforms/systems. FSC requests that the relevant wording be amended to allow for reporting entities to conduct this check “where reasonable for the reporting entity to do so” (or similar).

44. The draft CDD Rule 4.13.1(3) states that the reporting entity must determine whether “*any information*” collected about the PEP should be verified. Yet draft CDD Rule 4.13.1(2) already requires the identification requirements specified in draft CDD Rules 4.2.3 to 4.2.9 to be complied with, and draft CDD Rules 4.2.3 to 4.2.9 contain identification and verification requirements. Therefore, it is unclear whether the reference to “determine whether *any information* collected about the politically exposed person” (appearing in draft CDD Rule 4.13.1(3)) “should be verified” is referring to verification required by Rules 4.2.3 to 4.2.9 or

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some other verification. If the former, draft CDD Rule 4.13.1(3) is duplicative and redundant; if the later then draft CDD Rule 4.13.1(3) should provide (addition underlined) "determine whether any other information collected about the politically exposed person should be verified…".

45. FSC submits that the Part 4.12 requirements should apply at the time the reporting entity determines the customer is a PEP rather than before commencing to provide the designated service because at that earlier point the customer may not be a PEP but they may subsequently become one.

Ongoing Customer Due Diligence

46. Draft CDD Rule 15.11 is unduly prescriptive and the current position under the AML/CTF Rules where the level of enhanced customer due diligence is applied on a risk based approach should be retained.

Requirement to take reasonable measures to keep, update and review records relating to the identification of customers and beneficial owners

47. The existing AML/CTF Rules (Rule 15.3) set out obligations which requires reporting entities to put in place risk-based systems and controls to determine whether and in what circumstances KYC information should be updated and/or verified in respect of customers for ongoing customer due diligence (**OCDD**) purposes.

48. Any requirement to perform wholesale OCDD, that is to update or review customer identification information for all customers would be excessively onerous for reporting entities and have limited benefit. This is particularly the case for customers of reporting entities in the wealth management sector, given that a reporting entity in that sector may only interact with a customer on an annual or periodic basis.

49. FSC's interpretation is that "reasonable measures" will generally be determined by the level of risk and as a result, proposed CDD Rules 15.2 and 15.3 are intended to primarily be applied for high risk customers. If this is not the case, the draft CDD Rules should be amended to clarify the intention of the proposed reforms.

Disclosure certificates and documentary verification

50. FSC notes the significant changes proposed to Chapter 30, relating to disclosure certificates. FSC believes that the enhanced requirements under the draft CDD Rules in relation to beneficial owners and PEPs may mean that some reporting entities could make an appropriate risk-based determination that disclosure certificates might have greater utility than under the current AML/CTF Rules. FSC seeks to ensure that the relevant rules are not so restrictive that they prevent appropriate use of disclosure certificates.

51. FSC notes the proposed addition of draft CDD Rule 30.2(4), which when combined with the new words "but only in the following circumstances" would appear to prohibit any reporting

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entity from using any disclosure certificate obtained from a customer: (a) which is signed by a person other than those specified; or (b) that is for any purpose other than those specified in paragraphs 30.3 to 30.9. This prescriptively limits the use of disclosure certificates.

52. FSC suggests that it may be appropriate in a broader range of circumstances for a disclosure certificate to be used (and for the AML/CTF Rules to permit such use) as reliable and independent evidence of various matters under the Rules (subject of course to an assessment of its reliability and independence).

53. In particular, FSC wishes to make the following comments relating to the use of disclosure certificates:

54. *Name and address OR name and DOB*:

(a) FSC suggests that the references to "full name and full residential address" of a beneficial owner in paragraphs 30.3 be replaced with a reference to "either the full name and full residential address, **or** the full name and the date of birth".

55. *Verification of additional matters, but that use be subject to ML/TF risk assessment*:

(a) FSC suggests that the words "but only" should be deleted from draft CDD Rule 30.2. The words "but only" will prescribe (and limit) the use of disclosure certificates in relation to beneficial owners.

(b) FSC further suggests that a new paragraph should be added, specifying that an AML/CTF Program may provide that other information may be collected using a disclosure certificate, subject to an assessment (to be documented in each case) of the ML/TF risk of relying on a disclosure certificate from a person associated with a customer, why the relevant certificate is regarded as being appropriately reliable and independent in the circumstances, and the reasons why it is not practical to use other alternative reliable and independent evidence to establish the matter.

56. *Verification that there are no beneficial owners through ownership*:

(a) FSC notes that the proposed new customer identification rules are intended to be based on the FATF graduated scale for identifying beneficial owners by ownership, and in the absence of beneficial owners at that level, moving to additional levels of beneficial ownership by control and so on. For some customer types (in particular, foreign listed companies) it is likely that there would in fact not be any individual holding 25% of the stock, but it may be disproportionately difficult to demonstrate that this is so. FSC therefore requests AUSTRAC to confirm (perhaps in AUSTRAC Guidance or in the Explanatory Note accompanying the finalised CDD Rules) that a disclosure certificate from a listed foreign company could verify the beneficial owners by (for example): (a) confirming that no individual owns more than 25% of the shares in the company, and (b) providing the name and date of birth of the chief executive officer.

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57. *Persons who may provide a disclosure certificate*:

(a) FSC submits that the persons who can under the draft CDD Rules provide a verification certificate may be too restrictive, making the use of disclosure certificates impractical in some cases. The limited and exhaustive permitted uses of disclosure certificates under the draft CDD Rules is especially problematic given that by virtue of the CDD reforms, the need for disclosure certificates will increase.

(b) For example, for companies generally, a certificate must be signed by "a director or secretary or AML/CTF officer or equivalent officer" of the company. Firstly, from the grammar of the sentence as drafted and in particular the double use of the undefined word "officer", it appears (albeit it is not entirely clear) that "equivalent officer" is intended to only qualify the words "AML/CTF officer" rather than referring to persons (i.e. officers) equivalent to a director or secretary. The same comments apply for the other entity types. FSC notes that entities that are not regulated under AML/CTF laws (whether in Australia or outside) will typically not have an AML/CTF officer nor any "equivalent" officer, and generally not an officer that is even similar to an AML/CTF officer. FSC suggests that a "public officer" (as understood under Australian taxation laws) or equivalent may be a more suitable person to mention and would make it more practical for disclosure certificates to be obtained.

(c) FSC understands that in many foreign jurisdictions there is no equivalent to a company secretary under Australian company law, meaning that the only class of persons who could sign a certificate are directors. FSC members understand from experience with other jurisdictions that in some countries, directors have specific responsibilities to avoid providing certification of information about the company. Further, when dealing with a large company for which a particular transaction is not strategic, it is unrealistic to expect that directors would be involved in the transaction or prepared to provide any certificates requested by a counterparty (or a reporting entity).

(d) FSC suggests that, given the likelihood that disclosure certificates (by virtue of the CDD reforms) will become a more significant means of verifying information required to be verified, the persons who can provide disclosure certificates should be expanded by simply referring to a person who is authorised to provide certifications in relation to or on behalf of the entity (subject to some reasonable risk based assessment of the appropriateness of that person's certificate being accepted).

(e) Some examples of *additional* persons who would be appropriate in specific cases (compared with the current position) to provide disclosure certificates are set out below:

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i. For a foreign company that is registered in Australia – local management, such as the country officer;

ii. For an association (such as a school parents and citizens association), the principal of the school;

iii. For a trust, an accountant who has prepared or audited the most recent accounts of the trust.

Verification of documents outside Australia:

58. Although the relevant provisions (the definition of "certified copy") are not proposed to be amended, FSC submits that the enhanced customer due diligence requirements may lead to a greater need to obtain reliable and independent documentary verification from persons outside Australia than has previously been the case. As such, there may be a greater need for "certified copies" to be obtained. Where a copy is required to be certified in a place outside Australia, there can be material difficulty in doing so. Outside Australia, the options are essentially an Australian qualified legal practitioner, and an Australian consular officer. Certification through an Australian consulate may not be practical in countries where Australia maintains a formal consulate, and FSC notes that in many regions of the world Australia relies on honorary consuls, who have no authority under the Statutory Declarations Regulations.

59. FSC submits that where a copy is to be certified outside Australia, the certification should be valid if it is provided by a person authorised to act as a notary public in the relevant country.

We thank AUSTRAC for the opportunity to comment on the draft CDD Rules. If you have any questions on our submission, please contact Stephen Judge on (02) 9299 3022.

Yours sincerely

STEPHEN JUDGE
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