

13 February 2018

Director
Rules
AUSTRAC
PO Box 5516
West Chatswood NSW 1515

By email: aml_ctf_rules@austrac.gov.au

Dear Director

Draft AML/CTF Rules- amendments resulting from the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2017: Digital Currency*

The Financial Services Council (**FSC**) has over 100 members representing Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks and licensed trustee companies. The industry is responsible for investing more than \$2.7 trillion on behalf of 13 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the third largest pool of managed funds in the world. The FSC promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

Thank you for the opportunity to provide a submission on this topic. By way of general observation, the FSC supports "modernisation" of the legislation to capture new and emerging forms of monetary transfers and their equivalents, such as digital currency. However, our members have identified some issues with the proposed changes, which we discuss further below. We now comment as follows-

1. **Financial Institutions** – it would be useful if further clarity and explanation could be provided around the types or categories of Financial Institutions, which now fall within the Act, in the view of AUSTRAC, as a result of the expanded definition of correspondent banking relationship;
2. **Other Serious Crimes** – the proposed amendments introduce this concept. It would be useful for our members to obtain some further information or practical comment as to how this might impact upon business practices and how AUSTRAC anticipates these provisions will be administered;
3. **Correspondent Banking Relationships** – The amendments propose that sections 97 – 99 of the Act only apply to such relationships that involve a Vostro account; as compared with both Vostro and Nostro accounts as is currently the case. It is not entirely clear to us why this distinction is drawn

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in this particular instance. It also seems to be inconsistent with international banking practice in terms of risk management where such accounts are considered together and holistically;

4. Relationship Management Application keys (RMA keys): In terms of international practice, correspondent-banking relationships are considered from a 'trade' perspective which includes the exchanging of RMA keys. International best practice appears to be proceeding in a direction of providing more information around due diligence requirements for RMA keys relating to trade and payments. However, the legislation does not appear to accommodate or contemplate this international movement. This is a matter which could usefully be considered in due course;

5. Definitional Issue- In relation to transactions involving digital currency, the formulation is expressed as follows (for example, in relation to threshold transactions) –

where the transfer involves digital currency:

(i) the denomination or code of the digital currency and the number of digital currency units;

(ii) the equivalent total amount of digital currency in Australian dollars, if known;

(iii) a description of the digital currency including details of the backing asset or thing, if known;

where the threshold transaction involves digital currency:

(i) the denomination or code of the digital currency and the number of digital currency units;

(ii) the equivalent total amount of digital currency in Australian dollars, if known;

(iii) a description of the digital currency including details of the backing asset or thing, if known;

We assume that the reference to "thing" is intended to operate so that any sort of supporting basis for digital currency is captured. However, for clarity, it would be useful if some further explanation could be provided;

6. Reporting – members have asked whether the SMR and TTR changes for digital currency are intended for financial institutions to include in their reporting or whether these changes are intended only for Digital Currency Exchanges. By way of an example, if a customer made a cash deposit to a dealer's account (with a financial institution) would that financial institution be expected to provide information on its TTR/SMR relating to digital currency? Given the use of the word "involves", there is a risk that the financial institution would be so required to report. However, it is not entirely clear. Similarly, the inclusion of transfer of digital currency within suspicious matters, a financial institution might provide an account or facility, but it will not be the direct settlor of or participant in the digital transactions. Clarity accordingly is required here;

7. Digital Currency Exchange Providers (DCEPs) – is it anticipated that AUSTRAC will maintain a register of registered DCEPs, which providers of designated services may refer to when providing commercial services to a DCEP. In similar vein, is it intended that registration for DCEPs is mandatory?

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8. **Transition** – it would be appropriate that a transition period be provided for DCEPs to ensure they are in a position to comply with the legislation. A transition period of in the order of 12 months is likely to be appropriate.

Should you have any questions, please contact the writer on 02-9299 3022.

Yours Faithfully

A handwritten signature in blue ink that reads "Paul Callaghan". The signature is written in a cursive, flowing style.

Paul Callaghan

General Counsel