



10 May 2011

Director - AML/CTF Rules
AUSTRAC
PO Box 13173
Law Courts
MELBOURNE VIC 8010

By email: aml_ctf_rules@austrac.gov.au

Dear Sir/Madam

Draft AML/CTF Rules amending Chapter 4 in relation to self-managed superannuation funds

We refer to the Draft Rules amending Chapter 4 (the Draft Rules) published on the AUSTRAC website at http://www.austrac.gov.au/aml_ctf_rules.html.

As set out in AUSTRAC's Information Circular No. 62, AFMA's members understand that the NSW Police Force is investigating the activities of an organised crime syndicate whose continued activities are suspected to include:

- creating false identities of members of regulated superannuation funds to steal a member's superannuation entitlements through the opening of bank accounts; and
- stealing funds from superannuation accounts via rollovers to falsified self managed superannuation funds.

Under the Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) (the AML Rules) currently in force, self-managed superannuation funds (SMSFs) that have elected to be regulated by the Australian Taxation Office (ATO) are currently eligible to be viewed by reporting entities as *"..subject to the regulatory oversight of a Commonwealth statutory regulator in relation to it's activities as a trust.."* under the Simplified Trustee Verification Procedure (STVP) under Rule 4.4.8.

Under the Draft Rules, the STVP has been amended in three sections by the addition of the words ***"..but not including a self-managed superannuation fund"***. No further amendments have been made to the Draft Rules to mitigate the types of criminal

activities set out above. Both of these activities, we believe, could be addressed more effectively by other responses from government.

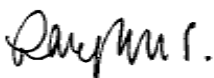
As the AML Rules have not been substantively amended to deal with these specific threats, the inference drawn is that the sole purpose of the Draft Rules is to shift the regulatory oversight responsibilities from the ATO onto reporting entities operating in the financial sector, in regard to the customer identification procedure (CIP) for SMSFs. The operational effect of this will be quite profound. Whilst verification of a SMSF has up until now been as efficient as taking an extract from the ATO, the requirement to source the original or certified trust deed may take many days or even weeks. In addition to creating further burden for reporting entities, the position is of concern to AFMA members as it would appear that the ATO is seeking to abrogate its regulatory responsibilities in regard to SMSFs.

A key point to be made is that the first victim of this kind of fraud perpetrated by the organised crime syndicate is the ATO. The ATO should be responding effectively to this specific threat, as the industry does in business as usual for the many other AML and CTF threats it faces on an ongoing basis.

A key AML advantage which the ATO has is being able to co-operate with the NSW Police Force to access intelligence about criminal modus operandi regarding SMSF fraud. As set out in AUSTRAC's Information Circular No. 62, "*..the syndicate...used personal details from stolen mail to produce high quality counterfeit identity documents*". Identity documents are a core requirement of the AML Rules and it would present a hefty burden on reporting entities to recognise fraudulent identity documents which otherwise appear to be legitimate. Reporting entities do not have the advantage of intelligence from the NSW Police Force, but would be 'starting from scratch' in taking on the ATO's responsibility in developing a CIP against criminal activities which are sophisticated, and ongoing.

AFMA submits that the Draft Rules are counterproductive in strengthening the AML and CTF regime in Australia, as they simply shift the responsibility for undertaking the CIP on SMSFs from the ATO to reporting entities. Our members further submit that the Draft Rules are counterproductive to improving the quality and reputation of AML practices in Australia, undermine the regulatory credibility of the ATO, and accordingly should not be consolidated into the existing AML Rules.

Yours sincerely



Tracey Lyons
Director Market Operations