



12 August 2022

Director,
Rules, Exemptions and MOUs
AUSTRAC
PO Box 5516
WEST CHATSWOOD NSW 1515

Attention: Evan Schnell

Dear Director,

Proposed Amendments to Chapter 16 of the AML/CTF Rules

The Australian Financial Markets Association (AFMA) represents the interests of over 120 participants in Australia's wholesale banking and financial markets. Our members include Australian and foreign-owned banks, securities companies, treasury corporations and traders across a wide range of markets and industry service providers. Our members are the major providers of services to Australian businesses and retail investors who use the financial markets. The majority of AFMA's members are reporting entities for the purposes of the AML/CTF Act.

AFMA welcomes the opportunity to provide feedback on AUSTRAC's proposed amendments to Chapter 16 of the Rules to accommodate the migration to the ISO 20022 MX Format for SWIFT messages, effective November 2022. Overall, AFMA is supportive of the proposed amendments to update the Rules to reflect the new message format; however we note concern to the extent that the proposed amendments go beyond this specific objective.

Comments and questions in relation to the proposed amendments are set out below.

Proposed Rule 16.6

AUSTRAC has proposed to insert Rule 16.6, which provides that "A report under subsection 45(2) must not contain a Tax File Number (TFN) as defined in the *Income Tax Assessment Act 1997*." AFMA also notes that there is a proposed addition to Rule 16.3(3)(a)(i) which states that the information to be included in the report is "subject to subparagraph 16.6."

From AFMA's perspective, this proposed amendment raises concerns for members as this does not appear to have any nexus to the proposed migration of the SWIFT messaging format to ISO 20022 and was not foreshadowed as part of consultation with industry. There are a number of scenarios where TFN information may be populated in a payment by the customer (ordering and beneficiary) and the Ordering

Institution. On this basis, AFMA's preference would be that the restatement of the existing requirements with respect to TFNs not be an actual rule, but rather referred to in the Explanatory Statement and/or AUSTRAC guidance. This would avoid the scenario where an otherwise compliant IFTI was provided to AUSTRAC which, by virtue of it inadvertently including a TFN, becomes non-compliant due to it breaching the Rules, noting the application of Section 45(3)(b) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

As noted in Rule 16.3, Reporting Entities generally are obliged to report details as they appear in the instruction. To this end, we have interpreted the proposed amendment to Rule 16.3(3)(a)(i) as giving the Reporting Entity the right to remove the TFN from the instruction prior to reporting, but not the obligation.

Confirmation from AUSTRAC would be appreciated as to the regulatory expectation where an incoming message includes a TFN, i.e. is it the expectation that the reporting entity needs to remove the TFN prior to providing a copy of the message to AUSTRAC, and whether the regulatory expectation differs depending on whether the TFN is disclosed in the Tax ID field or in a free tax field on the MX message. Further, to the extent that the reporting entity is acting as an intermediary, in the event that there is a requirement to remove the TFN, we query whether this means that the reporting entity is obliged to retain two copies of the message, one with the TFN and one without.

If the regulatory expectation is for Reporting Entities to remove the TFNs, then Reporting Entities will require time and need to allocate resources to amend policies, undertake systems changes and develop controls to ensure that the requirements are adhered to. It is expected that a minimum of twelve months will be required for such changes.

Proposed Rule 16.4

AFMA is largely comfortable with proposed Rule 16.4 on the basis that a reporting entity will not breach the *Privacy Act 1988* when passing on the message as received. Our understanding of the proposed Rule is that whatever additional information may be included on a message under the MX format will be permissible such that, when a copy of the message is provided to AUSTRAC under proposed Rule 16.4, any information included on the message will be such that the message represents a compliant IFTI message, to the extent that the requirements of 16.2/16.3 are satisfied.

We enquire as to the use of the word "may" in Proposed Rule 16.4(2). Can AUSTRAC please confirm that, to the extent that the reporting entity does not report everything received on the message but does report the items required under 16.2/16.3, then this will be a compliant IFTI? We also note that while the draft Explanatory Statement refers to "additional information," this term is not defined in Chapter 16.

From a practical perspective, confirmation is sought as to whether AUSTRAC is planning to release any changes to better support reporting of additional information contained in the MX message, such as updating the schema and/or updating AUSTRAC Online to support the additional data field.

* * * * *

Please contact me on (02) 9776 7996 or rcolquhoun@afma.com.au if you have any queries about this submission.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Rob Colquhoun', written in a cursive style.

Rob Colquhoun
Director, Policy