



14 April 2022

Richard Bunting  
Principal Specialist, Education, Capability and Communications  
AUSTRAC  
Level 27, Tower 2, 727 Collins Street  
Docklands VIC 3008

Dear Richard,

### **Proposed Guidance on Source of Funds and Source of Wealth**

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, 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the opportunity to provide feedback on AUSTRAC's proposed guidance on source of funds and source of wealth (**the Draft Guidance**). Overall, the Draft Guidance is welcomed and should provide a useful reference point for reporting entities.

#### **Intention of the Guidance**

We seek clarity from AUSTRAC as to the scope of the requirements articulated in the Draft Guidance, particularly whether determining/verifying the source of funds and source of wealth applies to all customers, only high-risk customers or those customers subject to enhanced due diligence. For example, the last dot-point on page 3 of the Draft Guidance states that "as part of ongoing due diligence and monitoring **for all customers** (emphasis added)." This does not appear to align to other parts of the Draft Guidance that acknowledge that the requirements apply only to high risk customers that are subject to enhanced due diligence.

#### **Consistency with AUSTRAC Guidance on Debanking**

The Draft Guidance states that "if you cannot satisfactorily establish the source of funds or the source of wealth for a high-risk customer, you should consider whether to continue to provide designated services to the customer." This statement appears to be at odds with the approach taken by AUSTRAC in the recently issued draft guidance on debanking with respect to remitters, digital currency exchanges and fintech businesses. We would appreciate clarification with respect to AUSTRAC's expectations.

## **Expectations for Establishing Source of Funds/Wealth**

It is noted that on page 9 of the Draft Guidance, AUSTRAC lists a number of information sources, specifically:

- bank statements
- payslips
- a will (or a certified copy)
- a trust deed (or a certified copy)
- audited financial accounts showing funds disbursed to the customer
- sale/purchase agreements
- receipts of other transactions or similar documentation
- documents detailing share transactions, business activities, bequest of a gift, insurance payouts, inheritances, gambling winnings, trading in digital currencies, etc.

The Draft Guidance states that these information sources may be used “to establish the source of funds or source of wealth.” Our view is that these sources should be split into what is acceptable to establish a source of funds and those for source of wealth, noting that the sources do not appear particularly appropriate for the latter.

Further, in AFMA’s view, it is not always the case that establishing source of wealth/funds requires separately collecting and verifying information, as in some cases the reporting entity may be able to consider information obtained through establishing the position of wealth that informs the source of that wealth (such as a credit assessment). The Draft Guidance should acknowledge the ability of reporting entities to rely on previously obtained information to establish the source of wealth/funds. Specifically, an additional dot-point should be included under “Collecting information on the source of funds and source of wealth” which reads:

- “information you have collected about or from the customer as part of your credit risk assessment of the customer (e.g. for the purpose of assessing the customer’s loan application)”

Finally, we would welcome clarification from AUSTRAC that verification of sources of funds/wealth can also occur via public sources of information.

## **Mapping Guidance to Statutory Obligations**

AFMA believes that the Draft Guidance could be enhanced through the inclusion of specific legal references (i.e. relevant provisions of the Act/Rules) to the obligations articulated in the Draft Guidance. The inclusion of specific legal references will allow for reporting entities to map the mandatory statements in the Draft Guidance to the legal requirements.

For example, there are statements in the Draft Guidance to the effect of “you must collect and, on a risk basis, verify the source of funds and source of wealth when your customer is a foreign politically exposed person or a high money laundering and terrorism financing (ML/TF) risk domestic or international organisational PEP.” There should be a reference to the relevant Rules (Rule 15(2)(a)&(b)) and alignment between the guidance and the specific legal requirements.

### **Customer Type**

It is noted that the Draft Guidance is drafted in a way that primarily relates to individual customers and could be enhanced with further comments/examples as to AUSTRAC's expectations with respect to non-individuals.

### **Clarification of Specific Scenario**

A particular circumstance that has been raised with AFMA is AUSTRAC's expectations to determine the source of funds/wealth where the PEP is the CEO of a company which is a state-owned enterprise and not therefore, a substantial shareholder. While this example is potentially too narrow for inclusion in the Draft Guidance, AUSTRAC's view on the obligations in this circumstance would be welcome.

### **Interaction with Australian Privacy Principles**

For completeness, we believe that the Draft Guidance should acknowledge that reporting entities are required to abide by the Australian Privacy Principles in verifying the source of funds/wealth.

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

Yours sincerely,



Rob Colquhoun  
Director, Policy