AFMA

13 July 2018

Mr Richard Bunting
Director, Policy and Guidance
Strategic Intelligence & Policy
AUSTRAC

By email: richard.bunting@austrac.gov.au

Dear Richard

Updates to AUSTRAC Compliance Guide re self-attestation of identity; independent review of AML/CTF programs

Thank you for the opportunity to provide comments on the proposed updates to the AUSTRAC Compliance Guide in relation to self-attestation of identity and independent review of AML/CTF programs.

1. Self-attestation of identity

AFMA has no comments on the proposed updates in relation to self-attestation of identity.

2. Independent review of AML/CTF programs

Note – comments correspond to the headings in the Guide

What is an independent review?

The way in which the section is drafted seems to refer to the AML/CTF Program as a whole and not only to Part A. For consistency purposes, we suggest referring to Part A throughout.

The third paragraph states that "..independent reviews also provide an opportunity to *ensure* that previous audit issues have been addressed." An independent review cannot ensure that the issues are addressed, as this is a business responsibility. Accordingly, we suggest a minor amendment to say that "..independent reviews also provide an opportunity to *validate* that previous audit issues have been addressed", or similar wording.

It is not clear when AUSTRAC would expect the independence of a reviewer to reset - for example, would someone who reviewed an AML/CTF program a number of years (eg. 5 years) ago be considered sufficiently independent to conduct a review now. While this is ultimately a matter for the reporting entity to decide, it would be helpful to have some guidance about AUSTRAC's expectations.

What matters should the independent review consider?

We suggest adding a comment at the end of the first sentence under this heading to the effect that not all of the items listed in the bullet points would need to be addressed at the same time during an independent review as it would be dependent on certain changes occurring within a financial institution. For example, if a firm was currently transitioning to a new transaction monitoring system, a review would be conducted on transaction monitoring once the new system is implemented. It could also be the case that some of the items listed in the bullet points are reviewed by different parties, depending on the circumstances.

What should be in the independent review report?

The areas listed in the bullet points under this heading are not typically included in independent review reports but instead form part of the working papers. This requirement seems overly prescriptive, especially as most internal audit functions have set reporting formats that would not accommodate this level of detail.

How often should the independent review be conducted?

The proposed maximum period of 2 years between independent reviews may not be realistic for large complex organisations.

In particular, it does not match the wide spectrum of Australian reporting entities, and the wide range of ML/TF risk that such reporting entities present, depending on factors outlined in the AML/CTF Rules (ie. nature, size, industry, customer types, products & services, delivery channels and so on).

It is common industry practice that REs fall into one of three ML/TF categories: *low, medium or high risk*, depending on the results of their ML/TF risk assessment. As such, it is more reasonable for the RE to match its review frequency to the level of ML/TF risk it presents. Therefore we recommend that AUSTRAC considers changing the language to reflect a more risk-based approach, or changes the maximum recommended period in between periodic review to not exceed three years.

A good-quality independent review looks back at the performance of an AML/CTF Program-Part A over the period of at least a year and in some cases more, in order to assess whether the AML/CTF Program-Part A has been in compliance with the applicable AML/CTF Laws and has been operationally effective over that time period. The impact of a maximum two year interval would mean that the operation of the program would be under review/testing for up to 50% of the time, which for a low risk RE whose risk factors and program have not changed year-to-year, and has had no issues noted in its previous reviews/audits/risk assessments, is not reasonable.

Additionally, the review itself can take several weeks if not months to be performed and for a report to be issued. Some reviews could conceivably take up to six months from the point they are started until findings noted in the report have been actioned. It would be unreasonable to be under review, or have a review going on, for the majority of a 2 year interval period, again for an RE that is low risk.

Requiring an independent review at such a regular frequency would also add considerably to the burden and high cost of compliance for REs in Australia. While the independent review is a valuable aspect of the regulatory regime, it is not sustainable for REs to adopt measures that require a significant amount of additional resources if it is not justified.

What factors might lead to more frequent independent review of Part A of your AML/CTF program?

While some of the factors listed in the bullet points under this heading are valid points, again they are too prescriptive. Frequency of internal audit reviews are normally set in an annual audit plan and the plan would not ordinarily allow for such a flexible adjustment of audit timings. However, provided that the Guide is not a proxy for compliance requirements, then some reporting entities may find the suggested factors or circumstances and the examples useful.

Clarification is needed as to whether these factors are to be considered as trigger events to conduct out-of-cycle reviews or as factors to determine the frequency of the periodic reviews (ie. supporting the decision to choose a relevant frequency for periodic reviews as a starting point). Some of the factors listed do represent trigger events (eg. changes to the ML/TF risk) and other examples represent activities of a financial institution in the normal course of business without articulating the increased level of risk - for example:

"Whether the reporting entity allows transactions to be conducted in cash."
"*Whether the reporting entity has commenced servicing new customer types, or commenced providing new designated services and/or new products, or has commenced providing services through new channels."*
"Whether the reporting entity has outsourced some of its obligations to another entity."

In general, a bank will always allow transactions to be conducted in cash and will provide new products and services to its customers. It would be helpful to clarify AUSTRAC's expectations on how a bank should interpret these factors to influence the decision to conduct more frequent independent reviews. For example, in the current wording of the guidance, is it AUSTRAC's expectation for a reporting entity to conduct reviews more often than 2 years if the entity allows transactions to be conducted in cash? Or is the expectation to conduct a trigger event independent review if the entity started to conduct cash transactions as part of its business model (ie. a change in the ML/TF risk profile)?

We trust that you find the above comments helpful. Please contact me on 02 9776 7997 or tlyons@afma.com.au if you have any queries.

Yours sincerely

Tracey Lyons
Head of Policy