

27 February 2018

Director
Rules
AUSTRAC
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By email: aml_ctf_rules@austrac.gov.au

Dear Director

Draft Amendments to the AML/CTF Rules resulting from the Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2017 (the Draft Rules)

The Financial Services Committee (**FSC**) of the Business Law Section of the Law Council of Australia welcomes the opportunity to provide this submission on the Anti-Money Laundering and Counter-Terrorism Financing Draft Rules (**Draft Rules**) published on the AUSTRAC website on 16 January 2018.

The Draft Rules implement a number of amendments resulting from the passage of the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2017* (Cth) in December 2017 (**the Amending Act**). The Act implements the first phase of reforms arising from the recommendations of the *Report on the Statutory Review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and Associated Rules and Regulations* (**the Statutory Review**), including to regulate digital currency exchanges.

Explanatory Materials and Guidance

The digital currency payments industry is by nature highly technical and rapidly evolving with widely varying levels of sophistication and resourcing among its participants, as is also the case in other industries that are within the ambit of the *Anti-Money Laundering and Counter-Terrorism Financing Act* (Cth). While many of these participants have great expertise in information technology and financial and operational risk management, the judgements these businesses will be required to make and the reporting culture that they will be required to develop in order to implement an AML/CTF program may require substantial change to the way they currently do business. Nevertheless, from the Committee's experience (and anecdotally), digital currency exchanges and wallet providers are generally highly motivated and resourced to achieve this.

It will assist in the implementation of the new rules if AUSTRAC is able to apply the recommendations of the Statutory Review, and lessons from other industries; for example, by the provision of guidance and risk assessments. The Explanatory Notes to the Draft Rules, unlike the Explanatory Memorandum to the Amending Act, are very brief and 'high level' and therefore of limited assistance to providers of the new designated services.

AUSTRAC publications can fill that gap by making clear statements as to AUSTRAC's view of high risk industry features such as anonymous wallets. This may counter any appearance that dealing with the holders of anonymous wallets is something of a red flag, notwithstanding the optional nature of the provision of this information in the prescribed details for suspicious matter and threshold transaction reports. We express the hope that AUSTRAC will be bold in publishing its position in regard to this and other potentially novel issues, while recognising that in order to provide the necessary guidance for efficient and effective transition of the industry to compliance it may be necessary to take positions that may need to be refined or changed in the future.

Renewal of Registration

Section 76H provides that registration on the Digital Currency Exchange Register ceases (among other reasons) after three years. Registration may be renewed pursuant to section 76L which provides that the Rules may provide for the criteria for determining applications for renewal.

Although the number of registered digital currency exchange providers is likely to be relatively low, at least in the short term, we wonder if there is a regulatory net benefit in having a positive obligation to renew registration, as opposed to a 'negative' regime under which AUSTRAC would proactively respond to any information received raising concerns about a particular provider. The experience in the remittance sector, as we understand it from the information available to us, is that most participants exiting the industry due to AUSTRAC enforcement action do so as a result of cancellation of registration rather than failure to approve an application to renew. Further, there are instances where large and reputable businesses otherwise in good standing have been forced to shut down overnight due to a small but critical administrative oversight leading to the failure to submit to AUSTRAC the relevant renewal application in the required time. There is no regulatory benefit from such events. We therefore query whether an assessment has been conducted of the impact on AUSTRAC's strategic objectives if resources currently devoted to the routine administrative processing of renewal applications were reduced under a streamlined and light touch renewal process with the resources freed up then applied to heightened oversight and monitoring of the industry.

I trust these observations are of assistance.

Please contact James Moore, Deputy Chair of the FSC at jmoore@hwle.com.au in the first instance, if you require further information or clarification.

Yours sincerely



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Chair, Business Law Section