



7 June 2016

Consultation – Draft amendments to Chapter 22
Director
Rules
PO Box 13173, Law Courts
MELBOURNE VIC 8010

By email: aml_ctf_rules@austrac.gov.au

Dear Sir/Madam

AUSTRAC Draft amendments to Chapter 22 – exemption of certain types of transactions relating to the over-the-counter derivatives market

The Australian Financial Markets Association (AFMA) represents the interests of over 130 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.

As AUSTRAC is aware, in June 2013, AFMA made an application to clarify the operation of Chapter 22 of the AML/CTF Rules and to bring the Existing Exemption up to date to reflect current market practices and the products that are able to be traded in regulated electricity, gas and environmental product markets.

The primary purpose of the application for exemption was twofold:

- To clarify the scope of products covered by the exemption, particularly with respect to environmental products (including to “future-proof” this definition); and
- To clarify the categories of entities covered by the exemption

AFMA thanks AUSTRAC for their consideration of the application, and is supportive of the draft amendments, as the amendments largely achieve these objectives.

There are some minor amendments to the draft that AFMA believes that AUSTRAC should reflect in the Final Rules before finalising, as well as some areas in which AFMA would like AUSTRAC to consider in the future.

Minor amendments to the draft Chapter 22

The participants to whom the exemption applies to are referenced by the following Rules:

- *The National Electricity Rules;*
- *The Wholesale Electricity Market Rules; and*
- *The National Gas Rules*

We note that the inclusion of The National Gas Rules is new to this draft exemption, and for clarification purposes, **we suggest that a definition of these Rules that includes the legislation to which these Rules relate (i.e. National Gas Law) should be included in Section 22.6, as per the other two referenced Rules.** The AEMC should be able to assist with this wording.

Secondly, we note that the definition of environmental products includes transferable instruments “**created**” under Commonwealth, State or Territory Laws. We note that prescribed eligible carbon unit within the meaning of the CFI Act (which may have been created due to international regulations such as the Kyoto protocol) may not fall under this definition, although they are traded in the Australian market and recognised as environmental products under Australian legislation. Consequently we suggest that the definition of environmental products be amended slightly to read:

‘environmental products’ are transferable instruments created “**or recognised**” under Commonwealth, State or Territory laws which are intended to reduce non-renewable energy consumption or enhance environmental sustainability.

Issues for future consideration – entities covered by the exemption

Subject to the above recommendations, AFMA is supportive of the amendments, however would like to note another issue that could be considered in the future.

The inclusion of the over-the-counter derivatives market in environmental products is a welcome amendment to the draft Rules, and apart from the minor amendment above, serves to help “future-proof” the application of the exemption.

We note, however, that the list of entities to whom the exemption applies is largely limited to participants in gas and electricity markets who hold AFSL licences. Consequently, there may be participants in the environmental products market in derivatives who do not fall in this category, despite the fact that the exemption may have been intended to capture these participants given the low AML/CTF risk posed. These include:

- Some ASX-listed entities;
- Some international listed entities; and
- Other participants in environmental products, such as farmers.

Whilst this may be a minor section of the market, we suggest that you may wish to consider the inclusion of these types of participants in the environmental products market in the exemption. AFMA may engage about this further following the passing of the amendments.

If you have any questions, I can be contacted at mchadwick@afma.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read "M. Chadwick". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mike Chadwick
Head of Education and Director- Markets