9 December 2016

Director, Rules
AUSTRAC
PO Box 5516
CHATSWOOD   NSW   1515

By email: aml_ctf_rules@austrac.gov.au

Dear Sir/Madam

Privacy Implications
Collecting KYC Information From Sources Other Than The Customer

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.

We are pleased to provide a submission to AUSTRAC in relation to the draft Privacy Guidance on the privacy implications of collecting know your customer information from sources other than from the customer (**the Draft Privacy Guidance**). As AUSTRAC is aware, AFMA has been an advocate of the amendment to the Rules to facilitate the ability of reporting entities to collect KYC information "about the customer." AFMA lodged a submission in December 2015 in relation to the Draft Privacy Impact Statement arising from the proposed changes to Chapter 4 and our comments below should be read in light of that submission. We further note that the Privacy Impact Assessment was finalised in April 2016.

Our submission to the Draft Privacy Impact Statement sought clarity on the process of engagement between AUSTRAC and the Australian Privacy Commissioner. This request is reiterated to enable better understanding of the reason for the publication of the Draft Privacy Guidance, especially where it appears to adopt a different perspective to that set out in the final Privacy Impact Statement. In particular, we note that 2.10 – 2.12 of the Privacy Impact Statement noted the conditions in which it would be "unreasonable and

impracticable" to collect information from sources other than the customer. The Privacy Impact Statement noted that collection of the information about the customer at the time of on-boarding would generally be "consistent and in accordance with APP3" and highlighted the issues associated with collecting personal information about non-customers from independent sources.

Broadly, the feedback from the AFMA membership is that the comments contained in the Draft Privacy Guidance will impose significant restrictions on the ability of reporting entities to utilise the optional procedure to collect information "about" the customer, including potentially beneficial owners and PEPs as well as customers, such that the optional procedure is practically not available. This is due to the regulatory burden associated with documenting the reasons why the collection of information from the customer was "unreasonable and impracticable" and then operationally the need to split the customer base between those where the information was collected "from" the customer and those where the information was collected "about" the customer, noting the comments in the first bullet point under Paragraph 25 of the Draft Privacy Guidance.

Further, members have raised whether the expectation from AUSTRAC arising from the implementation of these amendments is that where information is collected "about" the customer then it must follow that information is verified by the customer and not through other sources. Support for this statement exists in paragraph 8 of the Explanatory Statement to the amendment.

In order for the Draft Privacy Guidance to be of practical benefit to the AFMA membership, more granular guidance would be necessary as to the circumstances/examples where information could be collected about either the customer, or individuals associated with the customer, without being in breach of requirements imposed under the *Privacy Act.*

Yours sincerely

Rob Colquhoun
Director, Policy