

11 November 2013

Joint response to consultation paper:

Practical implications of Reporting Entities transacting with other Reporting Entities and the Factsheet on Managing Intermediaries

Background:

The Financial Markets Authority published a consultation paper on 11 July 2013 concerning certain obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 ('AML/CFT Act'). The paper dealt with the obligations of reporting entities that transact with other reporting entities.

17 submissions were received from market participants, industry bodies, law firms and consultants. All submissions will be published on the FMA website together with this update, except where submissions requested that they be kept confidential. The submissions have been considered by The Ministry of Justice (the Ministry responsible for the AML/CFT Act) and by FMA, Reserve Bank of New Zealand and The Department of Internal Affairs (the AML/CFT supervisors). The following is a joint update from the Ministry of Justice and the three AML/CFT supervisors:

Response to consultation submissions:

Following our review of the consultation submissions, we propose to take action on two issues:

- (1) The definition of "beneficial owner" in section 5 of the AML/CFT Act; and
- (2) Proposal for simplified customer due diligence where a customer is a reporting entity.

1. Definition of "beneficial owner":

It is clear that there is uncertainty as to what is meant by "beneficial owner" in section 5 of the AML/CFT Act. We believe the definition was intended to include:

- (i) A natural person who owns a customer
- (ii) A natural person who controls a customer
- (iii) A natural person on whose behalf a transaction is being conducted

The 'natural person on whose behalf a transaction is being conducted' was intended to cover situations where a person is central to a transaction being conducted even though they do not control or own the customer.

Internationally, the guidance on beneficial ownership is still developing. The Financial Action Task Force ('FATF') is currently drafting guidance to support the implementation of the beneficial ownership requirements in the FATF Recommendations, including greater clarity about how and

through what means the 'natural person on whose behalf a transaction is being conducted' should be identified.

When the AML/CFT Act is next updated we will recommend the definition of "beneficial owner" is amended to make it clear that this term includes a natural person on whose behalf a transaction is conducted and aligns with the international guidance. We expect the legislation will be updated during the second phase of implementation, which is due to bring designated non-financial businesses and professions into the AML/CFT regime.

In the interim, the AML/CFT supervisors will concentrate on monitoring compliance with the obligation to identify the customer, and any owner or controller of the customer, pending the change to the legislation. The supervisors intend to amend the guidance to reflect this in due course.

2. Proposal for customer due diligence ('CDD') on reporting entities:

We recognise that the requirement to perform CDD on another reporting entity can lead to multiple reporting entities having the same CDD obligations. The consultation submissions highlighted many negative effects of this duplication, including duplication of effort for no discernible benefit, increased costs, privacy concerns, and deterring international investment.

After careful consideration of all the submissions received during FMA's July consultation, we consider that these issues may be best addressed by allowing reporting entities to conduct simplified CDD on certain financial institutions. This would be consistent with FATF recommendations.

We are in the early stages of formulating a proposed Ministerial exemption. As such, we seek submissions on the following outline of a proposed exemption and the practical implications of it. In short, the proposed exemption would permit entities to conduct simplified customer due diligence procedures on 'financial institutions', and may contain the following elements:

- Reporting entities may apply simplified customer due diligence procedures, as set out in sections 18-21 of the AML/CFT Act, where their customer is:
 - A 'financial institution' under section 5 of the AML/CFT Act; or
 - Would have been a 'financial institution' under section 5 of the AML/CFT Act if not for a specific exemption; or
 - A foreign 'financial institution' (or equivalent)
 - which is situated in another jurisdiction that imposes requirements equivalent to those laid down in the AML/CFT Act; and
 - is supervised for compliance with those requirements.
- Reporting entities must have reasonable grounds for believing that the customer falls within the exemption and may have to demonstrate this to their AML/CFT supervisor.
- As such, reporting entities should record the steps they have taken to ensure the status of the customer.
- No question of reliance will arise under sections 33 and 34 of the AML/CFT Act if the customer falls within the exemption.

- There is no exemption from the obligation to conduct customer due diligence where the reporting entity knows or suspects that a proposed relationship or occasional transaction involves money laundering or terrorist financing, or where there are doubts about the veracity or accuracy of documents, data, or information supplied by the customer.

The practical implications of the proposed exemption are as follows:

- A reporting entity could conduct simplified due diligence where it establishes a business relationship or conducts an occasional transaction with a customer who is a financial institution under section 5 of the AML/CFT regime.
- Simplified due diligence means not having to verify the customer's identity, or, where relevant, identify or verify the identity of a beneficial owner.

Issues for Comment

1. We encourage submissions on the following points:

- a. Are the proposed elements of the exemption sufficient?
- b. Are there other elements that should be included?
- c. Are there any unintended consequences of the proposed exemption?
- d. Should the exemption apply whenever a customer is a financial institution (or would have been a financial institution but for an exemption) or should certain financial institutions be excluded from the exemption, e.g. money remitters?

Consultation Period

The consultation period is six weeks.

Please send your written submissions to: Criminal Law Team, Ministry of Justice, Level 3 Justice Centre, 19 Aitken St, DX SX10088, Wellington 6011.

You can also email your written submission to international.crime@justice.govt.nz, clearly labelling your attached email submission "Practical Implications of Proposed Ministerial Exemption"

The deadline for submissions is close of business **Monday 23 December 2013**.

Next Steps

Once submissions have been received, Ministry of Justice will share and discuss submissions with the AML/CFT supervisors and other stakeholders as appropriate. More generally, please note that Ministry of Justice will not treat any part of your submission as confidential unless you specifically request it to do so.

Submissions will be subject to the Official Information Act 1982. Ministry of Justice may make submissions available on its website, compile a summary of the submissions, or draw attention to individual submissions in internal or external reports.

If you would like Ministry of Justice to withhold any commercially sensitive, confidential or proprietary information included in your submission, please clearly state this in your submission and identify the relevant extracts of information. Ministry of Justice will consider any request to have information withheld in accordance with its obligations under the Official Information Act.

