



FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

20 January 2017

Mr Philip Johns
Director, AML/CTF Rules
AUSTRAC
PO Box 5516
West Chatswood NSW 1515

Email: aml_ctf_rules@austrac.gov.au

Dear Mr Johns

Re. Revised draft privacy guidance relating to Chapter 4 of the AML/CTF Rules

The Financial Planning Association of Australia (FPA) commends AUSTRAC for its revised draft privacy guidance relating to Chapter 4 of the AML/CTF Rules.

The readability of the document has been significantly enhanced, improving the usability of the guidance for industry.

1. The FPA seeks clarity on how the APPs may apply when sourcing Know Your Client (KYC) information from other sources in the following scenario.

Financial planners have a direct relationship with the client. Product providers (for example, fund managers, super funds, insurers) and licensees do not usually have a direct relationship with the client. However product providers transact (buy and sell) financial products to the client.

Financial services product providers and licensees rely on KYC information collected by a financial planner and passed through to them, as permitted under Rule 7.2 (which permits third parties to rely on customer identification from Item 54 reporting entities, such as financial planners).

While financial planners have to gain consent to pass the information to the third party (to meet the confidentiality requirements of the Tax Agent Services regime), there is a question as to how the APPs apply to these third parties (product providers) when they accept and rely on the KYC info provided by financial planners for AML purposes.

We suggest the use of the customer identification information passed on to third parties should be limited to AML customer identification purposes only. Where the client has provided consent for information about them to be used for ID verification purposes, it should not be used for other purposes.

2. Paragraph 31 states:

The requirements under APPs 10, 12 and 13 may be mitigated to a large degree by the AML/CTF Rules obligation that customer identification, in most cases, is required to be verified by a reporting entity, regardless of whether the information is sourced directly from the customer or from another source. Generally this should ensure that identification information is not inaccurate, out-of-date, incomplete, irrelevant or misleading.



As Item 54 reporting entities, financial planners have an obligation to collect identification information from the client, which is then relied upon by product providers and licensees. However, financial planners are not currently permitted to verify the client identification (except where permitted to do so by their own licensee for internal clients). This creates significant inefficiencies in the identification process for both the client and the service providers.

Currently lawyers, Justice of the Peace and other individuals are permitted to verify customer identification. Financial planners who are members the FPA are qualified professionals who must hold a relevant degree and adhere to our ethical and professional standards. In contrast: to become a Justice of the Peace (in NSW for example), you must:

- be at least 18 years of age
- be nominated by a member of the Legislative Assembly or the Legislative Council (MP or MLC)
- be an Australian citizen or a person who is entitled to vote at a general election for the Legislative Assembly, unless the Attorney General exempts you from having to satisfy this criterion
- be of good character
- consent in writing to confidential inquiries being made as your suitability for appointment, including a criminal records check
- not be an undischarged bankrupt
- establish that your appointment as a justice of the peace is required for your employment or to fulfil a community-based need for the appointment

The FPA recommends AUSTRAC include financial planners on its approved person list for verifying customer identification. This could be limited to financial planners who adhere to the ethical standards of a recognised professional body.

3. The FPA provides the following suggested typographical amendments to the wording of the document to enhance the readability and understanding of the guidance, for your consideration.

Paragraph 2. The amendments relate to **information about (insert)**...

Paragraph 13. **Non-public** third party sources on which the customer may reasonably expect to be included are company websites and professional association databases. – the use of the term **non-public** is contradictory to the use of a website and some professional association database, both of which are in the public domain. The FPA seeks clarity on the meaning of this paragraph and the use of the term ‘non-public’ in this context.

Paragraph 14. In the following circumstances (relating to opening an account), a customer may also reasonably expect a reporting entity to collect information from **a source (insert)** other than the customer **where (insert)**:

Paragraph 20. Reporting entities should be aware that the requirements of APP 5 apply to all information collected about a customer under APP 3 (**collection of solicited personal information that is reasonably necessary or related to your function or activities**)(insert), either directly from the customer or from other sources.



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Paragraph 21. Reporting entities must take reasonable steps either before or after the collection of information from **a source (insert)** other than the customer, to notify the individual that such information has been collected.

If you have any questions, please contact me on 02 9220 4500 or heather.mcevoy@fpa.asn.au.

Yours sincerely

Heather McEvoy

Policy Manager

Financial Planning Association of Australia¹

¹ The Financial Planning Association (FPA) has more than 12,000 members and affiliates of whom 10,000 are practising financial planners and 5,600 CFP professionals. The FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first "policy pillar" is to act in the public interest at all times.
- In 2009 we announced a remuneration policy banning all commissions and conflicted remuneration on investments and superannuation for our members – years ahead of FOFA.
- We have an independent conduct review panel, Chaired by Mark Vincent, dealing with investigations and complaints against our members for breaches of our professional rules.
- The first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules that explain and underpin professional financial planning practices. This is being exported to 24 member countries and the 150,000 CFP practitioners that make up the FPSB globally.
- We have built a curriculum with 17 Australian Universities for degrees in financial planning. As at the 1st July 2013 all new members of the FPA will be required to hold, as a minimum, an approved undergraduate degree.
- CFP certification is the pre-eminent certification in financial planning globally. The educational requirements and standards to attain CFP standing are equal to other professional bodies, eg CPA Australia.
- We are recognised as a professional body by the Tax Practitioners Board.