Australian Banking Association

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Mr Hugh Dixon
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AUSTRAC
By email: hugh.dixon@austrac.gov.au

Dear Mr Dixon

Draft Chapter 79 dealing with conducting applicable customer identification procedure (ACIP) after account opening and initial deposit

Thank you for the opportunity to provide feedback on the draft Chapter 79 explanatory note ahead of its public consultation.

The ABA is seeking amendments to the draft explanatory note ahead of public consultation. These include:

- amendments to Chapter 36, relating to item 33
- clarification in the form of guidance
- Acknowledgement and accommodations for the significant system and process changes required to meet the legislative changes.
    - Provide an assisted compliance period of 18 months.

Discontinuance of proposed amendments to Chapter 46

The ABA is generally supportive of the proposal for the special circumstances for the opening of an account to be in a new Chapter of the AML/CTF Rules. However, the proposed Chapter 46 amendments circulated for comment in August* 2020 also included amendments to simplify the circumstances around the provision of Item 33 services. These were sensible amendments, and the ABA would recommend that AUSTRAC include the amendments to Chapter 46, relating to Item 33, as drafted.

Guidance needed on the application of ACIP after account opening and initial deposit to the account

The ABA refers to the explanatory note, which "allows a reporting entity to carry out the ACIP in respect of a customer … after opening an account, provided no transaction – other than an initial deposit made at the time of the account opening – is conducted in relation to the account". This allowance raises a number of questions for clarification which are detailed below.

What type of customers would a designated service be "essential to avoid interrupting the ordinary course of business?"

The ABA request that AUSTRAC clarify in the Explanatory Note what its expectations are regarding the following requirement:

> *The reporting entity must: (1) make a determination that carrying out the ACIP in respect of a customer after commencing to provide a designated service is essential to avoid interrupting the ordinary course of business.*

In particular, we welcome guidance that provides examples of "*providing a designated service that is essential to avoid interrupting the ordinary course of business*." For example, is there a sub-set of customers that this provision applies to such as vulnerable customers or for migrant banking or are all account opening services essential? Confirmation of this requirement is important to enable reporting entities to build system functionality.

What are "reasonable grounds" that opening an account before ACIP is "essential to avoid interrupting the ordinary course of its business" (Rule 79.2(1)).

The ABA is seeking clarity on whether it is AUSTRAC's view that Chapter 79.2(1) applies on a case-by-case basis every time an account is opened prior to ACIP; or is it permissible for a blanket determination be made by the reporting entity. For example, a reporting entity determines, on reasonable grounds, that accepting an initial payment to a term deposit to lock in the negotiated rate is essential to avoid interrupting the ordinary course of business. Rather than determining this each and every time it opens a term deposit, the reporting entity adopts this as a policy position and permits the client services team to open term deposit accounts and accept the initial deposit prior to completing ACIP.

What items and type of account does Rule 79 apply to?

The ABA is also seeking confirmation on the items and type of accounts referred to by the explanatory note. The ABA understands that this is limited to Item's 1 and 3 of table 1 in subsection 6(2) of the AML/CTF Act only. The ABA understands that Chapter 79 only includes a common transaction account.

What constitutes an "initial deposit" under Rule 79?

In relation to the statement "a deposit can comprise part cash, part cheque", it is not the ABA's view that the intention of this statement is to preclude deposits using methods other than cash or cheque. In circumstances where a customer makes an initial deposit which comprises both cash and cheques, can AUSTRAC clarify if this would be considered one deposit and not two.

Do existing exceptions under the AML/CTF Rules that allow ACIP to be completed shortly after commencing a designate service inadvertently capture section 32?

The ABA recommends that AUSTRAC review all existing exceptions in the AML/CTF Rules that allow ACIP to be completed shortly after commencing a designate service or otherwise, to ensure they are not unintentionally captured by Section 32 of the AML/CTF Act.

Proposed Chapter 79 will impose substantial system changes and costs

The ABA is concerned that the proposed Chapter 79 will require significant lead times for discovery and to undertake the system changes to restrict any further deposits after the initial one. This functionality is not available under the current systems and represents a significant change. This is because each product or channel that considers allowing the initial deposit would need to objectively determine and evidence that it was 'essential to avoid interrupting the ordinary course of business'. On some Legacy systems, any change may not be technologically possible.

More broadly, the ABA notes that there is a range of impacts to regulated entities systems and processes, including development of new controls, new or amended policies and procedures and staff training to align with the proposed Chapter 79 requirements. Such changes to bank systems and processes require broad-based engagement across the Group, including Financial Crime Compliance, Business Units, Support Units and the Board.

The ABA stresses the need for an assisted compliance period of 18 months to develop and implement system and process changes, and this time will need to be factored into the existing program of work. These changes pose significant operational risks to banks and a greater assisted compliance timeline is needed.

Examples of the system and process changes include:

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- Removing the ability for branch staff to open (even with a stop) until after ACIP is completed; or establishing new processes and controls to allow one transaction on an account before ACIP is completed (subject to amendments to Chapter 79).
- For digital banking, sequencing changes for digital originations (i.e. accounts (including Direct Debit Authority), credit cards and personal loans) are required to ensure an account is not created in a bank's system until after completion of ACIP at a branch or through Electronic Customer Verification (ECV).
- For migrant banking, sequencing changes are required to prevent opening of an account (or to limit the account to one transaction) before the customer presents in branch. These changes will present difficulties for migrant customers required to establish an account to comply with certain Australian VISA requirements.
- Uplift of account opening and on-boarding processes and procedures to reflect the changes in sequencing for account opening.
- New processes to address circumstances when more than one deposit is received in error or due to an external method that reporting entities cannot reject e.g. VISA OCT foreign tax refunds.
- Many thousand frontline staff nationally across 98 banks would require training on:
    - The process change itself, including understanding impacts to on-boarding of customers; and
    - How to communicate the change and reasoning to customers.
- Back Office staff would require training on changes in account opening processes and procedures.

The ABA looks forward to AUSTRAC releasing an updated draft Chapter 79 explanatory note providing further guidance and greater assisted implementation timeframe. It is important to note that banks are facing a great number of financial regulatory implementation programs in 2021 and we would be grateful if AUSTRAC could consider this when finalising the implementation timeline. Please contact myself by phone on 0450 615 148 or by email karen.obrien@ausbanking.org.au if you have any further queries.

Yours sincerely

K. OBrien

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