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**Draft AML/CTF Rules relating to risk-only life policy interests in a superannuation fund**

These draft Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) Rules exempt reporting entities from the AML/CTF Act who provide the item 42(a) (superannuation fund accepting a contribution, roll-over or transfer) and 43(a) (cashing the whole or part of an interest held by a member of the fund) designated services, in respect to risk-only life policy interests in a superannuation fund.

A risk-only life policy is a life policy which only provides insurance against a future event, such as death. As a result of the definition of 'life policy' in section 5 of the AML/CTF Act, the provision of risk-only life policies by life insurance companies are carved out as a designated service from item 38 and item 39 in table 1 of subsection 6 of the AML/CTF Act.

Accordingly the AML/CTF Act does not impose obligations on life insurers providing such policies.

However, since the provision of risk-only life policies by superannuation funds are captured by items 42 and 43 as a designated service, trustees of superannuation funds are required to comply with the relevant obligations under the AML/CTF Act.

These draft AML/CTF Rules ensure that superannuation funds providing interests in risk-only life policies (but not as product issuers), are treated in the same manner under the AML/CTF Act as life insurers providing such policies.

**Source**

Draft AML/CTF Rules relating to risk only life policy interests in a superannuation fund.  
[http://www.austrac.gov.au/files/draft\\_rules\\_risk\\_only\\_super.pdf](http://www.austrac.gov.au/files/draft_rules_risk_only_super.pdf).

**AUSTRAC's assessment findings on the finance sector**

Over the past six months, AUSTRAC has conducted a number of assessments of small-to- medium sized reporting entities in the finance sector. AUSTRAC has released a circular that sets out the key findings from these assessment activities.

The major areas of concern identified by AUSTRAC relate to certain aspects of a standard AML/CTF program. A standard AML/CTF program is a written program divided into two parts; Part A (general) and Part B (customer identification). A standard AML/CTF program applies to individual reporting entities and must include all components set out in Chapters 4 and 8 of the Anti-Money Laundering and Counter-Terrorism Financing Rules (AML/CTF Rules).

The main findings are as follows:

### **In relation to Part A of the AML/CTF Program**

AUSTRAC indicates that many of the risk assessment models and frameworks did not fulfil the requirements covered by paragraph 8.1.4 of the AML/CTF Rules. Many risk assessments were found to be limited to only one or two components of ML/TF risk, primarily customer and product, and often ignored the methods by which products are distributed and into what geographic areas those products are sold.

AUSTRAC found a lack of board/senior management approval and oversight of Part A of the AML/CTF programs as required by Part 8.4 of the AML/CTF Rules.

AUSTRAC also found a lack of independent reviews as per Part 8.6 of the AML/CTF Rules.

AUSTRAC also found cases where no compliance officer had been appointed in accordance with Part 8.5 obligations of the AML/CTF Rules.

The AML/CTF training and education of staff was repeatedly found to be inadequate or outdated, and did not include any policy on the consequences of non-compliance as required by subparagraph 8.2.3(2) of the AML/CTF Rules.

Risk-based systems and controls to meet employee due diligence obligations under paragraph 8.3.2 of the AML/CTF Rules were frequently overlooked and in many assessments there was no evidence of any policy formulation to meet this obligation.

Reporting entities should also be aware that the obligations noted in Chapter 15 of the AML/CTF Rules relating to ongoing customer due diligence need to be included in Part A of any AML/CTF program.

### **Part B of the AML/CTF program**

The 'know your customer' (KYC) procedures of Part B of the AML/CTF programs were frequently found to be of poor quality and did not meet the minimum requirements as specified in Chapter 4 of the AML/CTF Rules. There were often incomplete policies and procedures that failed to suitably address any KYC obligations, including how the entity would respond to any discrepancies identified in the KYC identification process.

Source

Australian Transaction Reports and Analysis Centre, AUSTRAC Information Circular No. 66, December 2009.

## **APRA quarterly superannuation statistics**

The Australian Prudential Regulation Authority (APRA) has released its September 2009 *Quarterly Superannuation Performance* publication. It shows that total estimated assets grew over the quarter by \$114.5 billion, or 10.6 per cent, to a total of \$1.2 trillion.

Over the September quarter retail funds' assets grew by 10.6 per cent (\$32.6 billion) to \$338.6 billion. Industry funds' assets grew by 9.9 per cent (\$18.9 billion) to \$209.9 billion, corporate funds' assets grew by 9.5 per cent (\$5.2 billion) to \$60.1 billion and public sector funds' assets grew by 9.5 per cent (\$14.4 billion) to \$166.0 billion.

Contributions to funds with at least \$50 million in assets over the September quarter were \$17.8 billion, with employers contributing \$14.2 billion and members contributing \$3.4 billion. Other contributions, including spouse contributions and government co-contributions, totalled \$226 million.

During the September quarter, retail funds received 32.6 per cent (\$5.8 billion) of total contributions, public sector funds 30.9 per cent (\$5.5 billion), industry funds 30.6 per cent (\$5.5 billion) and corporate funds received 5.9 per cent (\$1.1 billion).

The combined rate of return was 9.4 per cent for the September 2009 quarter. The rate of return for retail funds was 10.4 per cent, corporate funds 10.0 per cent, public sector funds 8.6 per cent and industry funds 8.1 per cent.

Copies of the September 2009 *Quarterly Superannuation Performance* publication are available on APRA's website at [www.apra.gov.au/Statistics/Superannuation-Institutions-Statistics.cfm](http://www.apra.gov.au/Statistics/Superannuation-Institutions-Statistics.cfm).

Source

Australian Prudential Regulation Authority, APRA releases quarterly superannuation statistics for September 2009, 10 December 2009. [http://www.apra.gov.au/media-releases/09\\_40.cfm](http://www.apra.gov.au/media-releases/09_40.cfm)

### Important Notice: Impersonation of AUSTRAC officers

AUSTRAC has reported that certain individuals are claiming to be AUSTRAC employees and are contacting reporting entities saying they are scheduled for an onsite assessment or desk review.

Please note that AUSTRAC does not set up assessment meetings with, or seek personal or confidential information from, reporting entities by telephone. Such communications are always in writing.

AUSTRAC officers must also produce photo identification before commencing onsite assessments.

AUSTRAC has indicated that if an organisation is approached by someone claiming to be an AUSTRAC officer who seeks to establish a meeting with you over the telephone, they should record as much information about the phone call as possible.

This includes the name of the caller, their phone number (if displayed on the phone system), the time of the call, any identifying characteristics of the caller's voice, and details of what the caller is attempting to arrange. As soon as possible after the call, contact AUSTRAC on 1300 021 037 to report the details.

Source

Australian Transaction Reports and Analysis Centre, AUSTRAC Information Circular No. 67, December 2009. [http://www.austrac.gov.au/files/aic67\\_impersonation\\_austrac.pdf](http://www.austrac.gov.au/files/aic67_impersonation_austrac.pdf)

### New ASX guidelines

A proposal by the ASX Corporate Governance Council indicates that ASX listed companies will be required to disclose the number of women in senior management positions in their annual report. This new requirement aims at encouraging greater gender equality in the country's boardrooms is due to be implemented from the middle of next year.

The ASX Corporate Governance Council developed a set of Guidelines and Principles on corporate governance that were revised in August 2007. The table below includes the ASX Corporate Governance Council's principles on corporate governance and its comments and recommendations on those principles.

ASX Principles	ASX Comments of the Principles
1. Lay solid foundations for management and oversight	<p>Companies should establish the functions reserved to the board and those delegated to senior executives.</p> <p>Companies should disclose the process for evaluating the performance of senior executives.</p> <p>Companies should provide the information above in relation to principle 1</p>
2. Structure the board to add value	<p>A majority of the board should be independent directors. (The ASX Corporate Governance Council lists a series of relationships affecting independent status in 'Corporate Governance Principles and Recommendations')</p> <p>The chair should be an independent director.</p> <p>The roles of chair and chief executive officer should not be exercised by the same individual.</p> <p>The board should establish a nomination committee. (A board nomination committee is an efficient mechanism for examination of the selection and appointment practices of the company. The ASX Corporate Governance Council provides details on the purpose and composition of a nomination committee in 'Corporate Governance Principles and Recommendations')</p> <p>The nomination committee should have a charter that clearly sets out its roles and responsibilities, composition, structure, membership requirements and the procedures for inviting non-committee members to attend meetings.</p> <p>Companies should disclose the process for evaluating the performance of the board, its committees and individual directors.</p> <p>Companies should provide the information above in relation to principle 2.</p>

ASX Principles	ASX Comments of the Principles
<b>3. Promote ethical and responsible decision-making</b>	<p>Companies should establish a code of conduct, and disclose the code or a summary of the code as to:</p> <ul style="list-style-type: none"> <li>↳ The practices necessary to maintain confidence in the company's integrity;</li> <li>↳ The practices necessary to take into account their legal obligations and the reasonable expectations of their stakeholders;</li> <li>↳ The responsibility and accountability of individuals for reporting and investigating reports of unethical practices.</li> </ul> <p>Companies should establish a policy concerning trading in company securities by directors, senior executives and employees, and disclose the policy or a summary of that policy.</p> <p>Companies should provide the information above in relation to principle 3.</p>
<b>4. Safeguard integrity in financial reporting</b>	<p>The board should establish an audit committee. (A board audit committee is an efficient mechanism for focusing on issues relevant to the integrity of the company's financial reporting. The ASX Corporate Governance Council provides details on the purpose and composition of an audit committee in 'Corporate Governance Principles and Recommendations')</p> <p>The audit committee should be structured so that it:</p> <ul style="list-style-type: none"> <li>↳ Consists only of non-executive directors;</li> <li>↳ Consists of a majority of independent directors;</li> <li>↳ Is chaired by an independent chair, who is not chair of the board;</li> <li>↳ Has at least 3 members.</li> </ul> <p>The audit committee should have a formal charter.</p> <p>Companies should provide the information above in relation to principle 4.</p>
<b>5. Make timely and balanced disclosure</b>	<p>Companies should establish written policies designed to ensure compliance with ASX Listing Rule disclosure requirements and to ensure accountability at a senior executive level for that compliance and disclose those policies or a summary of those policies.</p> <p>Companies should provide the information above in relation to principle 5.</p>
<b>6. Respect the rights of shareholders</b>	<p>Companies should design a communications policy for promoting effective communication with shareholders and encouraging their participation at general meetings and disclose their policy or a summary of that policy.</p> <p>Companies should provide the information above in relation to principle 6.</p>
<b>7. Recognise and manage risk</b>	<p>Companies should establish policies for oversight and management of material business risks and disclose a summary of those policies.</p> <p>The board should require management to design and implement the risk management and internal control system to manage the company's material business risks and report it on whether those risks are being managed effectively. The board should disclose that management has reported to it as to the effectiveness of the company's management of its material business risks.</p> <p>The board should disclose whether it has received assurance from the chief executive officer (or equivalent) and the chief financial officer (or equivalent) that the declaration provided in accordance with s295A of the Corporations Act is founded on a sound system of risk management and internal control and that the system is operating effectively in all material respects in relation to financial reporting risks.</p>
<b>8. Remunerate fairly and responsibly</b>	<p>The board should establish a remuneration committee. (A board remuneration committee is an efficient mechanism for focusing the company on appropriate remuneration policies. The ASX Corporate Governance Council provides details on the purpose and composition of a remuneration committee in 'Corporate Governance Principles and Recommendations')</p> <p>Companies should clearly distinguish the structure of non-executive directors' remuneration from that of executive directors and senior executives.</p> <p>Companies should provide the information above in relation to principle 8.</p>

Source

ASX Corporate Governance Council, Corporate Governance Principles and Recommendations, 2nd ed, 2007.

<http://asx.ice4.interactiveinvestor.com.au/ASX0701/Corporate%20Governance%20Principles/EN/body.aspx?z=1&p=-1&v=1&uid=>

The Australian, Women the winners under new ASX guidelines, says Elizabeth Broderick, 8 December 2009.

## Updated policy and regulatory guidance to assist issuers and advisers of margin lending facilities

The Australian Securities & Investments Commission released updated policy and regulatory guidance to assist issuers and advisers of margin lending facilities comply with new licensing, conduct and disclosure requirements, following the passage of the Corporations Legislation Amendment (Financial Modernisation) Act 2009 (the Act).

The Act, amongst other things, makes margin lending facilities a financial product and requires that issuers and advisers of margin lending facilities hold an Australian Financial Services Licence (AFSL).

The reforms were introduced by the Federal Government to enhance investor protection. The same licensing, conduct and disclosure requirements that currently apply to financial services will soon apply to providers and financial advisers in relation to margin lending facilities and margin lending facilities will be regulated in the same way as other financial products.

In addition, the regime imposes new responsible lending requirements on issuers of margin lending facilities and clarifies responsibility for providing notification of margin calls.

Under the Act, issuers and advisers will have a 12-month transition period from commencement of the Act until the new requirements take effect (commencement of the Act is yet to be proclaimed). During the first six months of the transition period, existing margin lenders and advisers of margin loans will be required to apply for an AFSL authorisation.

### Policy and regulatory guidance

Within this context, ASIC has updated relevant regulatory guides and policies to explain when and how ASIC will exercise specific powers under legislation and assist regulated entities to meet their compliance obligations.

A number of ASIC's existing regulatory guides have been amended to take into account the inclusion of margin lending facilities as a financial product. This follows a public consultation process in July this year.

The updated policy and regulatory guidance comprises:

- ↘ Updates to Regulatory Guide 2 AFS Licensing Kit: Part 2 — Preparing your AFS licence application (RG 2) and Regulatory Guide 3 AFS Licensing Kit: Part 3 — Preparing your additional proofs (RG 3);
- ↘ Update to Regulatory Guide 146 Licensing: Training of financial product advisers (RG 146);
- ↘ Update to Regulatory Guide 166 Licensing: Financial requirements (RG 166)
- ↘ Update to Pro Forma 209 Australian financial services licence conditions (PF 209)
- ↘ Regulatory impact statement

ASIC's existing policies and regulatory documents on financial services and products, will apply to margin lending facilities and to licensees that provide financial services in relation to a margin lending facility.

### Transition timeframe for the new requirements

The commencement date of the legislation is yet to be proclaimed (ASIC will publish this information and key dates on its website as soon as the commencement date is proclaimed). However, to assist issuers and advisers in preparing for the transition, ASIC can confirm the following timeframes:

- ↘ ASIC will accept AFSL applications, or variations to existing AFSL's, one month from the commencement of the legislation;
- ↘ Applications from existing margin lenders and advisers of margin loans will be accepted for five months in total (that is, until a date six months after the commencement of the legislation and five months from the time ASIC starts accepting applications). Existing margin lenders and advisers on margin loans will need to apply to ASIC for an AFSL authorisation within this timeframe if they intend to continue to provide a margin lending financial service after the application period closes;



- The licensing, conduct and disclosure requirements for issuers and advisers of margin lending facilities, and the new responsible lending and margin call notification requirements, apply from a date 12 months (one year) after the commencement of the legislation.
- There will be an 18-month transition period from the commencement date of the Act for entities and individuals that provide financial product advice on margin lending facilities to comply with the training standards set out in RG 146.

Please refer to the ASIC website for further information:

<http://www.asic.gov.au/ASIC/asic.nsf/byHeadline/09-242AD%20Information%20for%20issuers%20and%20advisers%20of%20margin%20lending%20facilities?opendocument#attachment-1>

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