



## Australian Government

### Australian Transaction Reports and Analysis Centre

#### Explanatory note for consultation purposes

Certain services or products may be captured by the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) under more than one 'designated service' as defined in that Act. One such instance is where a product or service is a 'loan' designated service as well as a 'security' or a 'deposit-taker' designated service. Examples of such services include:

- (a) money market instruments (for example, cash transactions operated on the basis of an overnight interest rate or for a fixed period) which may fall within item 6 (loan) of table 1 in subsection 6(2) of the AML/CTF Act, as well as items 4 and/or 5 (deposit-taker)
- (b) government or corporate bonds or debt instruments which may fall within item 6 or 7 (loan), as well as item 33 or 35 (security).

One of the consequences of the potential dual application of different types of designated services (in a particular transaction) is that parties to the transaction are treated as reporting entities:

- (a) at different sides of the transaction – for example, a person may be treated as both a reporting entity in a particular transaction (item 6) and a customer in that transaction (because the transaction is treated as an item 35); or
- (b) at different times – for example, where a particular instrument (for example, a bond) is on-sold through a number of parties.

The purpose of these draft AML/CTF Rules is to remove the potential dual application of different types of designated services applying to a particular transaction, one of which is a 'loan' designated service. The draft AML/CTF Rules carve out from the definition of 'loan' in the AML/CTF Act products such as money market instruments, government or corporate bonds, debenture stock, bonds and debt instruments.



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#### **Draft AML/CTF Rules relating to the definition of 'loan'**

1. These Anti-Money Laundering and Counter-Terrorism Financing Rules are made under section 229 for paragraph (g) in the definition of 'loan' in section 5 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act).
2. For paragraph (g) in the definition of 'loan' in section 5 of the AML/CTF Act, a debt security is taken not to be a loan for the purposes of that Act.
3. In these Rules, 'debt security' includes debenture stock, bonds, notes and any other document evidencing or acknowledging indebtedness of a body corporate or government body, whether constituting a charge on property of the body corporate or government body or not, but does not include an equity security.

*Reporting entities should note that in relation to activities they undertake to comply with the AML/CTF Act, they will have obligations under the Privacy Act 1988, including the requirement to comply with the National Privacy Principles, even if they would otherwise be exempt from the Privacy Act. For further information about these obligations, please go to <http://www.privacy.gov.au> or call 1300 363 992.*