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Explanatory note for consultation

Subsection 39(4) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) allows exemption from a specified provision of Part 2 of the AML/CTF Act in relation to a designated service that is provided in circumstances specified in the AML/CTF Rules.

Disposing of a security, in the capacity of an agent, is a designated service under item 33 of table 1 in subsection 6(2) of the AML/CTF Act.

These draft Rules exempt from the customer identification provisions of the AML/CTF Act, those persons who provide an item 33 designated service involving the disposal of low-value parcels of shares, for the purpose of passing the proceeds to charitable organisations who are deductible gift recipients (DGRs) under the *Income Tax Assessment Act 1997*.

Under a typical arrangement, a person who wishes to donate the proceeds of the sale of their shares to charity provides details to a broker, who sells the shares and provides the proceeds of the share sale to a charitable fund or charitable institution who subsequently distributes the proceeds to DGRs.

Stockbrokers currently undertake the sale of the charitable shares without charging a fee to the customer. It is considered an unnecessary financial and administrative burden on such reporting entities to carry out the applicable customer identification procedure when they are providing the designated service on a without-fee basis.



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Draft Anti-Money Laundering and Counter-Terrorism Financing Rules relating to the sale of shares for charitable purposes

1. These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made under section 229 for subsection 39(4) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act).
2. Division 4 of Part 2 of the AML/CTF Act does not apply to a designated service that:
 - (1) is a disposal of the kind described in item 33 of table 1 in subsection 6(2) of the AML/CTF Act; and
 - (2) the disposal occurs on a prescribed financial market; and
 - (3) the value of the security does not exceed \$500; and
 - (4) the agent gives the proceeds of the disposal directly to a charitable fund or charitable institution that provides an undertaking to:
 - (a) distribute, by cheque and/or electronic funds transfer, the proceeds of the disposal of the security to a deductible gift recipient before the end of the financial year in which it receives the proceeds; and
 - (b) list on its public website within 14 business days, for a period of 12 months, the details of the distribution of the proceeds of the disposal of the security to the deductible gift recipient.
3. In these Rules:
 - (1) '*deductible gift recipient*' has the meaning given by section 995.1 of the *Income Tax Assessment Act 1997*;
 - (2) '*prescribed financial market*' has the meaning given by section 9 of the *Corporations Act 2001*;
 - (3) '*charitable fund*' means a fund established in Australia for public charitable purposes pursuant to items 1.5 or 1.5B of section 50-5 of the *Income Tax Assessment Act 1997*;
 - (4) '*charitable institution*' means an establishment, organisation or association that is instituted and operated in Australia to advance or promote a charitable purpose pursuant to item 1.1 of section 50-5 of the *Income Tax Assessment Act 1997*.

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.