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**Australian Transaction Reports
and Analysis Centre**

Explanatory note for consultation

Section 32 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) specifies that an applicable customer identification procedure (ACIP) must be carried out before the provision of a designated service by a reporting entity. Section 33 of the AML/CTF Act allows for special circumstances that justify carrying out the ACIP after the commencement of the provision of a designated service. Section 34 allows the relevant period to be specified by the AML/CTF Rules, or if the Rules do not specify the period, a default period of five business days applies, commencing after the day on which the reporting entity commenced to provide the service.

In the case of securities, reporting entities may experience difficulties in carrying out the ACIP before the provision of a designated service, due to the financial market conditions that may apply at the time the designated service is provided, which may require swift action on the buying and selling of securities, that may be affected by delays in carrying out the ACIP, with possible financial detriment to the customer.

These AML/CTF Rules specify the circumstances where a reporting entity may carry out the ACIP after commencing to provide the designated services of:

- acquiring or disposing of a security, derivative or foreign exchange contract on behalf of a person (item 33)
- issuing or selling a security or derivative to a person (item 35).

These AML/CTF Rules specify that the reporting entity has up to five business days, from the date on which it commenced to provide the specified designated service, to carry out the ACIP where the special circumstances apply.



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Draft Anti-Money Laundering and Counter-Terrorism Financing Rules setting special circumstances for the applicable customer identification procedure

1. These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made under section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act), paragraphs 33(a) and 33(b) and subparagraph 34(1)(d)(i) of that Act.
2. Under paragraph 33(a) and paragraph 33(b) of the AML/CTF Act, the services specified and relevant conditions are:
 - (1) in the capacity of agent of a person, acquiring or disposing of a security or a derivative or a foreign exchange contract by a reporting entity on behalf of another person (customer) under item 33 of table 1 in section 6 of the AML/CTF Act under the following conditions:
 - (a) the reporting entity does not accept physical currency to fund this service; and
 - (b) the reporting entity does not permit the customer to transfer, or otherwise part with, proceeds from a disposal of a security or derivative or a foreign exchange contract; and
 - (c) the reporting entity does not permit the customer to re-sell, transfer, or otherwise part with, a security or derivative or a foreign exchange contract which has been acquired by the customer; and
 - (d) the reporting entity does not allow the customer be re-credited with or obtain a refund of the purchase price unless otherwise required by law; and
 - (e) the reporting entity cannot reasonably undertake the applicable customer identification procedure before the commencement of the provision of the designated service; and
 - (f) the reporting entity must put in place appropriate risk-based systems and controls to determine whether and in what circumstances to provide designated services to a customer before the applicable customer identification procedure is carried out, including in relation to the number, types and/or amount of transactions; or
 - (2) issuing or selling of a security or derivative by a reporting entity to another person (customer) under item 35 of table 1 in section 6 of the AML/CTF Act where the transaction does not occur on a prescribed financial market under the following conditions:
 - (a) the reporting entity does not accept physical currency to fund this service; and

- (b) the reporting entity does not permit the customer to re-sell, transfer, or otherwise part with, a security or derivative which has been acquired by the customer; and
 - (c) the reporting entity does not allow the customer be re-credited with or obtain a refund of the purchase price unless otherwise required by law; and
 - (d) the reporting entity cannot reasonably undertake the applicable customer identification procedure before the commencement of the provision of the designated service; and
 - (e) the reporting entity must put in place appropriate risk-based systems and controls to determine whether and in what circumstances to provide designated services to a customer before the applicable customer identification procedure is carried out, including in relation to the number, types and/or amount of transactions.
3. For the purposes of paragraph 2 of these Rules and subparagraph 34(1)(d)(i) of the AML/CTF Act, the period is the earlier of the following:
- (1) the date on which the reporting entity carries out the applicable customer identification procedure; or
 - (2) the end of the period of 5 business days commencing from the date on which the reporting entity commenced to provide the service to the customer.
4. In these Rules:
- (1) 'derivative' has the same meaning as in Chapter 7 of the *Corporations Act 2001*;
 - (2) 'security' has the same meaning given by section 92 of the *Corporations Act 2001* (for this purpose, disregard subsections 92(3) and (4) of that Act);
 - (3) 'prescribed financial market' has the meaning given by section 9 of the *Corporations Act 2001*.

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.