



## Explanatory note for consultation purposes – draft version 2

Paragraph (d) of item 35 of table 1 in section 6 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) allows for certain conditions to be set out in the AML/CTF Rules, in relation to issuing or selling a security or derivative to a person. The condition set out in these AML/CTF Rules in relation to item 35 is that the service is not one described in item 33 of table 1 in section 6 of the AML/CTF Act. Item 33 relates to an agent (acting in that capacity) of a person, acquiring or disposing of a security, derivative or foreign exchange contract on behalf of that person. The acquisition or disposal must be done in the course of carrying on a business of such acquisitions or disposals in the capacity of an agent.

These revised draft AML/CTF Rules (version 2) provide that the following trading types are exempt from the operation of the AML/CTF Act:

1. an issue or sale of a security or derivative that occurs on an Australian prescribed financial market (secondary trading); or
2. an off-market issue of an interest in a managed investment scheme (including an option to acquire an interest in a managed investment scheme) quoted on a prescribed financial market in the following circumstances:
  - (a) the issue is in accordance with relevant requirements in the *Corporations Act 2001* pursuant to a dividend or distribution plan (also known as a distribution reinvestment plan); and
  - (b) the interest is to be quoted on a prescribed financial market; or
3. an off-market issue of an interest in a managed investment scheme (including an option to acquire an interest in a managed investment scheme) quoted or to be quoted (in the case of an initial public offering) on a prescribed financial market in the following circumstances:
  - (a) the issue is in accordance with relevant requirements in the *Corporations Act 2001* pursuant to fundraising (including an initial public offering, public offering and rights issue); and
  - (b) the interest is to be quoted on a prescribed financial market.

The quotation of securities such as units in a managed investment scheme and an option to acquire an interest in a managed investment scheme also includes stapled securities.

As at the date of these AML/CTF Rules, for the purposes of 'prescribed financial market' the following market operators are prescribed (see section 9 of the *Corporations Act 2001* and regulation 7.1.01 of the *Corporations Regulations 2001*): Australia Pacific Exchange Limited; Australian Stock Exchange Limited; Bendigo Stock Exchange Ltd and National Stock Exchange of Australia Limited.



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#### **Draft (version 2) Anti-Money Laundering and Counter-Terrorism Financing Rules for issuing or selling a security or derivative**

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) for section 6 and subsection 247(3) of that Act.
2. For paragraph (d) of item 35 of table 1 in section 6 of the AML/CTF Act, the condition applies that the service is not one described in item 33 of table 1 in section 6 of the AML/CTF Act.
3. For subsection 247(3) of the AML/CTF Act, the following designated services provided in any of the following circumstances are specified:
  - (1) a person issuing or selling a security or derivative to another person (transaction) under item 35 of table 1 in section 6 of the AML/CTF Act and the transaction occurs on a prescribed financial market; or
  - (2) an issue of an interest in a managed investment scheme (including an option to acquire an interest in a managed investment scheme) quoted on a prescribed financial market and the issue is in accordance with relevant requirements in the *Corporations Act 2001* pursuant to a dividend or distribution plan (also known as a distribution reinvestment plan) and that interest is to be quoted on a prescribed financial market; or
  - (3) an issue of an interest in a managed investment scheme (including an option to acquire an interest in a managed investment scheme) quoted or to be quoted on a prescribed financial market and the issue is in accordance with relevant requirements in the *Corporations Act 2001* pursuant to fundraising (including an initial public offering and a rights issue) and that interest is to be quoted on a prescribed financial market.
4. In these Rules:
  - (1) 'dividend or distribution plan' has the meaning given by Chapter 19 of the ASX Listing Rules issued by the ASX Limited trading as the Australian Securities Exchange;
  - (2) 'initial public offering' in the context of an interest in a managed investment scheme is an offering of that interest by a reporting entity, for the first time, to an applicant who subscribes for that interest, before the interest is quoted on a prescribed financial market;



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- (3) 'prescribed financial market' has the meaning given by section 9 of the *Corporations Act 2001*;
- (4) 'product disclosure statement' has the meaning given by section 9 of the *Corporations Act 2001*;
- (5) 'rights issue' has the meaning given by section 9A 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.*