



AUSTRAC Guideline No. 4



(Formerly CTRA Guideline No. 4)

Financial Transaction Reports Act 1988

Merchant Bankers & Stock Brokers Suspect Transaction Reporting

Preamble

The *Financial Transaction Reports Act 1988* (FTR Act) is an initiative to assist in the detection of major tax evasion and other serious criminal activity. The *Financial Transaction Reports Act 1988* places certain obligations on cash dealers including the requirement to report *Suspect Transactions*.

Tax evasion and money laundering from drug trafficking and organised crime have been the primary focus of earlier Guidelines. From 1 January 1991, however, the scope of the reporting requirement has been broadened to include Corporations Law offences under the scheme of corporate regulation administered by the Australian Securities Commission.

This AUSTRAC Guideline No. 4 (formerly CTRA Guideline No. 4) was issued jointly by AUSTRAC and the Australian Securities Commission specifically to assist merchant bankers, stock brokers and their staff in identifying and reporting suspect transactions that may occur within their respective areas of operation.

When must a Suspect Transaction Report be given?

1. A report is completed by the cash dealer where the cash dealer is a party to a transaction and the cash dealer has reasonable grounds to suspect that information that the cash dealer has concerning the transaction may be:

- relevant to investigation of an evasion, or attempted evasion, of a taxation law;
- relevant to investigation of, or prosecution of a person for, an offence against a law of the Commonwealth, State or Territory;
- of assistance in the enforcement of the *Proceeds of Crime Act 1987* or the regulations made under the Act; or
- relevant to investigation of, or prosecution of a person for, an offence against the *Corporations Act 1989*.

What is a transaction?

2. "Transaction" has not been extensively defined in the *Financial Transaction Reports Act 1988*. It therefore has its ordinary legal and commercial meaning. A transaction can be classified as any business dealing between a cash dealer and a customer. The *Financial Transaction Reports Act 1988* does make it clear however that it would include preliminary and bilateral negotiations, or proposals to conduct a transaction in the same way that it applies to a completed transaction. It would also include a transaction that is terminated prior to completion, in other words, it includes negotiations that might not ordinarily amount to a transaction. However, a transaction would not include mere enquiries.

3. The transaction must be something which can be reported in terms of the reportable details required by the *Financial Transaction Reports Act 1988* and as set out in the Suspect Transaction Report form. However, it is not essential that all such details be available to the cash dealer before there is a reporting obligation. The cash dealer should complete as many sections as possible of the Suspect Transaction Report from the information ordinarily available to the cash dealer.

What is a suspect transaction?

4. Suspect transactions are likely to involve a number of factors which together raise a suspicion in the mind of the cash dealer that the transaction may be connected with certain illegal activities (explained at point 1). As a general principle, a suspect transaction may be any transaction which causes a cash dealer to have a feeling of apprehension or mistrust about the transaction considering:

- the nature of, or unusual circumstances, surrounding the transaction;
- the known business background of the person conducting the transaction;
- the production of seemingly false identification in connection with any transaction, the use of aliases and a variety of similar but different addresses;
- the behaviour of the person or persons conducting the transaction (e.g. unusual nervousness); and
- the person or group of persons with whom they are dealing.

5. If in bringing together all relevant factors the cash dealer has reasonable grounds to suspect that the transaction may be connected with certain illegal activities (explained at point 1), then the transaction is required to be reported.

Not only cash transactions are affected

6. It is important to note that a suspect transaction must be reported even if it does not involve any dealing in cash. The presence of cash in a transaction may in some circumstances be so unusual of itself as to trigger suspicion. In most cases, however, there will be no cash element and suspicion will be formed from other factors surrounding the transaction.

How to identify a suspect transaction

7. In the merchant banking and stock broking industries a combination of some of the following factors may be relevant:

- a new client or prospective client whose background is unknown or whose reputation is unsound;
- ownership or control of an established corporate client has fallen into the hands of a person such as described above;
- behaviour by a customer that is out of character including unusual funds flows;
- a transaction that does not appear to be driven by ordinary commercial considerations;
- parties to the transaction are under serious financial stress and normal rules of commerce appear to have been suspended;
- full disclosure to third parties likely to be affected by a proposal is apparently being unfairly withheld;
- statements or admissions by persons in a transaction suggest that an illegality or abuse of office may be involved;
- the legality of a proposed arrangement is called into question by a legal opinion;
- the transaction does not proceed to completion because it is perceived to be illegal or wrong.

Specific areas of suspect activity

8. The enclosures with this guideline set out matters relating to particular areas of suspect activity that may be encountered within sectors of the securities and corporate finance industries.

Confidentiality of reporting

9. The report is to be completed as soon as possible after the transaction and not in the presence of the subject of the report. The subject of the report must not be advised of the reporting by the cash dealer.

10. It is an offence to disclose to anyone that a suspicion has been formed or that information has been communicated to AUSTRAC or to infer that these have occurred. The punishment upon conviction is imprisonment of up to two years or an appropriate fine.

How to report

11. A Suspect Transaction Report should be made on a Suspect Transaction Report Form 16. Supplies are available from AUSTRAC. A copy of the report is to be forwarded to AUSTRAC by

facsimile to Fax No (02) 9950 0071 or

post to The Director
 AUSTRAC
 PO Box 5516
 CHATSWOOD NSW 1515

12. Receipt of reports will be acknowledged in writing by AUSTRAC. Any enquiries you wish to make in relation to a suspect transaction report should quote the reference number on the acknowledgement.

13. The *Financial Transaction Reports Act 1988* requires reporting of a suspect transaction as soon as practicable after forming the suspicion. The suspicion may in some cases be formed a considerable time after the date of the transaction as a result of additional information coming to light.

Urgent Reporting- Suspect Hotline

14. Where urgent reporting of a suspect transaction is appropriate call AUSTRAC's Hotline on 1300 021 037. This is a free call from anywhere in Australia.

The reporting responsibility

15. The reporting responsibility falls on the cash dealer. A cash dealer, to satisfactorily discharge its responsibilities, must ensure that adequate internal lines of responsibility are in place together with an ongoing programme of training and audit.

16. Failure to report a suspect transaction is a serious offence.

Protection of the cash dealer and its officers

17. The *Financial Transaction Reports Act 1988* contains two important protections in relation to reports of suspect transactions made pursuant to Section 16 of the *Financial Transaction Reports Act 1988* or section 243D of the ASC Law.

18. The first protects a cash dealer, or an officer, employee or agent of a cash dealer, against any action, suit or proceeding in relation to the reporting process.

19. Whereas in the past a duty of confidentiality would operate in many cases to preclude reporting of a suspected illegality, there is now an overriding obligation to report under the *Financial Transaction Reports Act 1988* and the Corporations Law. The protection removes the possibility of a damages claim for breach of client confidentiality in complying with the reporting obligation.

20. The second protection (Section 17 of the *Financial Transaction Reports Act 1988* which is repeated in section 243D of the ASC Law) is from the money laundering provisions of the Proceeds of Crime Act, 1987. It is a criminal offence to receive, possess, conceal, or dispose of the proceeds of crime, where reasonable grounds exist to suspect that the property was tainted by crime.

21. A cash dealer, or an officer, employee or agent, who reports a suspect transaction is deemed not to have been in possession of the information contained in the report for the purposes of the money laundering offences in the Act. This means that where any one of those persons did have grounds to suspect and the cash dealer subsequently lodged a suspect transaction report, a defence is provided against the money laundering provisions of the Proceeds of Crime Act, 1987.

22. These provisions have been enacted to encourage cash dealers to identify and report all suspect activity which may potentially lead to prosecution under the Proceeds of Crime Act, 1987.

Further information or assistance

23. AUSTRAC officers are able to provide assistance and advice to cash dealers and their employees with queries in relation to suspect transaction reporting. The AUSTRAC Help Desk can be contacted on (02) 9950 0827.

24. This Guideline was issued jointly by the then Cash Transaction Reports Agency and the Australian Securities Commission on 16 May 1991. The guideline was prepared in consultation with the Australian Merchant Bankers Association and the Australian Stock Exchange. Advice was also provided by Professor Brent Fisse of Sydney University Law School.

February 1998

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