



Stockbrokers

Association of Australia

Incorporating SDIA

Discussion Paper – Cost Recovery
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Submission by Stockbrokers Association of Australia on Discussion Paper – Cost Recovery for AUSTRAC’s Regulatory Functions

The Stockbrokers Association of Australia (“the Stockbrokers Association”), formerly known as the Securities & Derivatives Industry Association, is the peak industry body representing institutional and retail stockbrokers and investment banks in Australia. The Stockbrokers Association is pleased to provide this submission to AUSTRAC in relation to the Discussion Paper – Cost Recovery for AUSTRAC’s Regulatory Functions (“the Discussion Paper”).

The Association understands the obligations imposed on AUSTRAC as a result of the Australian Government’s Cost Recovery Guidelines following this year’s Budget. At the outset, the Association would like to record its fundamental view that the AML/CTF regime exists to benefit all of the Australian community, and hence, it is not a fair result that regulated entities should bear the entire cost of AUSTRAC’s regulatory effort. As with other law enforcement measures, the public purse should bear a fair proportion of the cost. Our comments on the proposals in the Discussion Paper should be taken in this context.

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The key principle which should underpin AUSTRAC's Cost Recovery Proposal, in our view, is that the basis of apportionment of costs between different entities and sectors should be a fair one.

The Stockbrokers Association did not have an issue with the original proposal summarized in the Cost Recovery Fact Sheet issued earlier this year, namely, the base fee plus the component based on reports lodged with AUSTRAC.

In the revised proposal set out in the Discussion Paper, AUSTRAC is now proposing to change this approach by spreading the basis on which cost recovery will be calculated, by introducing the size-based component (the large entity fee) and by adjusting the method of calculating the report-based component.

Revised Proposal

The Stockbrokers Association does not have any issue with the reduction in the amount of the Base fee. We also do not have any issue with the revised method of calculating the Report-based component of the levy.

However, the Association submits that the "one-size-fits-all" large entity fee can lead to a result that the apportionment of the costs of regulation will not be a fair one. Not all entities with more than 150 staff should be seen in the same light from an AML/CTF perspective.

We note that AUSTRAC utilises a risk-based methodology in targeting its regulatory effort and in allocating its resources, which is appropriate. We submit that there should also be a division of large entities along risk lines, into moderate/low and higher risk categories, with a re-apportionment of the large entity fee to reflect this.

In our submission, the stockbroking sector should be considered in the lower of the two categories. In terms of AML/CTF risk, a stockbroking "large entity" does not pose anything like the same risk as large entities in other sectors. The factors which we set out below, and the regulatory regime which applies to stockbrokers minimise this risk. We note that AUSTRAC's rationale for a large entity fee is that more resources are devoted to supervising large entities, however, we do not believe that this would be true of all large entities. Hence, it is not fair to levy the same annual fee on a stockbroker which has more than 150 staff, as say, a major domestic bank or a foreign exchange service provider.

The experience continues to be that the opportunities to utilise the stock market to engage in money laundering or terrorist financing in Australia are significantly constrained by a number of key factors, including:

- Stockbrokers generally do not accept cash
- Transactions are carried out on liquid and transparent exchanges. It is difficult to exclude other market participants from participating in a trade. There are strictly limited exceptions in relation to crossings that enable trades to be done off-market, otherwise there is very little opportunity to structure artificial transactions between two parties in an open market that would enable the transfer of funds so as to launder them.

This is borne out by the difficulty in articulating Moneylaundering/CTF Typologies for the stockbroking sector. We note that there have been few such typologies in AUSTRAC's annual Typologies and Case Studies Reports, and the same is the case for overseas typologies exercises.

The Association is aware that AML/CTF analysis and typologies for the Stockbroking sector frequently focus most attention on insider trading and market manipulation as "predicate offences" for money laundering. These offences may in some instances involve the concealment or laundering of proceeds of the offence, but more often than not, do not involve any such concealment. Rather, it is the true motives behind the trading, or the use of non-public information, that is concealed.

In any case, the areas of insider trading and market manipulation are the subject of detailed and complex day to day surveillance, monitoring and enforcement by ASIC as the front line regulator responsible for the supervision of market activity. Following the transfer of market supervision from ASX to ASIC, ASIC is now also pursuing measures to levy the cost of market supervision from participants in the market.

Hence, stockbrokers already face cost recovery measures directed at the regulation of market misconduct, the principal focus of which are the areas of insider trading and market manipulation. It is not fair for stockbrokers to be financially levied twice for the same areas of risk.

We note that AUSTRAC's own estimates set out in Figure 3.2 Summary of Expected Levies, show that it is expecting to recover \$1, 176,363 from Stockbrokers, which by comparison

- Is more than 2 times the amount levied against foreign exchange providers
- Is 7 times the amount to be levied against Casinos, 7 times that of Betting Agents, and 8 times that from Bookmakers
- Is approximately 40% more than that levied against Financial Planners and Insurance Brokers

This comparison indicates, in our submission, that the large entity fee in particular operates to deliver an unfair apportionment of the costs of regulation of AML/CTF risk across different sectors, particularly in view of the higher level of risk that many of these other sectors exhibit.

In conclusion, we submit that some additional measure should be applied to the large entity fee, such as the risk measure referred to, to moderate this result.

Additional issues regarding the large entity fee

There are some other issues that have been raised with the Association as regards the reliance on a measure of 150 Full Time Equivalent staffing in order to give rise to the liability for the large entity fee:

- Off- shore staff of global entities should not be included. A stockbroking entity in Australia may have only, say, 50 staff, but overseas offices may have hundreds more. The offshore staff should not be included in the calculation, particularly as the overseas entities may also be liable to some form of cost recovery in each respective location under comparable approaches to AML/CTF regulation.
- There should be scope to exclude staff from the calculation where the entity's staffing is "swollen" by staff employed in an activity which has no bearing on money laundering/CTF risk or the actual provision of a designated service e.g. equities research analysts, product rating analysts, human resources, compliance and secretarial.
- There should be a mechanism to ensure consistency of application of the large entity test to ensure that it is being fairly applied between entities and between sectors.

We would be happy to discuss any issues relating to this matter at your convenience. Should you require any further information, please contact Peter Stepek, Policy Executive, on (02) 8080 3200 or email pstepek@stockbrokers.org.au.

Yours sincerely,

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