



Stockbrokers

Association of Australia

Incorporating SDIA

Cost Recovery Impact Statement – Exposure Draft
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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”) refers to its earlier submission of 13 December 2010 lodged in respect of the previous model for Cost Recovery for AUSTRAC’s Regulatory Functions. We make these further submissions in response to the revised Cost Recovery Model set out in the Cost Recovery Statement - Exposure Draft, notification of which was only sent to us on 11 February 2011.

At the outset, we make the observation that the period of time that this allowed for submissions in respect of the Exposure Draft has been extremely brief and less than satisfactory to enable the preparation of a response.

The Stockbrokers Association notes the concerns that it expressed in its earlier submission. The revised model in the Exposure Draft does not address those concerns. In fact, the result of the changes announced in the Exposure Draft is to even further increase the cost burden imposed on the Stockbroking sector. In the context of our comments in our earlier submission, these changes result in a Cost Recovery model which is even more unfair than the earlier model, hence the Stockbrokers Association registers its objection to the revised model.

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Revised Definition of Large Entity

We note that AUSTRAC is proposing to adopt a new definition of a Large Entity as follows:

A large entity is a reporting entity which is or is ultimately owned or controlled by:

- *an entity (together with any entities it controls, if any) which has 200 or more full-time equivalent (FTE) employees (in line with the ABS definition of a large business); and/or*
- *an entity which is included in the official list of a financial market (inside or outside of Australia).*

Previously, the Definition of Large Entity was as “...a reporting entity with more than 150 FTE employees.”

Whilst on the one hand, the threshold has been increased from 150 FTE employees to 200 employees, which is welcomed. On the other hand, the new definition, by including the reference “...is or ultimately controlled by....” a large entity, now means that every subsidiary or controlled entity of a Large entity which is also a reporting entity will now be separately liable for the Large Entity Fee, regardless of how few employees they may have. The only limit on the Fee appears to be the maximum of 40 Large Entity Fees per designated business group, which we would imagine will only amount to a cap in a small number of cases.

Under the previous model, the Fee would not have been payable by any of those entities where they had less than 150 FTE employees.

In addition, the revised definition will include an entity which is either listed on a financial market anywhere, or is owned or controlled by such a listed entity.

There are a number of stockbroking firms in Australia which would have considerably less than 150 FTE employees, and are not part of any group which would in total reach that number, but which are listed on the ASX. There are other broking entities which would have far fewer than 150 FTE employees but which are local branches of an entity listed on an overseas exchange.

The revised definition of Large Entity would mean that each of these entities, and each subsidiary or controlled entity that is also a reporting entity, is now deemed to be a Large Entity and separately liable for the Large Entity fee.

In the case of local subsidiaries, the local entity may be the only entity which is carrying on business in this jurisdiction. Hence, the size of the parent entity, which may already be paying a contribution to regulatory cost in the jurisdiction where it is located or carrying business, ought to have no bearing on the level of regulatory activity required by AUSTRAC and hence should have no bearing on the question of cost recovery.

These results are in our submission unfair. The rationale stated by AUSTRAC for imposing a Large Entity fee is that a large entity consumes a greater burden of AUSTRAC's regulatory budget. How it can be said that entities which are in actual fact small in terms of number of FTE employees, and also in terms of overall market share, warrant the level of attention that would justify the imposition of the Large Entity fee on them is difficult to understand. Indeed, the size of the fee is likely to represent a cost that small organizations will find very difficult to bear.

Proportion of Cost carried by Stockbroking Sector

In our earlier submission, the Stockbrokers Association pointed out the lack of fairness in the overall proportion of the regulatory costs which AUSTRAC, by its own estimates, was forecasting would be borne by the Stockbroking sector.

The Association noted that the Stockbroking sector presented a low AML/CTF risk. We noted that, over a number of years, very few typologies have arisen in the sector showing examples of how money laundering or terrorist financing has actually occurred in the sector. We pointed out 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.

Hence, we urged that AUSTRAC not proceed with a "one-size-fits-all" large entity fee, but instead, reflect the level of AML/CTF risk in its Cost Recovery model.

The Association therefore considers it particularly disappointing that, under the revised model in the Exposure Draft, AUSTRAC is forecasting that the number of entities in the Stockbroking sector that will be liable for the Large Entity Fee will actually increase to 141, compared to 106 under the previous model, which is a 33% increase. The amount which AUSTRAC is forecasting will be raised as a result of this is \$1,285,906, and increase of some \$236K on the earlier model.

Overall, we note that the amount which AUSTRAC is now forecasting that it will levy against the Stockbroking sector in total is \$1,416,394 as opposed to the forecast under the earlier model of \$1,176,363. Hence, the result of the revised model in the Exposure Draft is that AUSTRAC is forecasting that the proportion of its regulatory costs that will be borne by the Stockbroking sector is to rise even further by \$240,031 or 20.04% that originally proposed.

As opposed to this, we note that some sectors which would present a high AML/CTF risk, for example, Casinos, Betting Agencies, Foreign Exchange providers, and Other Money service Providers, are forecast to benefit from a reduction in the amount levied under the new model, according to the figures in the Exposure Draft.

In view of this result, it goes without saying that the Stockbrokers Association objects strongly to the changes to the Cost Recovery Model being put forward in the Exposure Draft.

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 _____ or email _____

Yours sincerely,

David W Horsfield
Managing Director/CEO