



## NOTICE TO APPOINT AN EXTERNAL AUDITOR TO CONDUCT COMPLIANCE AUDIT

### SUBSECTION 162(2) OF THE *ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING ACT 2006*

**TO:** PayPal Australia Pty Limited (**PayPal**)  
ACN: 111 195 389  
Level 24, 1 York Street  
Sydney  
**NSW 2000**

Attention: Carolyn Hanson

I, Nathan Newman, National Manager, Regulatory Operations of the Australian Transaction Reports and Analysis Centre (**AUSTRAC**), as delegate of the Chief Executive Officer of AUSTRAC (**the AUSTRAC CEO**), have reasonable grounds to suspect that PayPal is a reporting entity that has contravened and/or is contravening section 45 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (**AML/CTF Act**).

Acting under subsection 162(2) of the AML/CTF Act, as delegate of the AUSTRAC CEO, I REQUIRE THAT:

#### **Within 14 days of the date of this Notice, PayPal must:**

1. Identify three or more individuals (**Nominated Individuals**) PayPal considers appropriate to conduct the audit AUSTRAC is requiring for AUSTRAC's consideration.
  - A. In the event that PayPal has appointed an independent auditor, for example, for the purposes of an independent review in accordance with Part 9.6 of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* (**AML/CTF Rules**), PayPal may, instead of identifying three or more individuals for AUSTRAC's consideration, nominate that independent auditor only.
  - B. If item [1.A] applies, AUSTRAC may authorise that independent auditor as an external auditor for the purposes of section 162 of the AML/CTF Act. However, if AUSTRAC finds the independent auditor unsuitable for the purpose of section 162 of the AML/CTF Act, PayPal must still identify and provide, in accordance with items [2] and [3] of this notice, the details of three or more Nominated Individuals for AUSTRAC's

consideration within 14 days of being notified by AUSTRAC that it does not consider PayPal's nominated independent auditor to be suitable.

2. Have each of the Nominated Individuals complete or provide to PayPal the following documents, in support of their application to be authorised as an external auditor for the purposes of section 162 of the AML/CTF Act:
  - A. Completed 'Capability statement' (refer to **Annexure A**),
  - B. Signed statutory declaration (refer to **Annexure B**), and
  - C. Resume or Curriculum Vitae of the Nominated Individual, which is to provide an overview of the Nominated Individual's employment and education history and any other information considered by the Nominated Individual to be relevant to the application.
3. Submit the documents listed at items [2.A] to [2.C] above for each of the Nominated Individuals, by email to [external\\_auditors@austrac.gov.au](mailto:external_auditors@austrac.gov.au). PayPal should include with these documents, its order of preference among the Nominated Individuals for appointment as external auditor for the purpose of section 162 of the AML/CTF Act.

The AUSTRAC CEO will consider the applications of the Nominated Individuals and whether they are appropriate to conduct the external audit AUSTRAC requires, and may authorise one of the Nominated Individuals to undertake the external audit or require PayPal to submit the details and applications of additional Nominated Individuals for AUSTRAC's consideration, as the case may be. PayPal will be notified in writing of the AUSTRAC CEO's decision.

**Within 7 days of the date AUSTRAC has authorised an external auditor under section 164 of the AML/CTF Act, PayPal must:**

4. Engage the authorised external auditor to conduct an audit covering the matters specified in the Schedule to this notice including giving a written report (**the audit report**) to PayPal.

**Within 60 days of the external auditor being engaged, PayPal must:**

5. Provide AUSTRAC with a copy of a written interim audit report.

**Within 120 days of the external auditor being engaged, PayPal must:**

6. Provide AUSTRAC with a copy of the final audit report setting out the auditor's findings.

**The matters to be covered by the audit:**

7. The audit must cover the matters set out in the Schedule to this notice.

**The form of the audit report:**

8. The audit report must be in a form that:
- A. Accords with any Australian standard applicable to that kind of audit report, or which in the opinion of the external auditor accords with the closest applicable Australian standard; and
  - B. Accords with the format and style in which the external auditor would prepare a report suitable to annex to an expert witness affidavit the external auditor would make in Federal Court of Australia proceedings.

**Details to be included in the audit report:**

9. The audit report must contain details of:
- A. Any provisions of the AML/CTF Act and/or the AML/CTF Rules which the external auditor concludes PayPal has not complied with or is not complying with; and
  - B. The facts on which the auditor has relied to conclude any provisions identified in [9.A] have not been or are not being complied with; and
  - C. Any measures which the external auditor believes PayPal should implement to ensure that it complies with the AML/CTF Act and the AML/CTF Rules; and
  - D. The capacity of PayPal to implement the measures set out in [9.C].

**Submission of audit reports:**

10. The audit reports are to be submitted to [Briony.Olmedo@austrac.gov.au](mailto:Briony.Olmedo@austrac.gov.au) and by post to:

Briony Olmedo  
PO Box 5516  
West Chatswood NSW 1515

**Consequences of not complying with this notice:**

11. Under subsection 162(7) a person commits an offence if:
- (a) the person is subject to a requirement under subsection 162(2); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct breaches the requirement.

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

Subsection 162(8), which is a civil penalty provision, states that a reporting entity must comply with a requirement under subsection 162(2).

Dated this 23 day of September, 2019.

A handwritten signature in blue ink, consisting of a large, stylized initial 'N' followed by a horizontal line extending to the right.

**Dr Nathan Newman**  
**National Manager, Regulatory Operations**  
**AUSTRAC**

## Schedule

### ***Definitions***

The following definitions apply to this schedule.

**AML/CTF Act** means the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

**AML/CTF Rules** means the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.

**IFTI** means international funds transfer instruction as defined by section 5 of the AML/CTF Act.

**Part A Program** means Part A of an AML/CTF program as defined in subsection 85(2) of the AML/CTF Act.

**PayPal** means PayPal Australia Pty Limited.

**Relevant period** means 1 July 2010 to the date of this notice.

### ***Matters to be covered in the audit***

#### **AML/CTF Program**

12. Whether each version of PayPal's Part A Program in operation during the Relevant period complied with the requirements of subparagraphs 9.1.5(3), 9.1.5(4) and 9.1.5(5) of the AML/CTF Rules.
13. Whether PayPal complied with the requirements of Part 9.4 of the AML/CTF Rules in respect of each version of its AML/CTF Program in operation during the Relevant period.
14. Whether, in putting in place risk-based systems and controls to ensure compliance with the requirements of subsection 45(2) of the AML/CTF Act, each version of PayPal's AML/CTF Program met the requirements of paragraph 9.1.3 of the AML/CTF Rules for the Relevant period.
15. Whether each version of PayPal's Part A Program met the requirements of subparagraphs 9.9.1(1) and 9.9.1(2) of the AML/CTF Rules, in so far as it relates to PayPal's obligation under section 45 of the AML/CTF Act during the Relevant period.
16. Whether the requirements of PayPal's AML/CTF Program that relate to section 45 of the AML/CTF Act have been effectively implemented throughout the Relevant period.

## **Compliance with IFTI reporting obligations**

17. Whether PayPal has failed to comply with the requirements of subsection 45(2) of the AML/CTF Act at any time during the Relevant period, and if so:
  - a. The cause, nature and scope (including timing) of each failure to comply.
  - b. The actions PayPal has taken to remediate each failure to comply, and whether those actions were effective.
  - c. Whether in each instance PayPal took appropriate steps to ensure that similar failures to comply do not occur in future.
18. Having regard to the full range of factors impacting on PayPal's compliance with its reporting obligations under section 45 of the AML/CTF Act including (but not limited to) systems, controls, processes, governance, assurance and resourcing, assess:
  - a. PayPal's historical capacity to comply with the requirements of subsections 45(2) and 45(3) of the AML/CTF Act throughout the Relevant period.
  - b. PayPal's current capacity to comply with the requirements of subsections 45(2) and 45(3) of the AML/CTF Act.
  - c. The steps that PayPal will need to take or continue to take to ensure that it can consistently and fully comply with the requirements of subsections 45(2) and 45(3) of the AML/CTF Act.
  - d. Whether PayPal has had adequate systems, controls and processes in place throughout the Relevant period to ensure that it receives information from the entities specified in paragraph 51.3.1 of the AML/CTF Rules to enable PayPal to comply with its obligations under subsections 45(2) and 45(3) of the AML/CTF Act.
  - e. The steps that PayPal will need to take or continue to take to ensure that it receives or will start to receive information from the entities specified in paragraph 51.3.1 of the AML/CTF Rules to enable PayPal to comply with its obligations under subsections 45(2) and 45(3) of the AML/CTF Act.
19. Without limiting the factors that the audit must consider, in assessing the issues identified in [18.a] to [18.e], the audit must specifically have regard to the following:
  - a. the governance framework within and between PayPal and the entities specified in paragraph 51.3.1 of the AML/CTF Rules, including communication channels;
  - b. the material triggers, escalation and communication processes to the Board and senior management of PayPal, and PayPal, Inc.; and
  - c. the communication relating to PayPal's IFTI reporting processes between PayPal and:

- Global Data Governance and Regulatory Technology based in Chennai, and
- Global Governance, Risk and Compliance Operations (Compliance Investigations) based in Omaha, Nebraska.

**Record keeping obligations**

20. In respect of PayPal's obligations under section 45 of the AML/CTF Act only, whether PayPal has failed to comply with the requirements of sections 106 and 107 of the AML/CTF Act at any time during the Relevant period, and if so:
- a. the cause, nature and scope of the failure;
  - b. the actions, if any, PayPal has taken to remediate the failure, and whether those actions were effective; and
  - c. whether in each instance PayPal took appropriate steps to ensure that a similar failure to comply does not occur in future.