FSC FINANCIAL SERVICES COUNCIL

6 March 2019

Consultation on exposure draft: Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2018 (Bill)– Proposed Removal of S38 Licensed Financial Adviser arrangements

In our previous letter dated 26 October 2018, we raised concerns with the proposed removal of existing S38 provisions enabling that an Applicable Customer Identification Procedure (**ACIP**) be carried out by a licensed financial adviser can be deemed to have been carried out by another reporting entity, subject to conditions specified in part 7.2 of the AML/CTF rules.

These 'deeming' provisions provide the relying entity with a safe harbour and enable circumstances where an ACIP carried out by a licensed financial advisor is considered to meet the AML/CTF Program requirements of the relying entity, even if the ACIP is not entirely in line with the requirements of this Program.

This safe harbour created by the deeming provisions has supported processes in place across the financial advice industry.

The function of this deeming provision is widely used across the wealth management industry and is fundamental in product issuers dealings with advisers. It allows a single ACIP for a customer, performed by a licensed financial adviser, to be used by multiple product issuers (rather than multiple ACIPs being completed), removing duplication in the customer identification process.

In its email dated 19 December 2018, the Department of Home Affairs stated that the Bill's scope of the proposed section 38 has been reframed to continue to allow reliance on licensed financial advisors for the purpose of performing an ACIP. However, under this proposal product issuers would become ultimately responsible for actions of advisers and the safe harbour from liability would be removed.

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The FSC notes that financial advisers are reporting entities in their own right, and many of them currently carry out customer identification for a variety of product issuers by using a standardised customer identification form issued by the FSC which has been common practice for a long time.

By removing the deeming provision, product issuers are unlikely to continue to rely on the ACIP procedures performed by licensed financial advisers, as the product issuer would be exposed to any potential non-compliance introduced through the ACIP performed by the licensed financial adviser.

Furthermore, the ACIP performed by the licensed financial adviser would be required to fully meet all elements of the product issuer's AML/CTF Program, rather than allowing for minor variations that can be accommodated under the deeming provision.

Licensed financial advisers would face dealing with a multitude of different identification requirements of each product issuer and a variety of differing customer identification forms to be completed.

This results in process inefficiencies and creates additional costs across the industry due to additional monitoring requirements to confirm advisers' adherence to the specific customer identification processes of each product issuer and an increase in complexity of carrying out these processes.

We request that the draft be further reviewed and confirm that we would welcome the opportunity of holding a workshop involving government representatives with representatives of the FSC AML-CTP Working Group to discuss the above issue, including drivers behind the move away from the previous drafting and to consider the best way forward in addressing this issue.

Yours faithfully

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