

**Discussion Draft Only  
for meeting 13/11/2006**

**A. Summary of Highest Priority Rules required prior Royal Assent**

	<b>Subject of Rule required &amp; Bill reference</b>	<b>Why required and impact if not available</b>	<b>Comment</b>
1.	Definitions Clause 5	<p>Definition of "<b>account</b>" - The concept of "account" is fundamental to a number of designated services and obligations under the Bill. Account includes "a trust of a kind specified in the AML/CTF Rules". No Rules have been provided in relation to such trusts.</p> <p>Definition of "<b>third party bill payment system</b>"- It is necessary to know what will be exempt from the EFTI provisions which commence at 0 months.</p> <p>Definition of "<b>designated business group</b>" - Aspects of DBG definition are left to the Rule namely (b),(d) and (e) and policy position that flexibility in definition will not be undermined by the Rule must be confirmed. DBG is a fundamental concept which underpins the way in which reporting entities will manage their operations and compliance with the legislation certainty is need for future planning. If the core features outlined above are not maintained reporting entities will need to outlay significant cost to rearrange current operations. It is necessary to know the scope of DBG to design systems and controls for identification as part of planning and implementation (and clause 116).</p>	<p>No rules currently contemplated</p> <p>No rules currently contemplated</p> <p>Rules under paras (b) &amp; (d) drafted, formalities only. To be finalised by 31/3/07. No rules currently contemplated under para (e). Rules under cl 85 &amp; 116 to be finalised by 31/3/07</p>

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		Definition of " <b>correspondent banking relationship</b> " - Need the Rules defining relationships and services that are exempted from the definition for example industry's submission that international credit card scheme relationships must be exempted (and clause 99).	AUSTRAC considering whether international credit card scheme relationships should be excluded. Rules by 1/1/07 if necessary. Clause 99 rules made public with DEB.
2.	Low risk Clauses 30 & 31	Content of this clause is left entirely to the Rule so it must be provided or alternatively a policy position that Government does not intend to publish a Rule pursuant to this clause must be clarified. AGD and AUSTRAC need to agree with industry the consultation process for identifying low risk services and customers and resolving the Rules that allow for the exemptions to operate.  The operational impact of this issue dictates that it must be resolved as a priority (as part of resolution of "commence to provide issue") and in any event before the passage of the Bill. The issue affects all aspects of industry's products and services and if the clarification above is not obtained industry will need to make wholesale changes to its current operational practices at significant cost, as well as significant change to the customer experience that industry expects will result in customer backlash.	No rules currently contemplated
3.	Special circumstances Clauses 33 & 34	Content of this clause is left entirely to the Rule so it must be provided or alternatively policy position that Government does not intend to publish a Rule pursuant to this clause must be clarified. This will be required for non-face to face channels, securities, derivatives and potentially for other designated services depending on the resolution of commence to provide. Other examples include where an account is opened for a customer prior to their arrival in Australia on a "post credits only" basis. Without this exemption, the Bill requires significant changes to	Rules currently contemplated only in relation to bookmakers.

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		<p>current industry practice that are not justified given the minimal ML/TF risk of such practices. See also comments in relation to section 30.</p> <p>Industry requires rules for time periods in clause 34 to be provided. See also comments in relation to section 30.</p>	
4.	<p>Identification procedures deemed to be carried out by another reporting entity</p> <p>Clause 38</p>	<p>Chapter 5 as currently drafted is too restrictive, causing the deeming provision to be unavailable in reality other than to financial advisers. Rule 5.2.2(c) should be revised or deleted. Further, there are outstanding issues in relation to identification procedures carried out by financial planners. Industry currently relies upon chains of identification between reporting entities, which will not necessarily be within a DBG post-commencement.</p> <p>Customer identification is a key obligation under the legislative package requiring a sufficient lead time to implement. Industry requires certainty so as to enable this planning and implementation to occur in a cost efficient and timely manner.</p> <p>Industry notes that many of the critical Rules required for the identification obligations are complete and assumes they will not be amended without consultation with industry.</p>	<p>Industry comments are under consideration and a further draft will be available early in the new year, but not by 1/1/07</p>
5.	<p>Rule to specify matters to be taken into account in assessing "reasonable grounds" to form a suspicion</p> <p>Clause 41(5)</p>	<p>No content is currently given to clause 41(5) and it is left to the Rule as to "reasonable grounds" that are required. The Rule is needed or alternatively a policy position that Government does not intend to make such a Rule must be clarified. It is critical that the Rule not undermine the reporting entity's ability to exercise judgement which is essential to a risk-based approach. It is required now so as to permit design of systems that work together.</p>	<p>Rules not currently contemplated</p>

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6.	Exemptions from identification procedures Clause 39	Some designated services will require exemptions in certain circumstances, eg traveller's cheques as the requirement under clause 35 should not apply in circumstances where a walk in customer requests one of these designated services and the amount of the transaction is not more than, eg, something in line with FATF or at least AUD 10 000. This is a must have as it is essential to design and implementation of customer ID procedures	Except for travellers' cheques, rules not currently contemplated. If industry puts a case, AUSTRAC & AGD will consider in consultation with designated agencies. Travellers' cheques under consideration.

**B. Summary of other Key Rules required prior to Royal Assent**

	<b>Subject of Rule required &amp; Bill reference</b>	<b>Why required and impact if not available</b>	<b>Comment</b>
1.	EFTI including definitions of "ordering institution" and "beneficiary institution"  Clauses 8 & 9, 67 & 70	It is necessary to know whether the Rules will extend the definitions to a person other than an ADI, bank, building society or credit union. This could have significant impact. For instance, if a wealth management company became an "ordering institution" it would have significant obligations in relation to EFTIs which it currently does not have under the FTRA.  No exemptions have been made from the EFTI obligations under clause 67 and no Rules published for the purposes of the definition of "required transfer information" in clause 70. It is imperative that these Rules be finalised prior to 1 January given the 0 month implementation date.	No rules contemplated at date of Royal Assent. Consultations with industry in January if necessary.  No rules currently contemplated
2.	Rules in relation to when an individual is ordinarily resident in a particular country  Clause 14	The clause permits Rules in relation to residency of an individual including conditions establishing residency or not and either Rules must be provided or Government confirm a policy position that it does not intend to make Rules in relation to this clause. The concept of resident is relevant to designated services and correspondent banking so must be complete before the Bill is passed.  The control test as used in clause 14 is unnecessarily complex and will create operational difficulties which are only compounded to the extent that there remains uncertainty about the scope of the clause.	No rules currently contemplated
3.	Verification of pre-commencement customers  Clause 29	Chapter 4 has not been finalised despite industry providing comments. The scope of the obligation is left entirely to the Rules (see also earlier comment in relation to clause 30). Rules must be provided or Government must confirm the way in which existing consolidated Rules will apply. Again these are key provisions that are integral part of systems currently being designed. Final Rules are essential so as to permit design of systems that work together.	Rules to be finalised by 31/3/07

	<b>Subject of Rule required &amp; Bill reference</b>	<b>Why required and impact if not available</b>	<b>Comment</b>
4.	Threshold transaction exemptions Clause 44	As currently drafted the Bill leaves all exemptions to the Rules. Transactions that are currently exempt under the FTRA should continue to be exempt and the Rule needs to be finalised as soon as possible.	Not required till 24 months after Royal Assent; available after 31/3/07
5.	IFTI reporting Clause 45	Rules are required in relation to the form and content of IFTI reports. These Rules may be less of a priority as the implementation date for this clause is 24 months. However, other EFTI provisions commence at 0 months. The Explanatory Memorandum states that section 45 is intended to "continue the long-standing obligations under the FTRA". ". Either a statement of statement of policy that the details on IFTI reports will not change or a Rule is required. CDD and potentially customer ID can be impacted by what must go into these reports in order to assess what to collect from customers via the front or back office. This comment also applies to threshold reporting and suspicious matter reporting. These reports will have an impact on the design of systems and controls to meet other obligations which cannot be assessed without them.	Not required till 24 months after Royal Assent; available after 31/3/07
6.	Compliance reports Clause 47	Given that this obligation will relate to others under the Bill and take some advance planning industry needs to know requirements relating to the content and timing of compliance reports in order to meet the 6 month implementation date.  Industry will be designing systems and controls that need to 'fit together'. If information needs to be included on one of these reports, then this needs to be taken into account during the design phase of projects, which need to commence well in advance of the implementation timeframe (ie two years).	Rules and approved form. To be finalised as early as possible in Jan 07, or before

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7.	Records of transactions Clauses 106 to 108 and 112 to 114	The nature and extent of record keeping obligations prior to 1 January remain unknown despite the 0 month implementation date for most of these obligations.	No rules currently contemplated in relation to Table 1 services except under cl 112. Cl 112 rules to be finalised by 31/3/07
8.	Definition of designated remittance arrangements Clause 10	Rules are required in relation to clause 10 to ascertain whether or not certain non-ADI entities will be caught as providers of designated remittance services. Designated remittance providers must comply with Part 6 of the Bill, which will involve substantial systems developments, with long lead-times. Part 6 has a 0 month implementation date.	No rules currently contemplated