

20 November 2006

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Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

Dear Sir/Madam

**Anti-Money Laundering and Counter-Terrorism Financing Bill 2006 and draft AML/CTF Rules**

We refer to the revised exposure draft Anti-Money Laundering and Counter-Terrorism Financing Bill 2006 (**AML/CTF Bill**), the draft AML/CTF Rules (**the Rules**) released by the Minister for Justice and Customs on 13 July 2006 and the current Senate Legal and Constitutional Affairs Committee on the Anti-Money Laundering and Counter-Terrorism Financing Bill 2006 and the Anti-Money Laundering and Counter-Terrorism Financing (Transitional Provisions and Consequential Amendments) Bill 2006.

PayPal welcomes the latest draft of the AML/CTF Bill and the Rules and the co-operative approach shown by the Government in developing robust yet workable anti-money laundering legislation.

**1. "Low-risk" designated services**

Section 28 of the AML/CTF Bill provides that the initial customer identification and verification procedures set out in Sections 29 and 31 do not apply to low-risk designated services under the Rules.

According to the "Release Status" summary published by the Minister for Justice and Customs on 13 July 2006, the Government has indicated that it does not presently see any need for making rules to designate any low-risk services for the purposes of Section 28.

PayPal made a submission to AUSTRAC in our letter dated 13 April 2006 in support of the designation of various services as "low risk".

Following a review of the latest draft of the AML/CTF Bill PayPal is still of the view that the service provided by PayPal, and similar services, should be designated as “low-risk”.

PayPal requests that AUSTRAC consider our earlier submission and provide us with its response in due course.

## **2. Submission on deemed customer identification under Section 34A**

PayPal considers the inclusion of new Section 34A in the draft AML/CTF Bill to be a significant improvement in the identification process. Section 34A recognises that it is reasonable for reporting entities, such as PayPal, to be able, in certain circumstances, to rely on customer identification procedures undertaken by other reporting entities. In addition, Section 34A recognises the importance of having a deemed customer identification process that is risk-based and technology neutral.

The Government has indicated that the Rules relating to 34A will be completed following further consultation with industry sectors and other interest groups.

As a result, PayPal wishes to make the following submission in relation to the proposed Rules:

1. **(Application of Section 34A and Rules)** The Rules in relation to Section 34A should enable a reporting entity (**reporting entity A**) to rely upon customer identification by another reporting entity (**reporting entity B**) in the following circumstances:
  - a. Where reporting entity A requires a customer to provide details of their credit/debit card or bank account issued or made available to them by reporting entity B (**Account**) at the time they open their account or before the designated service is provided to them by reporting entity A;
  - b. Where reporting entity A only accepts funds from the customer's Account with reporting entity B, or an account with another reporting entity. Reporting entity A does not accept deposits of cash or cheques; and
  - c. Where reporting entity A only allows a customer's funds to be withdrawn from its Account with reporting entity A to the credit of that customer's Account (i.e. a bank or credit/debit card account) held with reporting entity B, or an account with another reporting entity. Reporting entity A does **not** allow withdrawals via cash or cheque.
2. **(Reliance on Rules)** In the circumstances set out in point 1 above, the Rules should enable reporting entity A to rely upon the provision of the details of the customer's credit/debit card or bank account with reporting entity B as **prima facie** evidence that the applicable customer identification procedures have been carried out by reporting entity A without any further action required by reporting entity A. This prima facie reliance should be subject to reporting

entity A not having any actual knowledge or suspicion that the identification of the customer by reporting entity B is incorrect or in any way suspicious.

**3. (Purpose of Section 34A)**

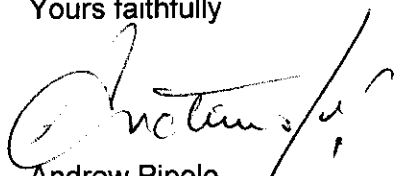
- a. In the example in point 1 above, reporting entity A should be able to rely, in good faith, on the provision of adequate details in relation to the Account received from the customer without the need to obtain any further evidence or documentation to establish the customer's identity. Requiring any further information or verification to be obtained by reporting entity A would undermine the utility and rationale for Section 34A.
- b. In support of PayPal's submission it is noted that the Government has already recognised in relation to self-managed superannuation funds (**SMSFs**) that any money laundering and terrorist financing risks that may arise in relation to the operation of SMSFs will be dealt with when an SMSF opens an account with a financial institution. PayPal submits that the same rationale and protections apply to the provision of designated services by reporting entity A in the circumstances outlined above. That is, reporting entity A should be able to rely upon the customer identification procedure as having been carried out by reporting entity B as the bank or credit card issuer that provided the customer's primary account.

In addition to the above, PayPal would like to be included in any discussion or consultation process related to the development of Rules on Section 34A. PayPal has significant experience in relation to AML/CTF legislation and compliance programs to address AML/CTF legislation around the world, including the US and UK. PayPal also has leading systems and risk based programs in place to detect and counter fraud, money laundering and terrorist financing.

For these reasons, PayPal believes it can bring valuable experience in the consultation process on the rules relating to Section 34A.

We look forward to an opportunity to continue working with Government and AUSTRAC in relation to the passage of the draft legislation.

Yours faithfully



Andrew Pipolo  
Managing Director