



Investment & Financial Services Association Ltd
ACN 080 744 163

20 March 2006

Mr Jonathan Curtis
Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
Parliament House
Canberra ACT 2600

Dear Secretary

AML/CTF EXPOSURE DRAFT BILL AND RULES

Further to our submission of 6 March 2006 focussing on the key issues in the AML/CTF Exposure Draft Bill and Rules, at the Committee hearing held on Tuesday 14 March 2006 we agreed to provide the Committee with a copy of our submission dealing with low risk designated services once finalised.

The Investment & Financial Services Association (IFSA) now welcomes the opportunity to provide the Committee with this further submission in support of IFSA's view that certain superannuation and life insurance products ought to be considered low risk designated services.

Once again, we would welcome the opportunity to attend any further hearings or provide you with any further information in support of this submission.

If you have any queries regarding the contents of this submission, please do not hesitate to contact me or Martin Codina on (02) 9299 3022.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Richard Gilbert', is written over a faint, larger version of the same signature.

Richard Gilbert
Chief Executive Officer

IFSA SUBMISSION ON ANTI MONEY LAUNDERING: SUPERANNUATION AND LIFE PRODUCTS

1 INTRODUCTION

Purpose

1.1 The purpose of this submission is to:

- (a) outline the AML/CTF risk profile of superannuation and life products;
- (b) demonstrate that regulated superannuation products, life risk insurance products and certain investment life products generally present a low AML/CTF risk;
- (c) propose that those products be treated as "low risk" for the purposes of section 28 of the Exposure Draft of the Anti-Money Laundering and Counter-Terrorism Financing Bill 2005 dated 13 December 2005 (**Draft Bill**); and
- (d) discuss the way in which other aspects of the AML/CTF regime (as currently proposed) should apply to superannuation and life products.

1.2 In focussing on superannuation and life products, IFSA is not suggesting that these are the only classes of designated service that could justify a "low-risk" classification. For example, designated services provided to reporting entities licensed by ASIC or regulated by APRA are unlikely to be used in connection with money laundering or terrorist financing given the low-risk nature of the customer. Other industry submissions may identify further classes of low risk designated services.

Suggested overall approach

1.3 The purpose of categorising a designated service as "low risk" is to ensure that the AML/CTF obligations imposed on financial institutions and the consequent implications for customers are not disproportionate to the risk posed by that designated service. Even if a designated service is classed as "low risk" by AUSTRAC, reporting entities:

- (a) may be required to verify the identity of a customer if a risk trigger occurs; and
- (b) will still need to consider the risks posed by individual products and circumstances in formulating their AML programs under part 7 of the Draft Bill (**AML Programs**).

1.4 Therefore, in deciding whether to categorise a designated service as "low risk", AUSTRAC should not focus on product features which are not usually activated, or non-representative customers that exhibit high risk behaviour or situations where the risk of money laundering is increased – these will be captured by each reporting entity's AML Program. "Low risk" should not mean "no risk".

- 1.5 Instead, AUSTRAC must focus on ensuring that the AML measures required are proportionate to the risk posed in the majority of cases, leaving reporting entities to deal with any unusual circumstances or particular risks in their AML Programs.

Submission is based on current proposals

- 1.6 This paper assumes that the Draft Bill will be enacted in its current form. Of course, the form of the legislation is not final and is subject to discussion with the various stakeholders. In addition, the AML/CTF Rules continue to be drafted, released and refined. The proposals in this paper may therefore need to be modified if the legislation is different to the Draft Bill or if new issues arise under the AML/CTF Rules.
- 1.7 In particular, we note that at the AML/CTF Advisory Group on 7 March 2006, there was considerable discussion around the risk based approach and its application to the identification requirements. An outcome of the meeting was that the Attorney-General's Department and AUSTRAC would prepare a revised draft of the Bill and AML/CTF Rules that supports the policy position that the risk based approach should also be applied to customer identification - that is, a removal of the minimum customer identification. There was also an acknowledgement that if risk based approach to customer identification is adopted, it is likely that AUSTRAC will not need to specifically approve low risk products in accordance with section 28 of the Draft Bill.
- 1.8 In this submission, IFSA is not seeking to raise issues in relation to the form or substance of the Draft Bill. As suggested by AUSTRAC, submissions in relation to the form and substance of the Draft Bill will be directed to the Attorney-General's Department and copied to AUSTRAC for information.
- 1.9 We do, however, note that IFSA strongly supports a risk-based approach to customer identification (and other AML/CTF requirements) under which the legislation imposes high-level requirements on reporting entities to determine their own risk-based controls, rather than a more prescriptive regime where the regulator imposes detailed requirements based on a broad view of the risks posed by various classes of designated services. The UK experience indicates that it is industry, rather than the regulator, that is best placed to determine specific AML/CTF measures. IFSA once again emphasises that the Government should follow the example of the UK in this regard.

2 WHAT IS THE RISK PROFILE OF SUPERANNUATION PRODUCTS?

Background

- 2.1 Superannuation products are designed to provide for employees and others to invest in order to fund their retirement.
- 2.2 Under superannuation guarantee legislation, employers are currently required to contribute a minimum of 9% of each employee's earnings base to a superannuation fund or RSA. Contributions must be made at least quarterly and are subject to a maximum required contribution currently set at \$3,034.80 per quarter.
- 2.3 The vast majority of contributions to regulated superannuation products are made under the superannuation guarantee legislation, although additional voluntary

contributions may also be made by employees and employers. Others (for example, the self-employed) may also voluntarily invest in superannuation.

- 2.4 Provided certain rules are complied with (including strict rules regarding the source, investment and payment of superannuation money), superannuation products receive concessional tax treatment. Compliance with those rules by those offering superannuation products is therefore critical.

Types of superannuation products

- 2.5 There are five basic types of superannuation products:

- (a) corporate funds, which are open to people working for a particular employer or corporation (including public sector funds);
- (b) industry funds, which are open to people in a particular industry or under a particular industrial award (some industry funds are open to anyone);
- (c) retail funds run by financial institutions, which are open to the public;
- (d) retirement savings accounts, which are offered by banks, building societies, credit unions or life insurance companies. These differ from other superannuation products because they don't have a trust structure and are run like a bank account, but are subject to similar restrictions on access to money invested; and
- (e) self managed superannuation funds (**SMSF**), which can be established by up to four people, who will all be both beneficiaries and trustees of the fund.

- 2.6 Three government agencies regulate and enforce legal standards to protect members and their benefits:

- (a) the Australian Securities and Investments Commission regulates what issuers and intermediaries tell members and how they abide by company law (we note however that SMSFs are not subject to the full range of licensing, disclosure and other requirements under the *Corporations Act 2001* (Cth));
- (b) the Australian Prudential Regulation Authority prudentially regulates how superannuation providers operate (except SMSFs) so that they can meet their fiduciary obligations to members, and
- (c) the Tax Office regulates SMSFs, employer contributions (the superannuation guarantee), co-contributions and superannuation tax rules.

Relevant legislation includes the Superannuation Industry (Supervision) Act 1993 (Cth), the Corporations Act 2001 (Cth), the Australian Securities and Investments Commission Act 2001 (Cth) and the Retirement Savings Accounts Act 1997 (Cth).

- 2.7 In this paper, the first four types of superannuation products identified in paragraph 2.5 are referred to as "regulated" superannuation products. SMSFs have a different AML/CTF risk profile in comparison to most other superannuation products.

What is the AML/CTF risk profile of regulated superannuation products?

- 2.8 Superannuation is specifically mentioned in paragraph 12 of the Interpretive Notes to FATF Recommendation 5 as an example of a low risk product for which simplified or reduced customer due diligence measures may be appropriate¹.
- 2.9 The following typical characteristics of regulated superannuation products make it unlikely that such products could or would be used for money laundering:
- (a) contributions are typically made incrementally and over long periods of time, meaning that regulated superannuation products are not suited to moving or disguising large amounts of money quickly;
 - (b) realisation of value is delayed and restricted in the following ways:
 - (i) statutory preservation rules restrict the timing and the circumstances in which the member can access their investment – generally speaking a member can only access their superannuation when they permanently retire and also reach the minimum age set by law (between 55 and 60, depending on the member's date of birth). A member can access their superannuation earlier in a very restricted number of circumstances, including if they suffer permanent incapacity for work, in cases of severe financial hardship or on 'compassionate grounds', or when they permanently leave Australia². Accordingly, members of a superannuation scheme will often be required to wait years if not decades to access the value of their accumulating investments;
 - (ii) superannuation product providers must ensure that the abovementioned restrictions are adhered to, as failure to do so would breach their legal obligations and/or jeopardise the tax treatment of the product – accordingly superannuation product providers will take practical steps to ensure that the conditions on paying money out of the fund have actually been satisfied;
 - (iii) typically, benefits cannot be paid out of the scheme to beneficiaries in cash or other form of anonymous value. Benefits are typically paid into an account with ADI or cash management trust in the name of the member, or to another superannuation product by way of rollover. This means that the members generally cannot access the cash value of their investments unless their identity has been verified by the provider of that account;
 - (iv) there is limited capacity for members to direct a scheme trustee or account provider to pay money out of the scheme to third parties;
 - (v) with the exception of small APRA funds (APRA-regulated funds with fewer than five members but with an APRA approved trustee) and superannuation master trusts, a member has limited opportunity to direct their accumulated benefits to the purchase of specific assets.

¹ One of the examples of low-risk products identified in paragraph 12 of the Interpretive Notes to Recommendation 5 is "[a] pension, superannuation or similar scheme that provides retirement benefits to employees, where contributions are made by way of deduction from wages and the scheme rules do not permit the assignment of a member's interest under the scheme."

² Those isolated cases in which superannuation is accessed early, or transferred to an SMSF, can be readily identified and separately dealt with in a reporting entity's AML Program.

Even in the case of small APRA funds and master trusts, members may only choose from a menu of investments selected by the APRA-regulated trustee;

- (vi) there is no secondary market for interests in superannuation schemes; and
 - (vii) with the possible exception of small APRA funds, members have little or no day-to-day control over the operation of the scheme;
- (c) the members are typically individuals holding their interest in their own right – there is little or no scope for complex ownership structures at the membership level that disguise ultimate ownership;
- (d) members must rely on the co-operation of a regulated entity in order to carry out any transactions in relation to their superannuation products, particularly where the transaction is atypical. Such regulated entities need to satisfy strict criteria to be licensed to operate superannuation schemes, including police checks, and typically have a substantial commercial interest in maintaining their good name and reputation;
- (e) because the vast majority of members are required to be members by legislation and the bulk of contributions are compulsory employer contributions, the reasons for investing in superannuation schemes are probably more homogenous than for other investment products, making unusual activity easier to identify and track and harder to carry out;
- (f) the source of funds is usually clear – the vast majority of contributions are paid by the employer as part of the employment conditions of their employees; and
- (g) superannuation schemes are subject to reporting requirements to the ATO, including details of contributions received, lump sum payments and commencement of pensions.

2.10 In summary, in contrast to other types of investment:

- (a) the normal methods of contributing to superannuation mean that the source of funds is clear and that contributions are typically incremental over a long period of time;
- (b) there are onerous restrictions on the ability to access the value of superannuation products prior to retirement age; and
- (c) superannuation products do not generally allow third party payments.

Regulated superannuation products are therefore unsuitable for money laundering or terrorist financing, and therefore present a low AML/CTF risk.

What is the AML/CTF risk profile of SMSFs?

2.11 SMSFs are regulated by the Australian Taxation Office. They have fewer than five members, each of whom also acts as a trustee of the fund. As such, members of such funds control the investment of their contributions and payment of their benefits.

- 2.12 Given the greater control and flexibility allowed to members of SMSFs, these schemes lack a number of the features which make regulated superannuation products low risk.

3 WHAT IS THE RISK PROFILE OF LIFE PRODUCTS?

Background

- 3.1 Life products have a range of purposes and structures. Broadly speaking, and with some exceptions, life products are contracts which provide for the payment of money where the timing or duration of payments is linked in some way with the termination or continuance of human life³.

- 3.2 Life insurers are regulated by:

- (a) the Australian Securities and Investments Commission, which generally regulates licensing of providers of, and disclosure for, insurance products; and
- (b) the Australian Prudential Regulation Authority, which prudentially regulates how life companies operate so that they can meet their obligations to policyholders.

Relevant legislation includes the Life Insurance Act 1995 (Cth), the Insurance Contracts Act 1983 (Cth), the Corporations Act 2001 (Cth) and the Australian Securities and Investments Commission Act 2001 (Cth).

Types of life products

- 3.3 Life products can be divided into two broad categories⁴:

- (a) life risk products, which are contracts of insurance where payment by the insurer is dependent on the occurrence of an event which may or may not occur, such as the death of a person within a specified term, other contingencies dependent on the continuation or termination of human life, or if a person becomes disabled through illness or injury; and
- (b) investment life products, where the main purpose of the product is to provide an investment return or income stream to the customer - these are not contracts of insurance.

- 3.4 Unhelpfully, both types of product are commonly referred to as "life insurance", but the two classes of product must be carefully distinguished as they can present very different AML/CTF risk profiles.

- 3.5 It is also worth noting that the types of life products which are offered in the market has substantially changed over the years. Many "traditional" products, such as products which provide for payment on, or until, death or maturity of the product, often had both risk insurance and investment elements. These types of products, commonly referred to as "legacy products", are much less common than was

³ For a more detailed definition, see section 9 of the Life Insurance Act 1995 (Cth).

⁴ See the definitions of "life risk insurance product" and "investment life insurance product" in section 761A of the Corporations Act 2001 (Cth), which in turn refer to paragraphs 764A(1)(e) and (f) of that Act respectively.

previously the case, and many issuers have ceased to offer them to new customers.

What is the AML/CTF risk profile of life risk insurance?

- 3.6 General insurers do not fall within the categories of businesses that are required to be regulated under the FATF Forty Recommendations⁵. The typical characteristics of general risk insurance products mean that they present a minimal money laundering risk. Policies of Consumer Credit Insurance issued by a general insurer are included in this category.
- 3.7 Life risk insurance products (including consumer credit insurance issued by life insurer) share most, if not all, of those characteristics. For example:
- (a) they generally provide no or little capacity to accept or make payments to or from third parties;
 - (b) they have no investment value;
 - (c) they only pay out on prescribed events for which the insurer requires independent evidence, for example death certificates, medical and hospital reports; and in the case of income protection insurance, the monthly benefits are subject to satisfactory proof of loss every month, and which the insurer has a right to investigate (a right that insurers will often exercise where there are unusual or suspicious circumstances);
 - (d) those prescribed events are unlikely to occur, or are at least not certain to occur;
 - (e) premiums are typically low value and can require incremental contributions over a long period of time;
 - (f) they generally have no surrender value, or may only accumulate a surrender value over time, or may have restrictions on early surrender;
 - (g) there is no secondary market for risk insurance products at the customer level;
 - (h) they are generally subject to some form of third party underwriting; and
 - (i) they also include policies of Consumer Credit Insurance issued by a life insurer and are therefore included in this category.
- 3.8 In summary, in contrast to investments such as bank accounts and managed funds, significant value can only be extracted from a life risk product at the expense of the financial institution issuing those products. Such products only pay on the occurrence of a contingency, and it is commercially imperative for the insurer to ensure that claims against it are genuine and not manufactured, fraudulent or for an illegal purpose.
- 3.9 In IFSA's view, therefore, most life risk insurance products present a minimal to low money laundering risk. While some form of laundering may be theoretically possible, the steps and time required to launder money using these products is likely to greatly impair their utility from a launderer's perspective. Of course, in

⁵ See the definitions of "financial institutions" and "designated non-financial businesses and professions" in the Glossary to the Forty Recommendations.

formulating their AML Programs, reporting entities will need to make risk assessments based on individual products and the circumstances in which they are sold and used.

- 3.10 Further, where life risk insurance products are sold through regulated superannuation products, the money laundering risks associated with these products are further mitigated for the reasons outlined above in paragraph 2.9.

What is the AML/CTF risk profile of investment life products?

- 3.11 Investment life products are a category of life products that are or can be used for investment purposes. These products are not contracts of insurance. Generally, such products have a surrender value, are transferable, can be used as collateral of a loan and can have high, lump sum premiums and payouts.

- 3.12 As a result, and subject to some exceptions (some of which are discussed in the next paragraph), these products can be considered to be medium risk and require a greater level of due diligence than life risk products (but no more so than for other investment products). Again, reporting entities will need to assess the risk presented by their products having regard to the circumstances in which they are sold and used.

- 3.13 However, there are a number of circumstances instances where a low risk classification is justified. These include:

- (a) *investment life products purchased by regulated superannuation funds* – in these cases, the money laundering risks associated with these products are mitigated for the reasons outlined above in paragraph 2.9. This is recognised in paragraph 12 of the Interpretive Notes to FATF Recommendation 5, which states that simplified or reduced customer due diligence measures could be acceptable for “insurance policies for pension schemes if there is no surrender clause and the policy cannot be used as collateral”;
- (b) *low premium policies* – these policies are unsuitable for laundering large amounts quickly. Again, this is recognised in paragraph 12 of the Interpretive Notes to FATF Recommendation 5, which states that simplified or reduced customer due diligence measures could be acceptable for “life insurance policies where the annual premium is no more than USD/EUR 1000 or a single premium of no more than USD/EUR 2500”. IFSA suggests that thresholds of at least A\$1,500 and A\$4,000 be adopted to take exchange rates and rounding into account;
- (c) *non-commutable pensions and annuities that are sourced from regulated superannuation products* – given that money in regulated superannuation is low risk, a product that is sourced from that money that provides an income stream but no or limited access to capital is unlikely to be suitable for use in connection with money-laundering or terrorist financing. IFSA considers that these products are also low-risk. Broadly speaking, IFSA suggests that this category should at least include products having a term of at least the lifetime or life expectancy of the beneficiary that are sourced from superannuation money or a transfer from another non-commutable product.

There may also be other classes of low-risk investment life products, such as certain products offered by friendly societies. We understand that the Australian Friendly Societies Association will make its own submissions in this regard.

4 APPLICATION OF THE AML/CTF REGIME TO SUPERANNUATION AND LIFE PRODUCTS

Low risk products

General

4.1 For the reasons outlined above, IFSA submits that:

- (a) regulated superannuation products;
- (b) life risk insurance (including term life insurance, trauma insurance, income protection insurance and consumer credit insurance);
- (c) life products acquired by superannuation funds;
- (d) life products having an annual premium of no more than A\$1,500 or a single premium of no more than A\$4,000; and
- (e) non-commutable annuities and pensions sourced from superannuation money,

all generally present a low to minimal money laundering risk. Of course, in formulating their AML Programs, reporting entities will need to consider the money laundering risk presented by each of their own products on a case-by-case basis having regard to the features of those products.

Identity verification

4.2 Given the low money laundering risk presented by these products, IFSA submits that the AML/CTF Rules should classify these products and related services as low-risk designated services for the purposes of section 28 of the Draft Bill. Generally speaking, no identification procedures should be required from an AML perspective in relation to such designated services except in very unusual circumstances where particular product features or customer characteristics warrant such measures.

4.3 Even where such additional precautions may be appropriate (for example, where money invested with regulated superannuation products is transferred to an SMSF or sought to be withdrawn because the member is permanently leaving Australia), they should be tailored and targeted to the specific risks identified. Such circumstances can be identified and provided for by each individual insurer in developing its AML Program.

4.4 AUSTRAC should also ensure that in formulating risk triggers for re-identification under sections 32 and 33, it does not cut across the section 28 exemption provided for low-risk products.

Know-your-client information

4.5 The low-risk status of these products should also be reflected in any know-your-client requirements applicable to these products. IFSA submits that the information required to be collected should be determined by the reporting entity on a risk-based approach and set out in the AML Program.

Suspicious transaction reporting

- 4.6 It is acknowledged that although there is minimal risk that these products will be used in money laundering or terrorist financing, there is nevertheless some risk. Accordingly, each reporting entity must comply with the suspicious transaction reporting requirements in Part 3 of the Draft Bill. Identification and monitoring of transactions will be done in accordance with the reporting entity's AML Program. Under section 32(1)(b) of the Draft Bill, AUSTRAC could also require the customer to be identified if suspicious circumstances arise.
- 4.7 It is also recognised that there is a trade-off between relaxing the identity verification for low risk products, and the quality and usefulness of a suspicious transaction report prepared in circumstances where identity has not been verified. However, given that these are low-risk services, the likelihood of a suspicious transaction being carried out using these services is also low. Accordingly, requiring verification merely to provide for the fairly remote possibility of a suspicious transaction report being required seems excessive. In IFSA's view, the structure of the Draft Bill makes it clear that the trade-off is one that the legislature is prepared to accept, and AUSTRAC should not defeat the legislative intention by denying low-risk status merely on the basis that subsequent suspicious transaction reports may be less useful.

AML Program

- 4.8 As stated at the beginning of this paper, the AML/CTF Rules set by AUSTRAC in relation to low-risk designated services will represent the minimum standard with which reporting entities must comply, regardless of the actual risk posed by particular situations. In addition to these minimum standards, reporting entities are required to maintain AML Programs which must seek to identify and materially mitigate AML/CTF risk. If particular features of products otherwise caught by a "low-risk" determination mean that they actually present a higher risk, the reporting entity's AML Program must identify and mitigate that risk.

Verification and monitoring of superannuation trustees by third parties

- 4.9 It follows from the low to minimal level of AML risk presented by regulated superannuation products that, subject to risk assessment at the reporting entity level, third parties providing designated services to regulated superannuation providers should be permitted to limit identity verification in relation to the fund to the verification of the trustee's identity and the existence and nature of the fund. Generally speaking, third parties should not have to identify or investigate the beneficial ownership of such funds.

SMSFs

- 4.10 For the reasons outlined above, SMSFs are more susceptible to money laundering than risk insurance or regulated superannuation products.
- 4.11 Unlike other superannuation products, the trustees and beneficiaries of SMSFs are the same individuals. Accordingly, as a practical matter, it does not make sense to require the trustees to identify themselves, monitor and report on their own transactions, and have AML Programs to identify and mitigate the risk that they will use the SMSF to launder money or finance terrorism. One possibility is for the identification, monitoring and reporting in relation to SMSFs to be carried out by other reporting entities who provide designated services to the SMSF, rather than by the trustees themselves. In this way, SMSFs would be treated in the same way

as other private trusts (such as family trusts). Alternatively, or in addition, SMSFs could be monitored by the ATO.

Investment life products (other than low-risk products)

- 4.12 For the reasons outlined above, investment life products (other than those in a low risk category, such as those referred to in paragraph 3.13) are more susceptible to money laundering than risk insurance products. Accordingly, subject to certain modifications as to the timing of identity verification (discussed in the following paragraphs) a similar level of due diligence as applies to other investment products may be appropriate in most cases.

Timing of customer verification

- 4.13 FATF Recommendation 5 generally requires verification of identity to take place before or during the course of establishing a business relationship or conducting transactions for occasional customers. However, where requiring verification at that time would interrupt the normal conduct of business, FATF allows countries to permit financial institutions to complete the verification of customer identity as soon as reasonably practicable *after* the establishment of the relationship, provided that the money laundering risks are effectively managed. In this context, paragraph 6 of the Interpretive Notes to FATF Recommendation 5 identifies life insurance business as an example of a case where it would be permissible for verification to be completed after the establishment of the business relationship. This treatment is not contingent on the product being classified as "low risk".
- 4.14 Sections 30 and 31 of the Draft Bill attempt to reflect this treatment⁶. However, as currently drafted, section 30 only applies to life products, non-face-to-face designated services and securities transactions only if:
- (a) requiring identification before commencement of the designated service would disrupt the normal conduct of business; and
 - (b) the designated service is specified in AML/CTF Rules.

Part 7 of the Draft Bill requires a reporting entity's AML Program to manage terrorist financing and money laundering risk (which would include the risk inherent in providing designated services prior to identity verification where permitted).

- 4.15 Accordingly, the requirements of the Draft Bill already cover all of the requirements identified in Recommendation 5 for permitting delayed customer identification. Therefore, IFSA submits that AUSTRAC should specify all life products, non-face-to-face designated services and securities transactions in the AML/CTF Rules made for the purposes of section 30 of the Draft Bill.

Timing of beneficiary verification

- 4.16 In line with paragraph 6 of the Interpretive Notes to FATF Recommendation 5, the Draft Bill permits providers of life products to identify and verify the beneficiary (as opposed to the policy holder) under a life product *after* the business relationship with the policyholder has been established, provided that identification and

⁶ IFSA will be making separate submissions to the Attorney General's department in relation a number of aspects of those sections, including the time frame allowed (5 business days is too short and too inflexible), the need to have the service specified in the AML/CTF Rules (particularly given the other conditions that must be required) and that there should be scope for AUSTRAC to add to the list of cases in which "special circumstances" exist.

verification occur at or before the time of payout⁷. AUSTRAC should ensure that any AML/CTF Rules applicable to life products are consistent with this approach.

"Legacy" products

- 4.17 As noted above, the types of life products which are offered in the market has substantially changed over the years. There are many products in existence that are no longer offered to new clients, but which continue in force in respect of clients to whom they were issued in the past. One important issue will be the way the transitional arrangements will treat these "legacy" products. In line with the requirements applicable to other products, reporting entities should not have to verify the identity of customers still holding or benefiting from these customers unless a risk trigger occurs. Of course, the risk triggers will need to be tailored to reflect the risk profile of those products. IFSA suggests that given the varied nature of such products, the risk triggers for these products be left to individual reporting entities to determine as part of their AML Programs.

5 CONCLUSION

Summary

- 5.1 For the reasons set out above, IFSA considers that

- (a) regulated superannuation products;
- (b) life risk insurance (including term life insurance, trauma insurance, income protection insurance and consumer credit insurance);
- (c) life products acquired by superannuation funds;
- (d) life products having an annual premium of no more than A\$1,500 or a single premium of no more than A\$4,000; and
- (e) non-commutable annuities and pensions,

present a low to minimal terrorist financing and money laundering risk. These products and related services should be classified as low-risk designated services for the purposes of section 28 of the Draft Bill. Any unusual risks or situations should be left for reporting entities to identify and manage under each reporting entity's AML Program.

- 5.2 Reporting entities dealing with regulated superannuation funds should not be required to gather information about the beneficial owners of those funds.
- 5.3 SMSFs are not low risk designated services. However, as the reporting entity and the customer are the same individuals, the identification, verification, monitoring and AML Program requirements do not seem appropriate. One solution is to treat SMSFs as the recipients of designated services rather than as a provider or reporting entity.

⁷ In relation the issue of life products, the "customer" is the policy holder not the beneficiary (see items 39, 40, 42, and 43 of section 6 of the Draft Bill). In relation to paying benefits, the "customer" is the payee (see item 41 of section 6 of the Draft Bill). So the identification and verification requirements apply only to the policy holder at the time of issue and only to the beneficiary at the time of payout.

- 5.4 Generally speaking, investment life products (other than those in the low-risk category, such as those identified in paragraph 3.13) are not low risk products. However, the Forty Recommendations do modify the timing requirements for verification of life products. AUSTRAC should specify all life products for the purposes of section 30 and ensure that its AML/CTF Rules do not cut across the ability to identify beneficiaries of life products at any time before payout under the policy.
- 5.5 Legacy products and other special or unusual circumstances should be left to be dealt with on a risk based approach under the reporting entity's AML Programs.

Further consultation

- 5.6 We understand that AUSTRAC will consult further with IFSA and other industry bodies before it makes a final decision as to which designated services may be treated as "low risk" under the Draft Bill. Further, the Draft Bill is itself subject to change and the AML/CTF Rules continue to be drafted and refined. Accordingly, this paper should be viewed as a broad policy position rather than as a final submission covering every detail. We anticipate that AUSTRAC may have further questions or require further information and we would be happy to assist in this regard.
- 5.7 We look forward to discussing the issues raised in this paper with AUSTRAC.