

14 September 2012

Manager  
Benefits and Regulation Unit  
Personal and Retirement Income Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By Email: [strongersuper@treasury.gov.au](mailto:strongersuper@treasury.gov.au)

Dear Sir/Madam,

**Exposure Draft legislation: Roll-overs to SMSFs as an AML designated service**

The Financial Services Council (“FSC”) represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, trustee companies and public trustees. The Council has over 130 members who are responsible for investing more than \$1.8 trillion on behalf of 11 million Australians. The pool of funds under management is larger than Australia’s GDP and the capitalisation of the Australian Securities Exchange and is the fourth largest pool of managed funds in the world. The Financial Services Council promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

FSC appreciates the opportunity to comment on the exposure draft legislation which will add a rollover to a self-managed superannuation fund (**SMSF**) as a designated service under the *Anti-Money Laundering and Counter-Terrorism Act 2006* (Cth) (**AML/CTF Act**). Our detailed comments on the proposal to introduce this new designated service are below.

**Proposed start date is difficult to achieve**

1. The 1 July 2013 proposed start date is difficult to achieve as industry will need to update processes, systems, procedures, documentation (potentially, including product disclosure material and related forms) and train staff in respect of the new requirements. Given that product disclosure material and forms are generally reviewed annually, we would seek a transition period of in the order of 12 months (from passing of the legislation to implement the change) to allow reporting entities to manage this change. Accordingly, we request a later start date to allow sufficient time to implement the necessary changes.

### **Customer identification and updating the SIS regulations standard rollover form**

2. The proposed new Item 42A will require identification of the member, and the SMSF to which the funds are being rolled over.
3. Currently, the SIS regulations contain a standard rollover form, available on the ATO website, for customers rolling over from one fund to another. The requirements in that standard rollover form are similar to, but different from, the “safe harbour” provisions of the AML/CTF Rules, such as in relation to who can certify documents, and the acceptable documents. Accordingly, we recommend that Treasury liaise with all of APRA, ATO and AUSTRAC as to whether or not any refinements are needed to the SIS regulations standard rollover form. FSC would be pleased to assist in that review.
4. We think it is important that the SIS regulations form is reviewed to ensure consistency with the objectives of SuperStream, which FSC supports. To the extent there are different requirements in the standard SIS rollover form, and any requirements under AML/CTF legislation, when undertaking a rollover from an APRA regulated fund to an SMSF, this may create confusion for customers and reduce the ease of movement of superannuation money within the superannuation system.

### **Treatment of the SMSF as a customer**

5. The exposure draft treats the SMSF as a customer. (See paragraphs 7 and 8 below about references in the exposure draft to “the member” as a customer.) We consider the SMSF would cease to be a customer once the rollover to the SMSF is effected. Nonetheless we seek clarity, in the legislation, that the SMSF ceases to be a customer (for AML/CTF Act purposes) upon the rollover to the SMSF being effected.
6. Further, we seek clarity (in the AML/CTF Act) that the only AML/CTF requirements relating to the new Item 42A designated service relate to customer identification and other obligations necessary and appropriate for managing AML/CTF risk *in relation to the rollover request*. For example, we seek clarity (in the AML/CTF Act) that the ongoing customer due diligence requirements are not applicable to these customers (that is, the SMSF and (see paragraphs 7 and 8 below) the member whose APRA regulated superannuation fund interest is being rolled over to the SMSF) for this (that is, the rollover) new designated service.

### **Treatment of the member as a customer**

7. It is unclear in the exposure draft whether the reference to “the member” as a customer of the reporting entity (the reporting entity being the trustee of the APRA regulated superannuation fund) is a reference to the APRA regulated fund member who is rolling over his/her interest to that person’s SMSF **OR** whether instead it is a reference to every member of the SMSF to which the roll-over is to be made (even if they are not the member of the

APRA regulated superannuation fund rolling over their interest to the SMSF). Clearly, reference to “the member” should be to the former and not the later.

8. Therefore, the legislation should be amended to clearly provide that “the member” customer (for AML/CTF Act purposes) for the new Item 42A designated service, is “the member of the superannuation fund from which the roll-over to the SMSF is sourced.”

**Exemption for low value superannuation cash-out should also be extended to the new Item 42A roll-over to an SMSF designated service**

9. Chapter 41 of the AML/CTF Rules provides an exemption from Division 4, Part 2 of the AML/CTF Act (identification procedures) for the cash-out of low value superannuation balances. It is appropriate that this exemption also apply to the new SMSF rollover designated service on equivalent terms to the existing exemption for low value superannuation cash-outs. This exemption (to the Item 42A SMSF rollover designated service) would remove the disproportionate identification requirements for the rollover of low-value amounts to an SMSF, as the risk of money laundering or seeking to avoid other laws by rolling over a small value balance in an APRA regulated superannuation fund to an SMSF would be insubstantial (compared to the costs and time in undertaking identification for rollovers of small value amounts to an SMSF).
10. We request that prior to (or at the same time as) the new Item 42A designated service of rollover to an SMSF commences, that AUSTAC provide an exemption (in the AML/CTF Rules) from the new Item 42A designated service for rollovers of low value amounts (not greater than \$1000) to an SMSF. We consider that Treasury ought to engage with AUSTRAC to ensure this low value exemption (from the new Item 42A) is effected by AUSTRAC (in the AML/CTF Rules) not later than the commencement of the new SMSF rollover designated service in the AML/CTF Act.

If you have any questions on this submission or would like FSC’s assistance on any of the above matters, please feel free to call me on (02) 9299 3022.

Yours sincerely



**STEPHEN JUDGE**  
General Counsel