

**INVESTMENT SAVINGS & INSURANCE ASSOCIATION OF NZ
INC**

SUBMISSION TO THE
MINISTRY OF JUSTICE

ON THE

ANTI-MONEY LAUNDERING AND
COUNTERING FINANCING OF TERRORISM
REGULATIONS AND CODES OF PRACTICE

DISCUSSION DOCUMENT

19 March 2010



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Anti-Money Laundering and Countering Financing of Terrorism Act 2009: Discussion Document on Regulations and Codes of Practice

Introduction

1. The Investment Savings and Insurance Association (“ISI”) welcomes the opportunity to comment on the Ministry of Justice discussion document, *Implementation of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009: Regulations and Codes of Practice*.
2. ISI represents the companies that issue and manage life insurance, superannuation and managed funds in New Zealand. ISI members are responsible for assets in excess of \$60 billion and a list of member companies appears at the end of this document.
3. ISI has been involved in consultation with the Ministry of Justice on AML/CFT proposals for several years and is generally supportive of the legislation enacted in 2009. We do, however, have some remaining concerns about practical aspects of implementing the legislation and we have endeavoured to propose solutions to those in this submission.
4. We have set out below our key recommendations and then detailed responses to the questions in the discussion document. We have only given responses to those questions relevant to our members’ businesses.

Key Recommendations

ISI has 6 key recommendations in response to the Discussion Document and these are set out below. This is not a complete list as further points are made in the next section in response to specific questions.

The definition of ‘financial institution’

- Needs to be clarified that it applies to financial advisers and, if so, an exemption provided from some requirements, (See response to Q5 below)
- Should be explicitly applied to trustees, with a CDD obligation on them. (See Q22)

Implementation date

- The implementation period should be 3 years from the date that full details of the regulatory regime are available. (See Q2)

Life Insurance

- Low premium rate policies and pure risk life insurance should be totally exempt. (See Q4 and Q10)

KiwiSaver

- Proposed reduced CDD measures for workplace superannuation should be amended to make them workable and specifically applicable to KiwiSaver. (See Q12)

Documentary identity verification

- A code of practice is preferable to regulations, with guidance for handling exceptions
- Consistency of codes under different Supervisors is essential
- Code requirements should be aligned with those in Australia rather than an approach that would be significantly more onerous.

(See Q13)

Certification of documents

- The proposed ‘trusted referee’ approach should include (or be replaced by) the existing process for certification by officers of the court and public notaries. (See Q17)

Response to Questions

- 1. **Scope of the regulatory framework:** Your feedback is sought on the proposed scope of the regulatory regime; in particular, we are interested in whether there are any other issues that need to be prioritised over the next six months to support planning for implementation.*

The scope of the regulatory regime looks appropriate. However, there are some key issues that need to be resolved as early as possible to make sure that implementation is able to be achieved on a cost effective and timely basis.

We need more clarity in relation to the interpretation of ‘financial institutions’ in the Act and what entities are intended to be covered by this key definition. We suggest that financial advisers and trustees will in many cases be defined as financial institutions. If they are, this will impact on many other aspects of the regime including the treatment of designated business groups and trusts.

We also need more clarity around minimum CDD identity standards as soon as possible.

In addition, information to be contained in annual reports and application forms for exemptions are two items planned for the second round of regulatory development that we would prefer to see as early as possible to assist in ensuring the scope of implementation projects does not require adjustment after project commencement. We have covered this further in our responses to the following questions.

- 2. **Commencement timeframes:** Assuming that the formal consultation will provide sufficient clarity about the shape and scope of the regime, further views on implementation dates are invited*

As we have noted in previous submissions, in the interests of the most cost effective and efficient implementation of compliance frameworks by reporting entities, full details of the entire regulatory package need to be made available before resources are committed to the work.

We note that the Ministry of Justice has previously proposed a two year implementation period from the release of the current discussion document in February 2010. We understand that this is on the basis that the discussion document ‘signals intent’ with regard to the proposed regulations.

With respect, there currently remains sufficient uncertainty and ambiguity in relation to the regime to raise significant difficulties in properly scoping implementation projects in the most cost effective manner. We have recommended a period of 3 years commencing from release of the final details and that is still our preferred option.

We note that the schedule in Appendix 1 defers until the second round of regulation some of the detail that will be needed for the financial services industry. It is important that all detail for implementation of the new regime (including details such as the information to be contained in annual reports and application forms for exemptions) are made available as soon as possible. Annual Reports are likely to contain key information and

declarations. If the Annual Reports require information that is onerous to obtain or requires declarations that need designed support from business processes, this needs to be understood at a very early date so that exemptions may be considered.

It would also be very helpful to understand when exemption applications will start to be considered by the AML Supervisors – preferably this will be some time prior to full implementation requirements.

3. *Exemptions for financial activity on a very limited basis: What is your view on the different approaches to exemptions, noting that the two approaches are not necessarily mutually exclusive?*

We agree with both of the proposed approaches to exemptions, providing for a limited number of general exemptions and also case-by-case exemptions. Both approaches will be appropriate in different circumstances. We note that in its initial stages of implementation, the Australian regime only provided for case-by-case exemptions and due to the huge administrative workload in processing these, significant delays were experienced by industry in obtaining exemptions. The proposed general exemptions should go some way to alleviate this issue.

4. *Exemption for low risk products and services: Can you provide information of the nature and extent of risk which may be associated with the activities described?*

We have previously recommended that life insurance investment policies with very low premium rates and pure risk life insurance should be exempted from the AML/CFT regime on the grounds that they represent a minimal risk. That remains our recommendation. There are underwriting processes to go through before a policy is issued (which includes an assessment of the reasonableness of the level of cover) and the premium is set by the life insurance company. There are also strict pre-conditions (typically death or ill-health) which need to be substantiated for a payment to be made from one of these policies.

We have attached (as Schedule 1) a table setting out the various conditions that must apply for a payment to be made. This schedule was previously provided as part of the ISI submission on the draft AML/CFT Bill in 2008 and illustrates our point that the risk of either money laundering or financing terrorism through life insurance is small enough to justify an exemption from the new regime.

5. *Are there other activities in relation to either the insurance or securities sector that should be considered for exemption or inclusion?*

Many financial advisers would appear to qualify as ‘financial institutions’ under the Act and therefore as reporting entities on the basis that they participate in the provision of financial services relating to the issue of securities in the ordinary course of business.

Financial advisers are a key element in the distribution of savings and insurance products to the public. It would be appropriate for financial advisers to be exempted from some aspects of the regime that may be onerous for individuals such as the requirement to have an AML/CFT programme, compliance officer, risk assessment audit and annual report.

Perhaps exemptions from some of these aspects may be on the basis that financial advisers form part of a Designated Business Group. We note that in the Australian jurisdiction, financial advisers are reporting entities but are exempted from full AML/CTF compliance.

To the extent that trustees are defined as financial institutions under the Act they should be entitled to some form of exemption from full compliance.

The partial exemption for workplace superannuation (paragraphs 122 to 128) should specifically include KiwiSaver schemes. See response to Question 12.

Issuance of shares to employees

Shares are typically issued to employees either as a form of bonus or as part of a remuneration package. The employee does not pay for them. A money laundering cash flow into a company that resulted in the issuance of shares to employees could also be paid to the employee as salary or wages or as a fringe benefit. The company would typically be registered in New Zealand and employees have IRD numbers. It is therefore difficult to see why employee share issues should attract special AML/CFT obligations.

- 6. **Corporate treasury functions:** We are interested in hearing about the size and nature of corporate treasury lending in New Zealand, both when they occur within New Zealand and between local and overseas parents or subsidiaries to determine whether this is also appropriate in New Zealand.*

Corporate treasury lending is possible between parents and subsidiaries of our members, including from overseas parents. If the corporates are New Zealand based, their identity will be established through Companies Office records. An exemption should at least apply for domestic corporate groups and those where the parent or subsidiary is resident in a jurisdiction with satisfactory AML/CFT regulation.

- 7. **Comment sought:** Are there other products or situations that may present low to negligible risk that attract obligations that will be operationally difficult to manage? Please provide information about the type of products or nature of the situation and rationale for why they should be considered for exemption.*

No.

- 8. **Occasional transaction threshold for financial institutions:** Is your organisation comfortable with an occasional transaction threshold of \$10,000? If not, why not?
Are you able to describe and/or quantify the business impact of setting the threshold at NZ\$10,000 compared to (for example) NZ\$12,500?*

We are happy for the threshold to be set at \$10,000 on the basis that it is a simple number to communicate in training material. There does not seem to be sufficient justification for incurring compliance costs in raising the current threshold by \$2,500. We recommend that there should be a flexible process for it to be increased if necessary in future by Order in Council, following public consultation. Given the increasing integration of Australian and New Zealand markets, the two thresholds should be consistent.

9. Beneficial ownership: *Which option do you support and why? Please provide detailed explanation in support of your view.*

ISI agrees with the option of setting the beneficial ownership threshold at 25% to be consistent with the Companies Act and with thresholds in other comparable jurisdictions.

Our main concern with beneficial ownership is in respect of the identity requirements (see response to Question 22) and that concern will not be reduced by a different threshold.

10. Reduced CDD measures for insurance products: *We would like your views as to whether you consider the exemption conditions and the thresholds are appropriate for insurance products in New Zealand. How do you rate the ML/TF risks of the proposed exemptions? Does the proposal offer real benefits in terms of reduced compliance costs?*

We note that the reduced CDD measures for low premium insurance products are significantly less of an exemption than is available under the Australian legislation which provides a total carve-out for such policies. As illustrated by the table in Schedule 1, the ML/TF risks associated with such policies are minimal and would justify an exemption from all provisions of the legislation.

In effect the proposal will require insurance companies to maintain 3 categories of insurance policy:

- Pure risk policies – totally exempt from the regime
- Low value insurance investment policies – reduced CDD
- Other insurance investment policies – totally within the regime

By comparison, the Australian regime has 2 categories for life insurance policies. Pure risk and low value policies are exempt and all others are covered by the regime. Even that categorisation creates extra compliance and we understand not all companies consider it worthwhile taking advantage of the exemption for low value policies.

The proposed reduced CDD measures outlined in the discussion document will require considerable management. They are expressed to be product based rather than customer based. How will cases where one customer has multiple products be treated? The use of a premium cap will require monitoring of premiums, segmentation of customer policies and in many cases may result in different requirements for the same customer for different products.

It would be preferable to follow the Australian example and exempt low value policies from the regime entirely.

11. Insurance products closed to new customers: *Would you propose the same criteria for exempting insurance products closed to new customers and new premiums in New Zealand? How would you rate the ML/TF risks?*

We would recommend the same criteria as in Australia for exempting such products. We understand from section 11(4) of the Act that customer due diligence provisions would not apply to existing customers unless there is a change in the business relationship or some reason to doubt the reliability of the information already held. This provision in the

Act would appear to cover contracted premiums as they are part of the existing business relationship.

There would be a potential ML/TF risk with an existing customer holding a product that is closed to new customers but allows a lump sum to be deposited into the policy and subsequently withdrawn. We expect that such an activity would qualify as a change in the business relationship and be captured by CDD in any event. A code of practice or guidelines would be useful in outlining criteria to assess 'change of business relationship'.

12. Reduced measure for workplace-based superannuation funds: Are the reduced measures proposed for superannuation funds and schemes appropriate? Are the criteria reasonable, balancing ML/TF risks and compliance costs?

The preferred approach set out in paragraph 126 will mean that the reduced measures proposed are unlikely to apply to any superannuation and retirement schemes, including KiwiSaver schemes. Workplace superannuation schemes almost invariably provide for payment of funds on cessation of employment before retirement age and most also allow payment to members on hardship or compassionate grounds. From 1 July 2010 KiwiSaver schemes may allow withdrawal for first home purchase.

In addition, payment on permanent emigration is a feature of many superannuation schemes with such conditions usually embedded in the schemes' trust deeds. A restriction that the payment may only be made to a member if they emigrate to a FATF approved country (as per para 126.6) will be a variation on the terms of the security that is likely to need the consent of all members. From a practical point of view, this may be difficult if not impossible to obtain and where will information regarding FATF approved countries be available?

We agree that it is appropriate for the reduced measures to apply for all superannuation products that are statutorily regulated and have limitations on the withdrawal of money before a nominated retirement age. Due to these limitations there is a low risk that these products will be used for ML/FT.

In Australia, the approach is that rather than requiring customer identification at inception customer ID verification is only required prior to scheme exit or payment of any monies from the scheme. This reflects both the low ML/FT risk of the products and also assists in facilitating the portability of retirement savings between registered schemes.

As noted above, it is not clear whether the partial exemption for workplace superannuation is intended to apply also to KiwiSaver schemes. It should be made clear that it does.

Section 204 of the KiwiSaver Act 2006 and clauses 17 and 18 of the KiwiSaver Regulations 2006 contain specific provisions relating to the application of the Financial Transactions Reporting Act 1996 to default KiwiSaver schemes. They recognise that it is not practicable to conduct CDD on new KiwiSaver members before their membership commences when they are assigned to a default KiwiSaver scheme. In those cases they will always be joining the scheme through their employer and having contributions deducted from wages and sent to the scheme via Inland Revenue.

Cash can be withdrawn from KiwiSaver schemes only in case of the death or permanent emigration of the member, or the member reaching the age of eligibility for New Zealand Superannuation.

We recommend that in those cases the KiwiSaver scheme provider should be able to rely on CDD undertaken by the employer and should be required to conduct verification only at payout.

Similarly, where an employer has chosen a preferred KiwiSaver scheme (as allowed under section 46 of the KiwiSaver Act) the KiwiSaver provider should be able to rely on the employer having verified the identity of the employee.

There is another issue with regard to KiwiSaver arising from section 37 which requires the reporting entity to terminate any existing business relationship with a customer if the reporting entity is unable to conduct CDD. In the event that a new member is assigned to a KiwiSaver default scheme the provider will receive member details from Inland Revenue at the same time as the first contributions are received. If the provider is unable to verify identity it will be unable to terminate the business relationship with the customer as there is no provision for that in the KiwiSaver Act.

13. Documentary identity verification: *We invite comment on this proposal. In particular we are interested to know:*

- *is a code of practice the right vehicle to use, or are regulations preferred?*

Establishing a clear minimum standard for documentary identity verification in regulations would ensure that all reporting entities are required to meet the same basic requirements.

A code would provide more flexibility for customers who may not have access to documents in a list prescribed in regulation. The young, elderly, refugees and recent immigrants may not have a current passport or firearms licence and there may be difficulties in obtaining birth certificates or other prescribed identity documents.

A prescribed list may preclude these people from using financial services. A code that retains a degree of flexibility is preferable as this would enable appropriate identity verification to be conducted with reference to individual circumstances.

The applicability of the appropriate level of documentary identity verification will remain to be determined by the risk assessment of each reporting entity.

The Evidence of Identity (“EOI”) Standard

We note that the EOI standard developed and promoted by the Department of Internal Affairs is a significantly higher standard than that applied in Australia.

Paragraph 162 of the discussion document states that the EOI Standard was designed for use in public sector organisations but “ the principles or objectives of identification are equally applicable in a private sector context”. This statement is not supported at all in the discussion document. The public and private sector are clearly very different environments. The public sector has key concerns such as national security that are not applicable at all to the private sector.

It appears that the issue being addressed here is identity fraud. While we understand that this is a concern, issues of identity fraud appear outside the purpose of the Act as set out in section 3.

If there is sufficient concern regarding identity theft this should merit its own legislation. We consider it more appropriate that entities issuing identity documents (nearly all of which are public entities) comply with the EOI standard rather than private industry.

For private industry a standard that is harmonised with the approach taken in Australia should be taken. The adoption of the EOI standard for reporting entities in the private sector is onerous and will cause disruption to customer services and to transactions contemplated by government trans-Tasman mutual recognition initiatives and will give rise to significant additional compliance costs.

We support the use of a code of practice to establish a safe harbour for identification for low to moderate risk customers.

- *is the preferred approach manageable in your business environment?*

Under the EOI Standard classes of acceptable photographic identification documents will be extremely limited for high risk products (such as redeemable investment securities) – requiring either passports or firearms licenses. We expect that a significant percentage of customers in New Zealand including the young, elderly and recent immigrants may not hold any of these documents. On this basis, such people would be excluded from receiving financial services that are generally available to the New Zealand public.

The moderate to low risk ‘preferred approach’ is significantly more onerous than the approach taken in Australia and so will make it more difficult for customers to do business with New Zealand organisations than equivalent Australian organisations.

Paragraph 183.2

The requirement to check a person’s details against customer records is extremely onerous. Many financial institutions have multiple products with different risk profiles currently on issue in addition to legacy products no longer on issue that have active customers who purchased the products 40 or 50 years ago.

One customer may have subscribed to several different products over the course of many years. Records for these products will be maintained by different registries with different software.

The proposed ‘check’ will require a search of multiple databases and detailed analysis of customer files to determine whether a product previously purchased by the applicant (in compliance with FTRA identity verification requirements - possibly many years ago) was purchased by the same person that is applying for a new product.

This requirement appears wholly disproportionate to low to medium risk cases and managing ML/TF risk in general and is focused on the issue of identity fraud.

Paragraphs 184.1 and 184.2

Validation of driver’s licence information will incur a cost on financial services providers and will require specific resource from both industry and from the administrator of the National Register of Driver Licenses or the ‘authoritative sources’ referred to in

paragraph 184.2 to service demand for confirmations and ensure that delays are minimised.

Paragraph 186

The requirement for reporting identities to verify the identity of all customers in person or through a ‘trusted referee’ will restrict the block transfers of superannuation schemes.

The consolidation of superannuation savings in New Zealand has been increasing following the introduction of KiwiSaver and it can be expected to continue. Such transfers routinely involve the transfer of hundreds of members and the administrative burden of meeting with members to re-verify their identities in person is unnecessarily onerous for what we recommend would be low risk products in circumstances where they had already satisfied their original scheme as to their identity.

We also have some concerns regarding the ‘trusted referee’ approach detailed below.

- *in what specific circumstances might the code of practice present difficulties?*

A code may give rise to competitive pressures resulting from variations in the approach taken by reporting entities to exceptional circumstances. Consistency between codes established by different Supervisors would be essential.

- *what are the exceptional circumstances that a code of practice should contemplate?*

As noted in the discussion document, there are likely to be circumstances where, for legitimate reasons, photographic evidence of identity cannot be provided. For example, this may occur with very young and elderly customers who do not hold photographic identity documents, and refugees and recent immigrants to New Zealand who may not have access to primary identity documents, or whose primary identity documents may not be written in the English language.

It is appropriate in such cases that a code of practice would allow an alternative procedure on an ‘if not why not’ basis in accordance with the risk profile of the product and the value of the service proposed.

- *would you prefer the prescription of exception handling procedures or is guidance preferred?*

We would prefer guidance here as this would assist in ensuring that exception handling will be flexible to cater for individual circumstances. Prescription runs the risk of excluding legitimate individuals due to their individual circumstances not fitting clearly within the prescribed exception.

Please provide information to support the rationale for your comments.

It would not be practicable to have every possible exception covered by a code of practice. Consequently, it would be preferable to have the most likely covered by a code with a facility for additional guidance on specific issues where necessary.

14. *Electronic identity verification: Does your organisation offer, or is your organisation considering the development of electronic verification tools? If so please provide information on the intended nature and operation of the tool and the sources of data it utilises.*

We do not have and we are not planning to develop electronic verification tools. Currently, industry resources are committed to ensuring compliance with the extensive range of regulatory reform in New Zealand. We have had discussions with the Department of Internal Affairs about the proposed Data Validation Service and the igovt Identity Verification Service. At this stage we believe it will be some time before these services will be launched publicly (if at all) and there is sufficient uptake of those services to provide a useful tool for customer identification. However, depending on the final design, electronic identity verification tools would be helpful.

15. *Other non-face to face identification and verification procedures: How much of your business is carried out in circumstances where identity verification cannot be carried out in person?*

Other than KiwiSaver, very little of our members' insurance or investment business is carried out in non-face to face circumstances. A small amount of cross-selling of pure risk insurance may be offered by direct mail to customers of other parts of a business group from time to time. However, internet purchase of financial services products will develop and members will increasingly look to electronic verification tools to meet AML/CFT requirements.

Block transfers of superannuation schemes are undertaken from time to time as described above.

Many financial services providers distribute their products through a network of financial advisers and brokers who have the 'face to face' contact with the customer.

16. *How is your business currently managing this risk?*

Insurers and fund managers currently comply with the requirements of the FTRA which permits the verification of identity based on receipt of a personal bank account cheque in the same name as the customer. We reiterate, however, that pure risk insurance presents no risk of ML/FT.

Where cross selling of products occur, identity confirmation has taken place in relation to the original product.

For the block transfer of superannuation schemes, the administrator of the destination scheme obtains copies of such identity documents as are retained by the originating scheme.

For the verification of identity by financial advisers or brokers, current practice is for the adviser to verify the identity of customers themselves personally and provide written confirmation to the manufacturer of the products that this has been done together with copies of identity documents sighted. We note that the 'third party relationships' proposed in the regime will permit such an arrangement to continue where properly

supported by the contractual documentation between the manufacturer and the adviser/broker.

17. Does certification of documents carried out as described above present any significant challenges in your business environment?

Particularly for default KiwiSaver members who will be distributed throughout the country, it will be impractical to meet all of the conditions of paragraph 219. For a customer in a location where the reporting entity does not have a presence, the referee would be unlikely to be known to the reporting entity. The requirement that the referee must have known the person for more than 12 months is in itself onerous and disadvantages recent arrivals to New Zealand for entirely arbitrary reasons. It would require some form of database of certified referees.

A guidance note or regulations should simply specify those positions that have 'standing' (e.g. practising lawyer, accountant, authorised financial adviser, JP, etc who are subject to statutory recognition and ethical requirements) and the reporting entity should be able to rely on the standing of that referee.

The proposed 'trusted referee' approach appears focused on the issue of addressing identity fraud in New Zealand rather than achieving the purpose of the Act.

Currently documents may be certified as copies of the original by officers of the court and public notaries. This appears to be entirely adequate for the purposes of the Act which is to detect and deter ML/FT, maintain NZ's reputation by adopting, where appropriate, FATF recommendations and to contribute to public confidence in the financial system.

18. Simplified due diligence: We invite comment on the proposal, but in particular: Would allowing the application of simplified due diligence to the above entities present any challenges to your organisation (competitive issues for example)?

No comment.

19. Are there other customers where simplified due diligence may be appropriate in light of the assumptions and/or criteria described above?

No comment.

20. Would an approach that set criteria for eligibility (in line with the criteria described above) be preferred? If so why?

No comment.

21. Are there any criteria that are not described above that should be included?

No comment.

22. Enhanced due diligence: Does the proposal present significant challenges in your business environment?

Yes, the proposal does present challenges. For a number of investment types the registered owner cannot be a trust. In those cases the issuer of the investment will not

know that the legal owner is holding it on trust and therefore will not have any reason to identify the beneficiaries of the trust. The reporting entity will only be able to rely on disclosure by the customer as to whether they represent a trust or not. The reporting entity will then have to make an assessment of where 'effective control' lies in order to determine whether enhanced due diligence is required. This is a substantial obligation on the reporting entity that will entail a detailed and ongoing review of the trust's operations.

The position in the Act as it relates to trustees requires clarification. Currently many trustees would appear to be 'financial institutions' and 'reporting entities' under the Act on the basis that they 'invest, administer or manage funds or money on behalf of other persons' in the ordinary course of business (as trustees).

As the discussion document notes, trusts are internationally recognised as presenting ML/FT risks. As that is the case, it is difficult to understand why they are not subject directly to AML/CFT obligations under the Act, rather than the indirect CDD and reporting of other financial institutions that are in a remote position to review or understand their operation. We therefore recommend that trusts be included by regulation as either financial institutions or reporting entities. Reporting entities would then only have to hold CDD information on the actual facility holder or holders where they are trustees. (Trusts with a foreign settlor do not have to be registered with the New Zealand Inland Revenue. It is more usual internationally for a trust to have to be registered if any trustee is a local national. A change to align the New Zealand registration requirement with international norms would facilitate more effective AML/CFT supervision of trusts.)

This may be a preferred approach as the trustees are the legal owners of trust property and are usually the natural persons who exercise effective control over the trust and therefore are best placed to identify beneficiaries. It may be appropriate to exempt trustees from some aspects of full compliance.

Identifying current trust clients

For a number of investment products the registered owner must currently be a legal person such as an individual or a company. In many cases, the issuer of the investment may not currently know whether the legal owner of the investment is an individual holding it on their own account or a trustee holding it on trust for beneficiaries. The ML/FT risk of trust structures would be most effectively addressed if the AML/CFT CDD onus were placed on the trustees. This would also be consistent with the preferred approach to pooled investments discussed below.

Large numbers of beneficiaries

In cases where the reporting entity is aware of a trust that has a large pool of beneficiaries, asking the trustees to identify the first 10 beneficiaries of the trust appears entirely arbitrary and ineffective in managing any risk of money laundering. Paragraph 261 states: 'without other AML/CFT obligations, obtaining customer due diligence information about underlying customers has little value for risk management but is an administrative burden.'

Is it contemplated that there will be an obligation on the trust to update the list of beneficiaries if the identities of those 10 beneficiaries change from time to time? This all appears to be an unnecessary compliance burden with little to no discernable AML/CFT benefit.

Discretionary Trusts

Where a customer is the trustee of a discretionary trust, the reporting entity issuer of the financial product will have no power to ask for beneficiary information from the trustee customer prior to paying the trustee the redeemed investment. The trustee may be withdrawing funds to invest elsewhere or may change its mind as to which beneficiary is entitled to the funds at any time.

Our preferred approach would be to clarify that trustees are reporting entities and place an obligation on them to conduct CDD on their beneficiaries. We recommend that an approach consistent with the preferred approach to pooled investments should be taken so that the financial service provider is able to rely on statements from trustees that they have complied with their CDD obligations in relation to the beneficiaries of their trust under the Act.

23. Are there types of trusts that you feel constitute a much lower ML risk? Please provide detailed explanation to support your view.

Charitable trusts would have a lower ML risk merely because of their registration and monitoring requirements.

24. Third party relationships: Are there other types of relationships or products that involve intermediaries for which AML/CFT obligations are problematic? Please describe the relationship, which obligations are problematic and explain why they are problematic.

The issuer or manufacturer of an investment product has no direct relationship or knowledge of the underlying investors who are investing through a wrap/administration platform administrator (ie: the intermediary in terms of the consultation paper). Individual investor transactions are aggregated by the wrap platform administrator before transaction instructions are given to the issuer/manufacturer of investment products.

The individual customers participating in the wrap platform are not 'beneficial owners' of the wrap platform administrator in terms of the Act as they do not have effective control of that entity.

In that situation the wrap platform administrator and its custodian will themselves be reporting entities responsible for their own AML/CFT requirements. On this basis it appears that it is the AML Supervisors who should be satisfied as to whether the wrap platform administrator is regulated, supervised and has adequate measures in place to comply with the obligations of the AML/CFT Act (in terms of paragraph 261.1 and 2) rather than the issuer/manufacturer reporting entities. Following on from this, it is difficult to see the benefit/purpose of the requirement in 261.3. The wrap platform administrator (and perhaps the wrap custodian) should be the entity obligated to obtain and maintain CDD information.

In respect of workplace-based schemes, issuers also need to be able to rely upon employers.

25. Would industry like Supervisors to issue guidance which describes who the reporting entities, intermediaries and customers are in specific business relationships and/or transactions, and what obligations apply? If so, which ones?

Yes, it would be useful to have guidance especially in relation to the classes of intermediaries that are intended to be covered. As we have stated earlier, we recommend that this guidance would cover the treatment of financial advisers and trustees.

We would expect exemptions for wrap, pooled, omnibus or nominee accounts to be made through the regulation facility under section 154 of the Act.

26. Designated business groups: Would providing for money remittance agents and sub-agents to join in a DBG together affect your business? If so, do you support the preferred option?

No comment.

27. Are there any other business relationships that sit outside the corporate group that you consider would benefit from being eligible for joining a DBG?

Financial advisers and brokers may benefit from being part of a DBG to the extent that they are defined as 'financial institutions' in the Act.

28. If so, please give us your rationale for this and how a DBG structure would bring added benefits for controlling money laundering risks and terrorism financing risks.

This would enable individual financial advisers to benefit from AML/CFT programmes of issuers and access to compliance officers and risk assessment tools.

29. Conditions for DBG membership: Do you think these conditions are appropriate?

Yes, the eligibility requirements seem appropriate however we feel that paragraph 273.2 is unduly onerous as it appears to require a full explanation of the governance framework of the DBG across a range of corporate entities. This is disproportionate to the AML/CFT purpose.

We would expect adequate management, oversight and reporting obligations will be set out in reporting entities AML/CFT programmes which are subject to annual audits and review by Supervisors in any event.

30. Are there any additional conditions for membership that you think should be applied?

No.

ISI Submission to the Ministry of Justice on the Draft AML/CFT Bill 2008**Schedule 1**

Life Insurance Products					
Product	Policy Type	Investment element	Sum insured	Surrender (cash) value	When Payable
Term Life	Pure Risk Product	No	Yes	No	On death of the insured
Trauma	Pure Risk Product	No	Yes	No	on incidence of a trauma event involving the insured
Income Protection	Pure Risk Product	No	Yes	No	on (total) disablement of the insured
Total & permanent disablement	Pure Risk Product	No	Yes	No	on (total & permanent) disablement of the insured
Endowment	Hybrid Product – including elements of Pure Risk Products and Investment Products	Yes	Yes	Yes	On death (life risk element), voluntary surrender or maturity of the contract (investment element)
Whole of life	Hybrid Product – including elements of Pure Risk Products and Investment Products.	Yes	Yes	Yes	On death (life risk element), voluntary surrender or maturity of the contract (investment element)
Annuities	Pure Risk Product	Yes	No	No	Immediately, on commencement. Residual capital values may or may not be attached to the contract
Pure endowment	Investment Products	Yes	No	Yes	On death (no life risk element payable), voluntary surrender or maturity of the contract (investment element)
Investment bonds	Investment Products	Yes	No	Yes	On death (no life risk element payable), voluntary surrender or maturity of the contract (investment element)

List of ISI Members

ISI MEMBERS

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BNZ Investments and Insurance
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