



FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

1 April 2022

Mr Peter Soros
Deputy CEO Regulation, Education and Policy
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Dear Mr Soros

Proposed guidance on source of funds and source of wealth

The Financial Planning Association¹ (FPA) welcomes the opportunity to provide feedback on AUSTRAC's proposed Source of Wealth (SOW) / Source of Funds (SOF) guidance.

Understanding SOW and SOF for targeted high-risk customers is important to ensure a reporting entity is dealing with a trustworthy client. This policy measure serves to protect the reporting entity's business and the broader Australian community. The FPA acknowledges that this initiative is broadly consistent with long standing SOW / SOF requirements in Europe.

FPA position:

- **The FPA supports, in principle, AUSTRAC's initiative to introduce guidance for reporting entities in relation to SOW / SOF for high-risk clients only.**
- **The FPA does not support the introduction of SOW / SOF requirements for the general populace.**

¹ The Financial Planning Association (FPA) is a professional body with more than 12,000 individual members and affiliates of whom around 10,500 are practising financial planners and 5,207 are CFP professionals. Since 1992, the FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first policy pillar is to always act in the public interest.
- In 2009 we announced a remuneration policy banning all commissions and conflicted remuneration on investments and superannuation for our members – years ahead of the Future of Financial Advice reforms.
- The FPA was the first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules that explain and underpin professional financial planning practices.
- We have an independent Conduct Review Commission, chaired by Dale Boucher, dealing with investigations and complaints against our members for breaches of our professional rules.
- We built a curriculum with 18 Australian Universities for degrees in financial planning through the Financial Planning Education Council (FPEC) which we established in 2011. Since 1 July 2013 all new members of the FPA have been required to hold, or be working towards, as a minimum, an approved undergraduate degree.
- When the Financial Adviser Standards and Ethics Authority (FASEA) was established, the FPEC 'gifted' this financial planning curriculum and accreditation framework to FASEA to assist the Standards Body with its work.
- We are recognised as a professional body by the Tax Practitioners Board.



Customer types

The draft guidance targets specific high-risk customer types that financial planners generally have limited involvement with:

- Financial planners do not use intermediaries or provide cash intensive or online services more open to abuse and exploitation by criminals.
- Most financial planners would not deal with many, if any PEPs (foreign, or domestic or international organisation PEPs) as clients.
- Some financial planners may have clients with complex corporate or trust structures and would be required, under the Corporations Act, to undertake significant 'know your client' fact finding research to ensure the legitimacy of the client and the ownership / beneficiaries of the structures.

Financial planners are required, under the Corporations Act, to undertake detailed investigation into a client's personal and financial situation which identifies SOW / SOF. The cost of any additional investigation required will need to be borne by the client,

The FPA supports the introduction of AML/CTF SOW / SOF requirements targeting the very specific high-risk customer types identified in the draft guidance².

However, the FPA would be extremely concerned about any expansion of the SOW / SOF requirements to customer types outside those stated in the proposed guidance. Expanding the SOW / SOF requirements to other customer types, or all customers, would have a significant impact on the regulatory cost and the ability to provide affordable financial advice to low AML/CTF risk customers.

Types of designated services

Financial planners who are registered relevant providers, provide face-to-face professional financial advice services direct to retail clients under the legislated Financial Planner and Financial Adviser Code of Ethics. The Code legally permits planners to use their professional judgement to meet its values and high standards in all their professional dealings. Financial planners and advice Australian Financial Services Licensees (advice licensees) are regulated under the Corporations Act with the oversight of ASIC.

² Customer types (AUSTRAC draft SOW/SOF Guidance):

- Foreign PEPs are recognised as presenting particular risks – it is mandatory to carry out source of funds and source of wealth checks for all designated services you provide to foreign PEPs.
- High ML/TF risk domestic or international organisation PEPs also require source of funds and source of wealth due diligence.
- Limited visibility of the source of funds for high-net-worth individuals moving funds into or out of Australia for the purposes of gambling or other cash intensive services.
- Complex corporate or trust structures that do not appear to have a legitimate economic purpose. These structures may also be exploited to conceal the financial activities of the individual beneficial owners seeking to move and use funds without detection.
- Customers acting as intermediaries for another person may be used to obscure the activities of the individual they are acting for.



Hence, financial planners and advice licensees are usually classified as item 54 designated service providers with a low AML/CTF risk and are required to have an AML/CTF Program B. Financial planners must comply with Suspicious Matter Reporting (SMR) requirements, including reporting any suspicious funds flow to AUSTRAC.

Importantly, financial planners and advice licensees are exempt from the following ongoing reporting requirements as they do not provide funds “transaction” services and do not transfer currency:

- Threshold transaction reports (TTR) for transfers of A\$10,000 or more in cash (or the foreign currency equivalent).
- International funds transfer instruction reports (IFTIs) for transfers of funds of any value into or out of Australia, made either electronically or under a designated remittance arrangement
- Report cross-border movement (CBM)

Financial planners have a direct relationship with their clients. Financial planners currently conduct customer due diligence (CDD) and ongoing CDD on behalf of financial product providers (not credit providers)³. This CDD is conducted under a third-party reliance arrangement with the product provider.

Delegation of SOW / SOF verification under third-party reliance arrangements

The FPA is concerned that the new guidance may result in financial planners and advice licensees being imposed with extraneous and unnecessary requirements demanded of them under third party reliance agreements with financial product providers and financial institutions who are operating under higher-risk AML/CTF Program A obligations.

AML/CTF Rule 8.1.7 requires that a reporting entity must apply Part A to all areas of its business that are involved in the provision of a designated service, including in relation to any function carried out by a third party.

Due to the designated services they provide to customers, product providers must have in place a Part A AML/CTF program due to their higher ML/TF risk. Financial product providers and financial institutions currently use financial planners to comply with their CDD verification, re-verification, and ongoing CDD obligations.

As product providers have ongoing CDD requirements⁴, financial planners are regularly requested to undertake ongoing CDD of their clients under the third-party reliance provisions, even though item 54 reporting entities are exempt from ongoing CDD.

The FPA is concerned about the flow on implications from the proposed guidance. Specifically, that the financial product provider’s Program A requirement to source and certify copies of documents and conduct research for SOW / SOF purposes will be delegated to financial planners. This drives up the cost of the advice for consumers, even though it is a product provider regulatory requirement. It transfers the regulatory burden in time and cost to the financial planner and creates a significant

³ Financial planners are authorised under an AFSL to provide advice or deal in financial products, not credit products; and do not conduct AML due diligence for credit providers or arrange credit for their clients. To arrange a credit product requires an authorisation under an Australian Credit Licence (ACL).

⁴ s36 of the AML/CTF Act

impost on financial planners to allow a large institution with a much greater obligation to AUSTRAC than a financial planner, to simply delegate that work to the financial planner.

Financial planning clients generally have funds already available to invest in a bank account – and thus the SOW / SOF identification should be undertaken at that point. As indicated in the following image, each application for a managed fund asks information about source of funds and usually source of wealth (see below).

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Documents and data

Financial planners seek information about a person's career and lifestyle and talk about their saving and investment knowledge and history. Documentation collected generally for most financial planning clients includes (for example):

- identification documents in line with existing legislation
- tax returns
- financial statements for corporate entities (generally provided by the client or their tax agent/accountant)
- ASIC statement
- copies of existing investment portfolios and related statements/documentation
- if working, a pay slip to confirm income
- SMSF and other trust deeds
- copies of their Will and other estate documents, if relevant to the advice required.

Financial planners use their professional judgement as the basis for accepting the information provided and do not ask for certified copies of documentation unless the planner believes it is necessary based on the individual client's circumstances and financial affairs.

Therefore, the FPA only supports the introduction of SOW / SOF verification and document and data requirements for the very high-risk customer types identified in the draft guidance.

The FPA would be extremely concerned about any expansion of the SOW / SOF document and data requirements to customer types outside those stated in the proposed guidance.

Professional judgement under the Corporations Act and Legislated Code of Ethics

As they provide a professional service, not a 'transactional service', financial planners have an ongoing relationship with clients and have a legal requirement under the Corporations Act to know



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their client's financial circumstances and interests to such a depth so they can consider their client's 'likely future interests' when identifying and providing appropriate advice in their client's best interest (as required under the Code of Ethics). Additionally, financial planners must consider any changes in the client's circumstances in the same level of depth when providing further advice to the client.

If one applies AUSTRAC's risk-based approach to identifying appropriate AML/CTF obligations for reporting entities and industries, financial planners and advice licensees should not be required to obtain original/certified copies of documents such as property sales contracts, wills etc, and undertake research to support the SOW / SOF obligations unless, using their professional judgement, the planner deems it necessary for that client.

Allowing financial planners to use professional judgement to assess the need for SOW / SOF verification based on each client's actual AML/CTF risk, would provide a more efficient, effective and cost appropriate process and deliver better regulatory and community protection outcomes, than applying the requirements of the 'whole of business' AML/CTF risk of a product provider's Program A and delegating the verification task to the financial planner.

Item 54 reporting entities are concerned about the cost and impact to the client relationship should the application of the guidance be extended to other customer types and certified or publicly known information was required rather than legally permitting financial planners' professional judgement to be used based on client engagement/discussions, checks and the know your client requirements in the Corporations Act.

[FPA recommendations](#)

The FPA supports the proposed guidance if restricted only to the identified very high-risk customer types.

The FPA would welcome the opportunity to discuss with AUSTRAC the concerns raised in our submission.

Yours sincerely

Benjamin Marshan CFP®

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Financial Planning Association of Australia