Peter Soros
Deputy CEO Regulation and Reform

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22 March 2024

Dear Mr Soros

Draft outsourcing guidance

The Financial Advice Association of Australia[1] (FAAA) welcomes the opportunity to provide feedback to AUSTRAC on its draft outsourcing guidance.

Australian Financial Services Licence (AFSL) holders are classified as item 54 reporting entities under the AML/CTF Act. The FAAA provides feedback from the perspective of item 54 reporting entities who conduct customer due diligence both in terms of their own AML/CTF obligations, and also under reliance for other reporting entities. Financial product providers rely on financial advisers to conduct CDD verification, re-verification, and ongoing CDD of customers. This is in the form of one reporting entity placing reliance upon another. We consider this to be a different capacity to outsourcing, and should be treated differently.

We recognise that in the future, outsourcing may play an important role more broadly in providing item 54 businesses (AFSLs) with the opportunity to access services that may offer efficiencies and benefits in conducting CDD for reliance purposes, as well as meeting other item 54 AML/CTF obligations.

Defining a standard for outsourcing arrangements is a positive and welcome initiative that facilitates the use of good practices by outsourcing parties. We support the provision of this guidance.

[1] The Financial Advice Association of Australia (FAAA) was formed in April 2023, out of a merger of the Financial Planning Association of Australia Limited (FPA) and the Association of Financial Advisers Limited (AFA), two of Australia's largest and longest-standing associations of financial planners and advisers.

The FPA was a professional association formed in 1992 as a merger between The Australian Society of Investment and Financial Advisers and the International Association of Financial Planning. In 1999 the CFP Professional Education Program was launched. As Australia's largest professional association for financial planners, the FPA represented the interests of the public and (leading into the merger) over 10,000 members. Since its formation, the FPA worked towards changing the face of financial planning, from an industry to a profession that earned consumer confidence and trust, and advocated that better financial advice would positively influence the financial wellbeing of all Australians.

The AFA was a professional association for financial advisers that dated back to 1946 (existing in various forms and under various names). The AFA was a national membership entity that operated in each state of Australia and across the full spectrum of advice types. The AFA had a long history of advocating for the best interests of financial advisers and their clients, through working with the government, regulators and other stakeholders. The AFA had a long legacy of operating in the life insurance sector, however substantially broadened its member base over a number of decades. The AFA had a strong focus on promoting the value of advice and recognising award winning advisers over many years. The AFA had strong foundations in believing in advocacy for members and creating events and other opportunities to enable members to grow and share best practice.

FINANCIAL ADVICE ASSOCIATION AUSTRALIA

Application of AUSTRAC's outsourcing guidance and third party reliance

The FAAA recommends:

- item 54 reporting entities be excluded from the draft outsourcing guidance when acting under reliance with/for another reporting entity. They already have similar obligations in AUSTRAC's reliance guidance and under the Corporations Act that can be relied upon. This should be made clear in the final outsourcing guidance.
- that AUSTRAC consolidate the existing guidance on third party reliance arrangements, particularly in relation to Customer Due Diligence (CDD) obligations.
- the 'safe harbour' from liability for an isolated or occasional breach of the identification and verification requirements, as stated in existing AUSTRAC 'reliance' guidance, should be maintained for reliance arrangements and extended to outsourcing arrangements.

AUSTRAC should provide clear definitions of outsourcing versus reliance arrangements, in line with the FATF Interpretive Note to recommendation 17. For example, a differentiating factor of an outsourcing arrangement could be a 'service provided for payment' to assist the reporting entity to meet their AML/CTF obligations (e.g. a digital identify verification service or AML/CTF platform). Equally important, in the context of an item 54 reporting entity undertaking CDD that is relied upon by a financial product provider, a reliance arrangement is understood by AFSLs as the item 54 reporting entity undertaking AML/CTF procedures (e.g. CDD) to meet their own obligations, and this is then accepted and relied upon by another reporting entity that has assessed and approved the advice AFSLs AML/CTF procedures.

The provision of financial advice under the licensing regime in the Corporations Act is unique. This is why AFSLs that provide financial advice only fall into the unique AML/CTF category of an item 54 reporting entity. The arrangements between AFSLs and product providers are equally unique. Under the Corporations Act, product providers are required to conduct due diligence on the advice AFSL prior to permitting the distribution of their financial products through the AFSL's advisers. The product provider/AFSL/adviser distribution channel is heavily regulated under corporations and financial services law.

The advice AFSL / product provider relationship also operates under AUSTRAC's existing guidance on reliance. We are concerned that the application of the proposed outsourcing guidance to these relationships will create confusion and potentially duplicate existing obligations for reporting entities (advice AFSLs).

In determining appropriate guidance for outsourcing arrangements, consideration should be given to third party reliance arrangements, FATF standards, existing AUSTRAC guidance, and liability for potential breaches of the AML/CTF requirements. We highlight the following:

1. FATF - Recommendation 17 and the related Interpretive note in the FATF *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation*[2] clarifies the

[2] https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf November 2023

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difference between reliance and outsourcing.

2. Existing guidance - AUSTRAC has to date published the following guidance and information to assist reporting entities operating under third party reliance arrangements:
   i. Reliance on Customer Identification Arrangements with a Third Party
   ii. Resolving issues with CDD arrangements and liability
   iii. Regulatory Quick Guide – Customer Due Diligence Arrangements
   iv. Examples: Reliance in practice

   The FAAA suggests existing AUSTRAC guidance on third party reliance is consistent with the FATF International Standard and appropriately focuses on the unique aspects of these arrangements between reporting entities such as product providers and advice AFSLs. However, we are concerned about the potential for confusion about the requirements under third party reliance arrangements and the ease of finding helpful information given the number of guidance documents published by AUSTRAC. Consolidating this guidance would be helpful.

3. Liability - AUSTRAC's guidance on reliance provides a 'safe harbour' from liability where an isolated or occasional breach of the identification and verification requirements occurs. In contrast, the draft outsourcing guidance makes it clear that the business remains liable for any breach of its AML/CTF obligations under outsourcing arrangements – ie. there is no safe harbour provision. We propose that this safe harbour provision be extended to outsourcing arrangements.

Existing FATF and AUSTRAC policy demonstrates clear and intended points of difference between outsourcing arrangements versus reliance with another reporting entity. As detailed in our recommendations above, the FAAA suggests the obligations for reliance and outsourcing are kept separate.

Examples and issues the guidance addresses

It would greatly assist reporting entities to understand and adhere with the outsourcing guidance if the issues AUSTRAC is trying to address through the guidance were made clear and direct in the introduction section of the guide. Seemingly these issues are already summarised in the 'Outsourcing AML/CTF functions' section of AUSTRAC's Regulatory Priorities 2024.

We note the intent of including 'good' and 'bad' practices in the draft guidance was to demonstrate the issues the outsourcing guidance aims to address, however an introductory summary would be beneficial.

We would welcome the opportunity to discuss the information in our submission with you in greater detail. Please contact me on phil.anderson@faaa.au or 02 9220 4500.

Yours sincerely

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