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By email:

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TACKLING MONEY LAUNDERING AND TERRORIST FINANCING – MINISTRY OF JUSTICE CONSULTATION

This submission comes from Fiducia Limited. We are a AML/CFT specialist consulting firm with clients in all financial sectors in New Zealand.

Legal and Accounting Sector

We submit that in both sectors, any involvement in a customer's financial or asset transaction, or financial or asset holdings, should be included in the AML/CFT Act.

Suspicious transaction reports (STRs) should be filed at the time a suspicious transaction is undertaken, or sought to be undertaken.

AML/CFT checks and assessments should commence at the time a client enters into a business relationship or conducts an occasional transaction under the current interpretation in the Act.

All points above are consistent with current practice in the financial sector.

Real Estate Sector

Identifying the reporting entity in the real estate sector is more difficult than the others, because of the way in which many real estate companies operate their business model. Typically, the real estate company is identified as the real estate agent, and the independent contractors who undertake the sales activity are known as salespeople. Under the AML/CFT Act, this would make the real estate company the reporting entity and the salespeople their agents.

Having the salespeople as mere agents of the real estate companies will not adequately manage the ML/TF risk posed by the sector, because it is the salespeople with nearly all of the access to the CDD and EDD information during the course of real estate negotiations and dealings. Putting the burden of collecting and managing ML/TF risk on solely the real estate companies would introduce massive new KYC costs to these entities, who ordinarily focus on supporting the salespeople with marketing and transactional assistance.

In the real estate sector, it is our submission that AML/CFT liability should sit with independent contractors who deal directly with customers, as well as real estate companies.

High Value Goods

It is our submission that dealers in all high value goods should be included in the AML/CFT regime. The risk is, of course, that including only some valuable goods will mean non-included goods simply become exponentially more attractive to ML/TF activity.

The consultation document notes that: *it may be challenging to ensure the wide range of businesses that may be affected by this approach are aware of and put in place AML/CFT requirements.* Indeed, a number of businesses currently caught by the AML/CFT Act are still unaware that they are required to

comply; we come across these businesses every week. To not include all high value goods on the grounds that it is too difficult for the government to regulate them all, is a direct blow to the purpose of the AML/CFT Act.

This is an issue that the government must address in the introduction of Phase 2. In our experience, the biggest disincentive to engaging in AML/CFT compliance in the financial sector is the plethora of non-compliant reporting entities who operate with total impunity in defiance of their obligations. It is truly dispiriting to the active reporting entities to see their good-faith efforts effectively punished as they know that their implementation of the AML/CFT requirements simply means more business for their non-compliant competitors.

Introducing more of this inequality in the high value good sector will seriously compromise the Government's purpose in extending the AML/CFT Act. There is significant anger already in the financial sector about this problem. We have seen active, compliant, ethical New Zealand businesses shut their doors because they cannot compete with competitors offering the same products minus the cost of compliance.

Further, enshrining specific types of high value goods in legislation does not account for changing and developing high value goods. For example, allowing for Bitcoin and other virtual currencies in this sector could provide an avenue for these industries to begin dialogue with the Government about how their businesses and products can contribute to New Zealand's AML/CFT regime. US case law has shown that Bitcoin is not considered a currency, so high value goods may be the best way for these instruments to be considered by the regime.

Supervisory Model

We submit that the supervisory model should become a single government agency. While we understand that resourcing this model is probably more challenging than sticking with the current multiagency or fragmenting further into self-regulating bodies, the credibility of the Government's commitment to consistency relies on a single supervisory model.

From the private sector's perspective, there is no advantage to the current multiagency approach. Frustration is high that what seems to acceptable practice for one sector is not acceptable practice for another. There are three different types of informal guidance being issued by three different supervisors; some supervisors provide more helpful and specific insights than others and it is frustrating for reporting entities to feel like they need to access information from other supervisors who they have no relationship with.

There is confusion in the private sector about the purpose of the Financial Service Provider Register (FSPR), what impact it has on AML/CFT activity, and why yet another government agency, the Companies Office, is involved.

While the roles and purposes of the FIU, the Asset Recovery Unit, the SFO, the IRD, the regular Police, the DIA, the FMA, the RBNZ, the Companies Office, and the Ministry of Justice may be clear to those in the public sector, it is very confusing to the private sector who are currently required to disseminate snippets of information from each in order to form the complete picture of their full AML/CFT regulatory requirements.

Wider Public Engagement

Our experience in the financial sector is that the responsibility for educating the customers of reporting entities as to AML/CFT requirements and practices has fallen exclusively on reporting entities. Many reporting entities, grappling to understand the requirements themselves, have found themselves ill-equipped to explain why CDD, EDD and transaction monitoring processes are now a part of a customer's experience, thereby encouraging customers to seek non-compliant entities.

While at least the financial sector customers are now familiar with the likely questions and requirements from reporting entities now, those caught in industries such as shared workspaces in the Trust and Company Service Provider sector are finding that compliance with the AML/CFT regime is presenting as hostile to their customers who have no experience with or knowledge of

AML/CFT and what its purposes are. This, again, serves only to reward noncompliant entities who experience no adverse effect of their noncompliance.

Our submission is that Phase 2 needs to be issued in with a general public awareness campaign to educate the customers of reporting entities that they should celebrate and support AML/CFT compliant entities.

We noted an example this week of a UK company issuing a press release to vaunt its compliance achievements: <http://banking.einnews.com/article/344396221/HZM6U6ly5pnaqUKc>. Until there is similar social and cultural capital amongst the New Zealand public in reaching and maintaining AML/CFT compliance, this regulation will continue to feel burdensome and something to avoid for reporting entities rather than something to share and celebrate.

To Remain

The part of the AML/CFT regime that is working well from private sector experience is the professionalism, ability, and collegiality demonstrated by supervisory staff. Without exception in our experience, every supervisory staff member has been focused on solving problems with reporting entities rather than seeking to catch or punish possible failures.

The ability to reach individual members of supervisory units is usually easy and their knowledge of specific reporting entities and the people within them is admirable.

The FIU, too, work hard to reach out to reporting entities to share knowledge about the quality of STRs and developing typologies. Their hosting of the national AML conference contributes to the perception that the FIU are approachable, pragmatic, and supportive of the private sector in the AML/CFT regime.

Thank you for the opportunity to share these thoughts.

Warm regards,

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Claire Piper', written in a cursive style.

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