

**Australian Transaction Reports
and Analysis Centre**

4 National Circuit
BARTON ACT 2600
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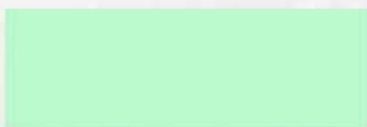


Australian Government
AUSTRAC

Correspondence
c/- Attorney-Generals Department
3-5 National Circuit
BARTON ACT 2600
Facsimile +612 6120 2601
www.austrac.gov.au

Our ref: 16/191

1 June 2016



Dear Mr Telford,

Freedom of Information request decision – Absolute Alpha

The Australian Transaction Reports and Analysis Centre (AUSTRAC) refers to your Freedom of Information request (FOI request) that was received on 8 April 2016 in which you sought access to documents in relation to Absolute Alpha, under the provisions of the *Freedom of Information Act 1982* (FOI Act), that you understood to be held at AUSTRAC.

The scope of your FOI request is as follows:

'The document showing how and by whom requested this exemption.'

In a telephone conversation of 8 April 2016, you confirmed that third party consultation was to be undertaken. Accordingly, AUSTRAC conducted third party consultation. Further, in accordance with section 15(6) of the FOI Act, an additional 30 days was added to the processing time to allow for consultation to be undertaken.

A search of the databases administered by AUSTRAC was conducted using the following search parameters:

Name	Absolute Alpha Pty Ltd
Address	Suite 5302 Level 53, MLC Centre, 19-29 Martin Place, Sydney NSW 2000
A.C.N.	113 940 953

The result of these searches revealed a total of **1 document**, consisting of 3 pages, within the scope of your request. I have examined the document and have decided to release the document in full.

Section 26 of the FOI Act requires AUSTRAC to provide a statement of reasons in support of a decision. My reason for this decision is set out in **Attachment A**.

The FOI Act provides a number of avenues for review if you are dissatisfied with any aspect of this decision. Your review rights are set out in **Attachment B**.

I have enclosed a copy of the released documents in accordance with the FOI Act. If you have any questions or require further information, please contact the decision maker on 02 6120 2630 or via email INFO_ACCESS@austrac.gov.au.

Yours sincerely



Suzie Sazdanovic
Authorised Decision Maker
AUSTRAC

enc: Document released under the FOI Act

ATTACHMENT A

Statement of Reasons

I, Suzie Sazdanovic, am an officer authorised under section 23 of the FOI Act to make a decision in relation to your request. The following is my decision and the reasons for that decision.

Overview

The examination of the documents in AUSTRAC's possession revealed that a total of **1 document** have been identified to be within the scope of your request.

I have examined the document and considered all the relevant factors including third party and internal consultation. I decided to release the document in full in accordance with the FOI Act.

Evidence/Material on which my findings were based

In reaching my decision to release the documents, I relied on the following documentary evidence:

- *Freedom of Information Act 1982*;
- Guidelines issued by the Australian Information Commissioner;
- third party and internal consultation;
- the documents falling within the scope of the request; and
- your FOI request received by AUSTRAC on 8 April 2016.

ATTACHMENT B

Review Rights

The following review rights apply.

Section 54 of the FOI Act gives you the right to apply for an internal review of the decision refusing to grant access to documents. An application for a review of the decision must be made in writing within 30 days of receipt of this letter. No particular form is required; however, it would assist the decision maker if the application grounds on which it is considered that the decision should be reviewed were set out.

Under section 53A of the FOI Act you may have ground for review under section 54 if you can establish that there are other documents held by AUSTRAC which have not been released.

Applications for review of the decision should be addressed to:

Australian Transaction Reports and Analysis Centre
Freedom of Information
c/- Attorney General's Department
3-5 National Circuit
BARTON ACT 2600
Facsimile +612 6120 2601
www.austrac.gov.au

It is not necessary to seek internal review before seeking review of the decision by the Australian Information Commissioner.

Office of the Australian Information Commissioner

As part of the 2016-17 Budget, the OAIC has been allocated \$37 million over the next four years to fund their ongoing Privacy and Freedom of Information functions. The OAIC will therefore remain operational and will continue to conduct Information Commissioner (IC) reviews.

IC review applications can be made to:

Office of the Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001
enquiries@oaic.gov.au

For further information about IC reviews please refer to the OAIC website.

Administrative Appeals Tribunal

An application may be made to the Administrative Appeals Tribunal (AAT) after the OAIC has made a decision. The AAT may also review a decision by the OAIC not to undertake a review. An application must be submitted to the AAT within 28 days of being notified of the decision by the OAIC. The AAT can be contacted on 1300 366 700.

Complaints

If you are not satisfied with the way AUSTRAC has processed your Freedom of Information request, you can complain to the OAIC. A complaint must be made in writing and must identify AUSTRAC as the agency that made the decision. There is no particular form required to make a request, however, the complaint should set out the grounds on which it is considered the action taken in relation to the FOI request should be investigated. Complaints can be made to the OAIC at the address listed above.

For up to date information please visit the OAIC website at <https://www.oaic.gov.au>.



10 December 2007

The General Manager
Regulatory Policy
Australian Transaction Reports and Analysis Centre
PO Box 5516
WEST CHATSWOOD NSW 1515

Received
by Regulatory Policy
12 DEC 2007

Dear Sir/Madam

Absolute Alpha Pty Ltd ('Absolute Alpha')
**Request for exemption and modification under section 248 of the Anti-Money
Laundering and Counter-Terrorism Financing Act 2006 ('AML/CTF Act', 'Act')**

In accordance with section 248 of the AML/CTF Act, we wish to make a request to the AUSTRAC CEO to not treat Absolute Alpha as a Reporting Entity under section 6 of the AML/CTF Act.

With due respect, we will not be taking any action in respect of the requirements of the AML/CTF Act, in particular Part 10, including the requirements of the *Australian Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No.1)* ('AML/CTF Rules') while awaiting the decision of the AUSTRAC CEO concerning our request.

Background

Absolute Alpha, an Australian registered company, is the *Investment Manager* of the Alpha Strategic Fund ('Fund'), a managed investment scheme (specialising in absolute return strategies), registered with the Australian Securities and Investments Commission. In that role, Absolute Alpha is liable and accountable to Astarra Capital Limited ('Astarra'), being the Fund's Responsible Entity ('RE').

Absolute Alpha assists the RE in formulating the investment objective and strategy for the Fund, and in particular, Absolute Alpha is responsible for the investment portfolio construction and selection of underlying fund managers. These activities are undertaken by Absolute Alpha within a strict compliance and risk management framework, which includes a due-diligence process. Absolute Alpha also assists with the marketing of the Fund, but is limited to providing general information only. Absolute Alpha only deals with dealer groups and not directly with investors in the Fund, nor does it hold money on behalf of investors or Astarra.

Investors in the Fund have no discretion to select underlying fund managers or where their funds should be invested in. This is because investments in the fund are **pooled** and invested with offshore underlying managers/funds, in accordance with the Fund's investment objective and strategy, via a *Deferred Purchase Agreement*.

Absolute Alpha Pty Ltd ABN 24 113 940 953, Level 53, MLC Centre, 19-29 Martin Place, SYDNEY NSW 2000
Telephone: +61 2 9233 9800 Facsimile: + 61 2 9233 9810, Web: www.absolutealpha.com.au, Email: info@absolutealpha.com.au. Absolute Alpha Pty Ltd is a Corporate Representative of Wright Global Investments Pty Ltd AFSL 225058 and Solutions Wealth Strategies Pty Ltd AFSL 282103.

Deferred Purchase Agreement ('DPA') and Fund Investment Structure

The Fund has adopted an investment structure whereby certain parties, including:

- Absolute Alpha (as agent for Astarra);
- ANZ (as Fund Custodian and legal holder of Fund assets); and
- an off-shore counter-party (as a special purpose vehicle)

enter into a contract, referred to as DPA, for allocation or placement of investments with offshore underlying managers/funds, which may be taken to mean as 'acquisition of securities' (conversely, 'disposal of securities', where redemption or withdrawal of investments arises) under the AML/CTF Act.

In this exercise, the actual remittance of the pooled funds is made by ANZ (transferred by ANZ to the offshore underlying managers/funds in accordance with the terms of the DPA and the investment allocation portfolio developed by Absolute Alpha for the Fund).

Astarra

As the Fund's RE, Astarra is responsible for the overall management and administration of the Fund and its investments. Astarra (not Absolute Alpha) deals directly with investors in the Fund or their financial adviser/representative and is responsible for accepting and processing applications for investments in the Fund.

Astarra has appointed ANZ Banking Corporation ('ANZ') as Custodian for the assets of the Fund.

Astarra is a Reporting Entity under the AML/CTF Act.

Designated service

It appears that due to the Fund's Investment Structure, in particular, the use of a DPA, Absolute Alpha, being an agent of Astarra for purposes of 'acquiring or disposing of a security' via the DPA, is considered as a Reporting Entity under the AML/CTF Act, specifically, Item 33 of section 6.

It should be noted that Astarra is the only customer of Absolute Alpha in so far as the AML/CTF Act is concerned.

We believe that Absolute Alpha would not have been considered a Reporting Entity in respect of designated services under Item 33, but for, Absolute Alpha being a party to the DPA. We also believe that this was an unintended consequence of the AML/CTF Act.

Other matters for consideration

In addition to the above, we offer the following in support of our request for exemption as a Reporting Entity under the AML/CTF Act.

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Telephone: +61 2 9233 9800 Facsimile: + 61 2 9233 9810, Web: www.absolutealpha.com.au, Email: info@absolutealpha.com.au. Absolute Alpha Pty Ltd is a Corporate Representative of Wright Global Investments Pty Ltd AFSL 225058 and Solutions Wealth Strategies Pty Ltd AFSL 282103.

- Absolute Alpha poses no risk to the integrity of the AML/CTF Act. Absolute Alpha does not deal directly with investors in the Fund nor does it transfer funds to underlying managers/funds in relation to individual investor's request. Transfer of funds under the DPA consists of pooled funds from a number of investors. Investors in the Fund have no discretion to direct which offshore underlying managers/funds should their investments be invested in.
- The granting of the exemption would be consistent with the intent and purpose of the AML/CTF Act. We believe that it is not the intent and purpose of the Act to consider entities such as Absolute Alpha, that does not deal directly with ultimate investors nor act on their behalf, as Reporting Entities.
- The level of the regulatory burden to which Absolute Alpha would be subjected to in relation to its sole customer, Astarra, which in its own right is a Reporting Entity under the AML/CTF Act, is not commensurate to the risk, if any (or lack of it), that may be applicable to Absolute Alpha. Our risk assessment of money laundering and terrorism activity for Absolute Alpha has yielded a 'highly unlikely' outcome.
- The reporting obligations under Part 3 of the Act has no direct application to Absolute Alpha. Reporting under Part 3, if any, will fall under Astarra's responsibility.

We are hoping for the favourable consideration of AUSTRAC's CEO on the matter.

Should you need more information, please do not hesitate to contact our Head of Compliance, Florissa Villavert on 02 9233 9820.

Yours faithfully



Shawn Richard
Chief Executive Officer