

From the Desk of Director Marija Pajeska



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Division Head
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

CLIENT MONEY REFORMS

The Association of Securities and Derivatives Advisers of Australia (ASDAA) appreciates the opportunity to provide these comments to Treasury in respect of the Client Money Reform draft legislation.

ASDAA is a newly formed association which represents its members from the Securities and Derivatives advisory profession. Its members are comprised of individuals who are either directors or employees of firms which hold Australian Financial Services Licences (AFSLs).

ASDAA has a strong desire to raise professional standards and improve investor protection. ASDAA members rely on the ongoing trust of their clients and on the integrity of the Australian financial markets for their livelihood. Without both, clients wouldn't participate in the markets and trade in shares, exchange traded options and other listed financial products.

As a result of the failures of many large organisations within the financial services industry, like MF Global and BBY, it is clear that the current client money regime does not provide clients with the protections intended.

ASDAA understands that the intent of the proposed changes is to:

- prevent the use of derivative retail client money from being used as the licensee's working capital; or to meet obligations incurred by the licensee other than on behalf of the client; or to enter into, or meet obligations under, transactions the licensee enters into to hedge, counteract or offset the risk to the licensee associated with a transaction between the licensee and the client.

- make it clear that retail clients (including sophisticated investors) cannot authorise such use through written general directions; and that AFS licensees are no longer entitled to use it in these ways.

In principle ASDAA agrees with these changes however note the following:

- CFDs and Margin FX Contracts are Over-the-Counter (OTC) products which were specifically designed to allow retail clients to access financial markets in what is generally considered a cost effective manner. We acknowledge that these markets pose the highest risk to client money and that most clients that deal in these markets do not fully understand the type of contract they are dealing in or the manner in which client money is dealt with in these circumstances. We believe that Treasury should be more specific in relation to OTC products such as CFDs and Margin FX as these markets will be mostly impacted by the proposed changes. One scenario that could arise is a decline in liquidity in CFDs and Margin FX as a result of retail and sophisticated clients being unable to access these markets or these markets no longer being offered. This could result in a large exodus thus having a direct impact on client money held and a licensee's ability to return funds to clients.
- Differentiating the treatment of client money between retail and wholesale clients will become administratively cumbersome. Generally speaking a licensee that holds client money does not assess whether a client is retail or wholesale as the same regime applies across the board.
- If Treasury deems it appropriate to differentiate the treatment of client money between retail and wholesale clients then further consideration and laws should be included to address a circumstance where the licensee defaults or goes bankrupt. Wholesale clients that have opted out of the client trust account (ie. wholesale clients) should not benefit from any protections afforded to retail and sophisticated clients under the regime, nor should they be allowed to offset their losses against other client money and property held under a client trust account.
- The client money reporting rules should cover both money held for retail and wholesale clients. This will assist in identifying red flags and potential shortfalls which could put client money at risk.

ASDAA appreciates the opportunity to provide this Submission to Treasury on these significant proposals. We would be happy to discuss any issues arising from our submissions on this issue, or to provide any further material that may assist. Should you require any further information, please contact Brad Smoling, Communications Executive, on (07) 5532 3930 or email brad@asdaa.com.au

Yours sincerely,

Marija Pajeska
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