

Attachment to CP 291: Draft rules



ASIC

Australian Securities & Investments Commission

ASIC Client Money Reporting Rules 2017

July 2017

These draft rules reflect the proposals in Consultation Paper 291 *Reporting rules: Derivative retail client money* (CP 291).

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Chapter 1: Introduction

Part 1.1 Preliminary

1.1.1 Enabling legislation

ASIC makes this instrument under subsection 981J(1) of the *Corporations Act 2001*.

1.1.2 Title

This instrument is the *ASIC Client Money Reporting Rules 2017*.

1.1.3 Commencement

This instrument commences on the later of:

- (b) the day after it is registered on the Federal Register of Legislation; and
- (c) the day Schedule 5 to the *Treasury Laws Amendment (2016 Measures No. 1) Act 2017* commences.

Note: The register may be accessed at www.legislation.gov.au.

1.1.4 Penalties

- (1) For subsection 981K(3) of the Act, the penalty amount specified under a Rule is the penalty amount for that Rule.
- (2) If no penalty amount is specified under a Rule, there is no penalty for that Rule.

Part 1.2 Waiver

1.2.1 Waiver of Rules

- (1) Subject to Rule 1.2.3, ASIC may relieve any person or class of persons from the obligation to comply with a provision of these Rules, either generally or in a particular case, and either unconditionally or subject to such conditions as ASIC thinks fit.
- (2) If any conditions on a waiver given under subrule (1) are imposed, all of the conditions must be complied with for the waiver to be effective.
- (3) ASIC may withdraw, in writing, a waiver given under subrule (1) at any time.
- (4) Any request by a person for a waiver under subrule (1) must be in writing.
- (5) Any waiver given under subrule (1), and any conditions imposed on that waiver, must be in writing.
- (6) ASIC may publish notice of a waiver given under subrule (1).

1.2.2 Compliance with conditions

Failure to comply with a condition imposed under Rule 1.2.1 is a contravention of this Rule.

Maximum penalty: \$1,000,000

1.2.3 Period during which relief applies

ASIC may specify the period or specific event during which any relief from an obligation to comply with a provision of these Rules may apply.

1.2.4 Register

(1) ASIC may establish and maintain a register for recording details of relief granted under Rule 1.2.1 and may enter the following details in the register:

- (a) the date that the relief takes effect;
- (b) the person or class of person relieved from the obligation;
- (c) the provision to which the relief applies;
- (d) brief reasons for the relief; and
- (e) any conditions that apply to the relief.

(2) ASIC may publish the register referred to in subrule (1).

Part 1.3 Interpretation

1.3.1 References to time

In these Rules a reference to time is to the time in Sydney, Australia.

1.3.2 Words and expressions defined in the Corporations Act

Words and expressions defined in the Corporations Act will, unless otherwise defined or specified in these Rules or the contrary intention appears, have the same meaning in these Rules.

1.3.3 Definitions

Act means the *Corporations Act 2001* (Cth).

Client Money Account means an account maintained for the purposes of section 981B of the Act.

financial market has the meaning given by section 767A of Act.

licensed market has the meaning given by section 761A of the Act.

Reportable Client Money means money that:

- (a) is **derivative retail client money** within the meaning of the Act; and
- (b) is or relates to a derivative other than a derivative entered into on a market that is licensed under section 795B(1) of the Act and no exemption under section 791C or 798M covers the market.

Rules means these rules.

Chapter 2: Record-keeping and reconciliation

Part 2.1 Record-keeping

2.1.1 Record-keeping requirements

(1) A financial services licensee must at all times keep accurate records of the amount of Reportable Client Money it has received from, on behalf of, or for the benefit of a person and is required under Division 2 of Part 7.8 of the Act to hold in a Client Money Account for that person.

(2) A financial services licensee must at all times keep accurate records of the total amount of Reportable Client Money it has received from, on behalf of, or for the benefit of all persons and is required under Division 2 of Part 7.8 of the Act to hold in a Client Money Account for those persons.

(3) A financial services licensee must retain records made under subrule (1) for at least 7 years from the date the record is made.

Maximum penalty: \$1,000,000

2.1.2 Requests from clients and ASIC

A financial services licensee must comply with a written request from:

- (a) a person for any record kept by the financial services licensee under subrule 2.1.1(1) for that person within 2 business days after the request; and
- (b) ASIC for any record kept by the financial services licensee under subrules 2.1.1(1) or 2.1.1(2) within 2 business days after the request.

Maximum penalty: \$1,000,000

Part 2.2 Reconciliation requirements

2.2.1 Daily reconciliation of client money

(1) A financial services licensee must perform an accurate reconciliation, as at 7.00 pm on each business day, of:

- (a) the amount of Reportable Client Money held in a Client Money Account for each person; and
- (b) the amount recorded in the licensee's records for each person, as required by subrule 2.1.1(1).

(2) A financial services licensee must perform an accurate reconciliation, as at 7.00 pm on each business day, of:

- (a) the total amount of Reportable Client Money held in a Client Money Account for all persons; and
- (b) the amount recorded in the licensee's records for all persons, as required by subrule 2.1.1(2).

(3) The reconciliations required by this Rule must be completed by 7.00 pm on the business day following the business day to which the reconciliation relates.

(4) A financial services licensee must retain a written record of the reconciliations required by this Rule for at least 7 years from the date the record is made.

Maximum penalty: \$1,000,000

2.2.2 Monthly reconciliation of client money

(1) A financial services licensee must perform an accurate reconciliation, as at 7.00 pm on the last business day of each calendar month, of:

- (a) the amount of Reportable Client Money held in a Client Money Account for each person; and
- (b) the amount recorded in licensee's records for each person, as required by subrule 2.1.1(1).

(2) A financial services licensee must perform an accurate reconciliation, as at 7.00 pm on the last business day of each calendar month, of:

- (a) the total amount of Reportable Client Money held in a Client Money Account for all persons; and
- (b) the amount recorded in the licensee's records for all persons, as required by subrule 2.1.1(2).

(3) The reconciliations required by this Rule must be completed and a written record of them given to ASIC within 10 business days of the end of the calendar month to which the reconciliation relates.

(4) The reconciliations referred to in subrules (1) and (2) must include a statement signed by a director, or a person authorised by a director, stating that the signatory believes, and has no reason not to believe, that the reconciliation is accurate in all respects.

Maximum penalty: \$1,000,000

Chapter 3: Reporting

Part 3.1 Reporting and annual declarations

3.1.1 Reporting requirements

(1) A financial services licensee must give ASIC a written report that complies with subrule (2) if:

- (a) the licensee fails to perform a reconciliation as required by these Rules;
- (b) a reconciliation performed under subrule 2.2.1(1) (the reconciliation of individual amounts) identifies a difference between the amount held in a Client Money Account for a person and the amount recorded in the licensee's records kept under subrule 2.1.1(1); or
- (c) a reconciliation performed under subrule 2.2.1(2) (the reconciliation of total amounts) identifies a difference between the amount held in Client Money Accounts for all persons and the amount recorded in the licensee's records kept under subrule 2.1.1(2).

(2) The written report must:

- (a) state the paragraph of subrule (1) to which the report relates;
- (b) contain details of the failure or difference, as applicable; and
- (c) explain any remedial action taken or proposed to be taken by the licensee in relation to the matters in the report.

(3) The written report may contain any other information the licensee considers necessary to explain the matters in the report.

(4) The written report must be given to ASIC within 5 business days after the licensee becomes aware of the failure or difference, as applicable.

Maximum penalty: \$1,000,000

3.1.2 Annual declarations—Directors and auditors

(1) For financial years ending after 1 July 2018, a financial services licensee must prepare and give to ASIC within 3 calendar months of the end of each financial year of the licensee:

- (a) a directors' declaration that states whether, in the directors' opinion, the licensee has complied with these Rules; and
- (b) an external auditor's report that states whether, in the auditor's opinion, the licensee has maintained suitably designed and effective internal controls and systems to comply with these Rules.

(2) For the purpose of paragraph (1)(a), the declaration must:

- (a) be made in accordance with a resolution of the directors;

- (b) specify the date on which the declaration is made; and
- (c) be signed by a director.

Maximum penalty: \$1,000,000

Chapter 4: Supervisory policies and procedures

Part 4.1 Supervisory policies and procedures

4.1.1 Establish, maintain and implement policies and procedures

(1) A financial services licensee required to comply with these Rules must establish policies and procedures designed to ensure compliance with the Rules.

(2) A financial services licensee required to comply with these Rules must keep the policies and procedures established under this Rule up to date.

(3) A financial services licensee required to comply with these Rules must implement the policies and procedures required under this Rule.

Maximum penalty: \$1,000,000