



**ASIC**

Australian Securities & Investments Commission

CONSULTATION PAPER 291

# Reporting rules: Derivative retail client money

July 2017

## About this paper

This consultation paper sets out ASIC's proposals to make ASIC Client Money Reporting Rules 2017 under s981J of the *Corporations Act 2001*.

We are seeking feedback from our stakeholders on our proposals to make new rules that will impose record-keeping, reconciliation and reporting requirements on Australian financial services (AFS) licensees that hold derivative retail client money that is 'reportable client money'.

Note: The draft rules are available on our website at [www.asic.gov.au/cp](http://www.asic.gov.au/cp) under CP 291.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This paper was issued on 11 July 2017 and is based on the Corporations Act as at the date of issue.

### Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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## The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information.

We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy on reporting rules for derivative retail client money. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see Section C, 'Regulatory and financial impact'.

### Making a submission

You may choose to remain anonymous or use an alias when making a submission. However, if you do remain anonymous we will not be able to contact you to discuss your submission should we need to.

Please note we will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any personal or financial information) as confidential.

Please refer to our privacy policy at [www.asic.gov.au/privacy](http://www.asic.gov.au/privacy) for more information about how we handle personal information, your rights to seek access to and correct personal information, and your right to complain about breaches of privacy by ASIC.

Comments should be sent by 8 August 2017 to:

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Market Integrity Group  
Australian Securities and Investments Commission  
Level 5, 100 Market Street  
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## What will happen next?

<b>Stage 1</b>	11 July 2017	ASIC consultation paper and draft ASIC Client Money Reporting Rules 2017 released
<b>Stage 2</b>	8 August 2017	Comments due on the consultation paper
<b>Stage 3</b>	October 2017	Feedback report to be released ASIC Client Money Reporting Rules 2017 to be finalised
<b>Stage 4</b>	4 April 2018	ASIC Client Money Reporting Rules 2017 to commence

## A Background

### Key points

The Australian Parliament has passed legislation removing a number of broad exceptions in the *Corporations Act 2001* (Corporations Act) that currently permit Australian financial services (AFS) licensees that deal in derivatives to use client money for a wide range of purposes, including as the licensee's own working capital.

The Parliament has also given ASIC the power to make new client money reporting rules. As a result, we are proposing to make ASIC Client Money Reporting Rules 2017 (client money reporting rules), which will impose record-keeping, reconciliation and reporting requirements on all AFS licensees that hold 'reportable client money'.

The proposed client money reporting rules would commence on 4 April 2018, which is when the other client money reforms will take effect.

### What is 'reportable client money'?

- 1 For the purpose of the application of the client money reporting rules, we are proposing (see Section B of this paper) to define 'reportable client money' as money that:
  - (a) is 'derivative retail client money' within the meaning of the Corporations Act; and
  - (b) is or relates to a derivative other than a derivative entered into on a market that is licensed under s795B(1) of the Corporations Act and no exemption under s791C or 798M covers the market.
- 2 We consider that where an AFS licensee receives retail client money in relation to over-the-counter (OTC) derivatives (domestic and foreign) or overseas exchange-traded derivatives (such as foreign futures contracts) the client money reporting rules should apply. This will ensure transparency in relation to the licensee's receipt and use of that money.
- 3 We consider it is appropriate to provide a carve-out for derivatives traded on an Australian domestic licensed financial market because the participants of those markets are already subject to stringent reporting and reconciliation requirements in relation to client money under ASIC market integrity rules. The carve-out is also appropriate because ASIC is responsible for supervising compliance with the market integrity rules and therefore there is already greater regulatory transparency in relation to that client money.

## The Australian Parliament's derivative retail client money reforms

- 4 Client money is money paid to an AFS licensee in connection with a financial service or a financial product. A client money account is an account maintained by a licensee into which client money is paid.
- 5 While Pt 7.8 of the Corporations Act requires that a client money account is a separate account subject to a statutory trust, clients are exposed to counterparty risk with respect to client money. This risk arises because:
- (a) s981D of the Corporations Act permits an AFS licensee to use client money to meet obligations incurred by the licensee in connection with margining, guaranteeing, securing, transferring, adjusting or settling dealings in derivatives by the licensee, including dealings on behalf of people *other than* the client;
  - (b) under reg 7.8.02(1)(a) of the Corporations Regulations 2001 (Corporations Regulations), an AFS licensee may withdraw client money if it has obtained a *written direction* from the person entitled to the money (client agreements of some licensees contain a broad authorisation that allows the licensee to make withdrawals from client money for any purpose whatsoever); and
  - (c) under reg 7.8.02(1)(c) of the Corporations Regulations, an AFS licensee may make a withdrawal from a client money account of money to which it is *entitled* (a broad entitlement may be created under the terms of some client agreements).
- 6 These broad exceptions place reportable client money at greater risk of loss, particularly if an AFS licensee becomes insolvent. This is because the extent of any shortfall in client money ultimately depends on the successful recovery of client money. Where client money has been used by the licensee for working capital or the wide range of other purposes permitted under the Corporations Act, it will no longer be afforded the protections of a statutory trust and the risk of a shortfall in client money is therefore greater.
- 7 While wholesale clients typically have considerable experience dealing in derivatives and the capacity to assess the risks associated with the use of their money, a thorough assessment and evaluation of the counterparty risk in derivatives markets is a complex exercise and cannot be reasonably expected of retail clients.
- 8 In the case of domestic exchange-traded derivatives, counterparty risk is mitigated by the market integrity rules and the rules of domestic exchanges and clearing houses that impose specific capital, reporting and reconciliation requirements in relation to client money. However, AFS licensees are *not* bound by these rules when dealing in OTC derivatives or overseas exchange-traded derivatives.

- 9 In early 2017, the Australian Parliament passed the Treasury Laws Amendment (2016 Measures No. 1) Bill 2016 and the Corporations Amendment (Client Money) Regulations 2017. These legislative reforms will prevent AFS licensees from withdrawing retail client money provided in relation to derivatives from the client money account and using it for the wide range of purposes currently permitted under the Corporations Act, including as the licensee's own working capital. The reforms will take effect on 4 April 2018.
- 10 In addition, ASIC has been given the power to make new client money reporting rules, which will ensure greater transparency in relation to the receipt and use of derivative retail client money by AFS licensees.

## Purpose of consultation

- 11 In Section B of this paper we are seeking your feedback on draft ASIC Client Money Reporting Rules 2017 (client money reporting rules), which will impose record-keeping, reconciliation and reporting requirements on all AFS licensees that hold reportable client money.
- 12 The proposed client money reporting rules will apply more formal and consistent standards across the retail derivatives sector and will enhance our surveillance of the retail derivatives sector. In particular, the rules will ensure any discrepancies in an AFS licensee's client money account (including where that discrepancy is the result of the licensee using client money for a non-permitted purpose) are notified to ASIC in a timely manner and that we are able to take appropriate action. The rules will also help to better protect investors from the risk of losses arising from fraud, error and other operational breaches.
- 13 The proposed client money reporting rules (and associated penalties) are broadly consistent with the existing reconciliation and reporting requirements that apply to domestic exchange-traded derivatives under ASIC Market Integrity Rules (ASX 24 Market) 2010 (ASIC Market Integrity Rules (ASX 24)). This is to ensure more formal and consistent standards across the derivatives sector and to make the transition for AFS licensees that operate across both OTC and exchange-traded markets as seamless as possible. We also consider that such an alignment is appropriate given ASIC Market Integrity Rules (ASX 24) similarly contribute to the overall outcome of well-regulated and supervised financial and derivatives markets.

## B Client money reporting rules

### Key points

The proposed client money reporting rules would require an AFS licensee that holds reportable client money to:

- keep accurate records of the amount of reportable client money it receives on both an individual client basis and a total basis;
- perform a daily and monthly reconciliation of the amount of reportable client money it has recorded in its records against the amount actually held in the client money account;
- notify ASIC if it fails to perform a reconciliation in accordance with the client money reporting rules or identifies a discrepancy;
- prepare and give to ASIC an annual directors' declaration and an external auditor's report on its compliance with the client money reporting rules; and
- establish, implement and maintain policies and procedures designed to ensure compliance with the client money reporting rules.

The client money reporting rules would commence on 4 April 2018, which is when the other client money reforms will take effect. The draft rules are available on our website at [www.asic.gov.au/cp](http://www.asic.gov.au/cp) under CP 291.

## Scope of the client money reporting rules

### Proposal

- B1** For the purpose of the client money reporting rules, we propose that reportable client money be defined as money that:
- (a) is 'derivative retail client money' within the meaning of the Corporations Act; and
  - (b) is or relates to a derivative other than a derivative entered into on a market that is licensed under s795B(1) of the Corporations Act and no exemption under s791C or 798M covers the market.

See Part 1.3 of the draft client money reporting rules attached to this consultation paper.

### *Your feedback*

- B1Q1** Do you consider this definition, and its effect on the application of the proposed requirements in proposals B2–B5 below, provides adequate protection for retail clients?

- B1Q2 Do you agree that the client money reporting rules should apply to:
- (a) all derivative retail client money received by an AFS licensee, other than client money that relates to a derivative that is traded on a fully licensed domestic market; and
  - (b) retail client money held in relation to overseas exchange-traded derivatives?
- B1Q3 Should we undertake further consultation on whether AFS licensees that are not market participants, but that facilitate the trading of derivatives on licensed markets for their clients through an arrangement with a market participant (commonly referred to as ‘indirect market participants’ or ‘shadow brokers’), should be required to comply with the client money reporting rules? Do you consider that:
- (a) the retail clients of these intermediaries are adequately protected by the existing regulatory framework; or
  - (b) there are regulatory benefits to be derived from extending the rules to apply to these intermediaries?

## Rationale

- 14 The underlying intention of our proposed definition of reportable client money is to ensure the client money reporting rules apply to client money provided to an AFS licensee in relation to derivatives that are not traded on a licensed domestic exchange. Our intention is to ensure that reportable client money is subject to similar protections to those applied to client money held in relation to domestic exchange-traded derivatives.

### Further consultation on extending the scope of the rules to intermediaries

- 15 We are also seeking your feedback in question B1Q3 on whether, at some future point, the scope of the client money reporting rules should be extended to include ‘indirect market participants’ or ‘shadow brokers’. Any extension of the scope of the rules would be subject to further public consultation.

## Record-keeping requirements

### Proposal

- B2 For the purpose of the client money reporting rules, we propose that an AFS licensee must:

- (a) keep the following records for at least seven years from the date the record is made:
  - (i) a record of the amount of reportable client money it has received from, on behalf of, or for the benefit of a client and is required under Div 2 of Pt 7.8 of the Corporations Act to hold in a client money account for that client; and
  - (ii) a record of the total amount of reportable client money it has received from, on behalf of, or for the benefit of all clients and is required under Div 2 of Pt 7.8 of the Corporations Act to hold in a client money account for all clients; and
- (b) comply with:
  - (i) a written request from a client for any record kept by the licensee for that client in accordance with the requirement in proposal B2(a)(i) within two business days after the request; and
  - (ii) a written request from ASIC for any record kept by the licensee in accordance with the requirement referred to in proposal B2(a)(i) or B2(a)(ii) within two business days after the request.

See Part 2.1 of the draft client money reporting rules attached to this consultation paper.

#### *Your feedback*

- B2Q1 Do you consider these proposals will improve the transparency of an AFS licensee's receipt and use of derivative retail client money?
- B2Q2 What impact will the proposals have on your business? What do you estimate the additional costs to your business will be? What steps will your business be required to take as a result of incurring these additional costs?
- B2Q3 Do you consider that it is too onerous to comply with a written request for these records within two business days? If so, why?

### **Rationale**

- 16 We consider that AFS licensees that hold reportable client money should be required to keep records on both an individual client basis and a total basis for all retail clients. This will ensure greater transparency in relation to a licensee's receipt and use of derivative retail client money. It will also provide greater protection to each retail client and, in conjunction with proposals B3 and B4 below, will ensure that discrepancies in individual client balances (including where that discrepancy is the result of the licensee using client money for a non-permitted purpose) are notified to ASIC in a timely manner.

- 17 We note that the requirement to keep client money records (and subsequent reconciliation and reporting) for each individual client is consistent with the rules currently administered by the UK Financial Conduct Authority in the [Client assets sourcebook](#) (CASS). Under CASS, a firm must carry out internal reconciliations of records and accounts of client money that the firm holds, including the individual client balance for each client.
- 18 Requiring an AFS licensee to comply with a written request from ASIC (or an individual client) for the records of the client money it keeps will provide further transparency in relation to a licensee's use of reportable client money, and will help ASIC detect and respond to breaches of the client money regime in a more timely manner.

## Reconciliation requirements

### Proposal

- B3** For the purpose of the client money reporting rules, we propose that an AFS licensee must:
- (a) complete—by 7 pm on the business day following the business day to which the reconciliation relates—an accurate reconciliation of:
    - (i) the amount of reportable client money held in a client money account for each client, and on a total basis, as at 7 pm on each business day; and
    - (ii) the corresponding amount of reportable client money recorded for each client, and on a total basis, in the licensee's records, which are kept in accordance with the requirements in proposal B2(a); and
  - (b) complete—and give to ASIC within 10 business days of the end of the calendar month to which the reconciliation relates—an accurate reconciliation of:
    - (i) the amount of reportable client money held in a client money account for each client, and the corresponding amount recorded in the licensee's records in accordance with the requirement in proposal B2(a), as at 7 pm on the last business day of each calendar month, and signed by a director, or a person authorised by a director, attesting to the accuracy of the reconciliation; and
    - (ii) the total amount of reportable client money held in a client money account for all clients, and the corresponding amount recorded in the licensee's records in accordance with the requirement in proposal B2(a), as at 7 pm on the last business day of each calendar month; and
  - (c) retain a written record of the reconciliations required by the client money reporting rules for at least seven years from the date the record is made.

See Part 2.2 of the draft client money reporting rules attached to this consultation paper.

*Your feedback*

- B3Q1 Do you consider these proposals will:
- (a) be effective in enhancing ASIC's surveillance of the derivatives sector; and
  - (b) help ASIC identify discrepancies in an AFS licensee's client money account in a more timely manner?
- B3Q2 What impact will these proposals have on your business? What do you estimate the additional costs to your business will be? What steps will your business be required to take as a result of incurring these additional costs?
- B3Q3 Will it be possible for your business to reconcile the amount of reportable client money held in a client money account for each client against the corresponding amount in your records?
- B3Q4 Will it be possible for your business to perform a daily reconciliation by 7 pm on the following business day?
- B3Q5 Do you consider that the reconciliations required to be performed should be less frequent? If so, please provide reasons.
- B3Q6 Is it sufficiently clear what must be set out in the reconciliation?

## Rationale

- 19 Requiring both a daily and monthly reconciliation will facilitate our objective of monitoring an AFS licensee's receipt and use of derivative retail client money. In conjunction with the proposed reporting requirements in proposal B4, requiring a daily reconciliation will ensure that any discrepancies in a licensee's client money account are notified to ASIC in a timely manner and that we are able to take appropriate action.
- 20 In addition, requiring the monthly reconciliations to include a director's statement will ensure that management is more actively involved in the AFS licensee's compliance with its obligations relating to reportable client money.
- 21 Requiring both a daily and monthly reconciliation is also consistent with the reconciliation requirements in ASIC Market Integrity Rules (ASX 24). We consider it is appropriate to apply a similar standard to reportable client money and afford a similar level of protection to retail clients that acquire OTC derivatives or overseas exchange-traded derivatives.

## Reporting requirements

### Proposal

- B4** For the purpose of the client money reporting rules, we propose that an AFS licensee must:
- (a) provide a written report to ASIC within five business days if it:
    - (i) fails to perform a reconciliation in accordance with the requirements in proposal B3; or
    - (ii) identifies a discrepancy when performing a reconciliation in accordance with the requirements in proposal B3; and
  - (b) prepare and give to ASIC within three calendar months of the end of each financial year:
    - (i) a directors' declaration that states whether, in the directors' opinion, the licensee has complied with the client money reporting rules (the declaration must be made in accordance with a resolution of the directors, specify the date on which the declaration is made and be signed by a director); and
    - (ii) an external auditor's report that states whether, in the auditor's opinion, the licensee has systems that have enabled it to comply with the client money reporting rules.

See Part 3.1 of the draft client money reporting rules attached to this consultation paper.

#### *Your feedback*

- B4Q1** Do you consider these proposals will be effective in ensuring that AFS licensees use reportable client money for permitted purposes only?
- B4Q2** What impact will these proposals have on your business? Does your business already record and reconcile reportable client money as part of its existing processes? What do you estimate the additional costs to your business will be? What steps will your business be required to take as a result of incurring these additional costs?
- B4Q3** Do you consider requiring AFS licensees to obtain an external auditor's report on their ability to comply with the client money reporting rules will provide additional protection to retail clients?
- B4Q4** Do you consider that it is too onerous to require an AFS licensee to obtain an external auditor's report on its ability to comply with the client money reporting rules? Do you consider that this requirement is appropriate given the existing obligations of an auditor to report certain matters to ASIC under Pt 7.8 of the Corporations Act?

B4Q5 It is currently proposed that the requirement to prepare and give to ASIC an external auditor's report will commence on 1 July 2018 to align with the start of the new financial year. Do you consider this will provide an adequate amount of time for audit firms to develop appropriate standards to refer to when preparing a report on the AFS licensee's systems?

### Rationale

22 We consider that it is appropriate for the directors of an AFS licensee to actively ensure that the licensee is complying with the client money reporting rules and for the licensee to also obtain an external auditor's report verifying whether it has maintained suitably designed and effective internal controls and systems to comply with these rules. This reporting requirement is also consistent with the requirements in ASIC Market Integrity Rules (ASX 24) relating to the reconciliation of clients' segregated accounts.

## Supervisory policies and procedures

### Proposal

- B5 We propose that an AFS licensee must:
- (a) establish and implement policies and procedures designed to ensure compliance with the client money reporting rules; and
  - (b) keep those policies and procedures up to date.

See Part 4.1 of the draft client money reporting rules attached to this consultation paper.

#### *Your feedback*

- B5Q1 Do you consider this proposal will be effective in ensuring that AFS licensees comply with the proposed client money reporting rules?
- B5Q2 What impact will this proposal have on your business? What do you estimate the additional costs to your business will be? What steps will your business be required to take as a result of incurring these additional costs?

### Rationale

23 We consider that an AFS licensee needs to establish (and keep updated) documented policies and procedures that address the relevant requirements in the client money reporting rules and that detail how the licensee will ensure compliance with the rules.

- 24            This requirement is similar to that imposed under ASIC Market Integrity Rules (ASX 24) and will ultimately enhance our surveillance of the OTC derivatives and overseas exchange-traded derivatives sectors by helping us identify when an AFS licensee has in place no policies and procedures or inadequate policies and procedures.

## C Regulatory and financial impact

- 25 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they will strike an appropriate balance between the need to ensure:
- (a) more formal and consistent standards across the derivatives sector; and
  - (b) greater transparency in relation to an AFS licensee's receipt and use of reportable client money.
- 26 Before settling on a final policy, we will comply with the Australian Government's regulatory impact analysis (RIA) requirements by:
- (a) considering all feasible options, including examining the likely impacts of the range of alternative options which could meet our policy objectives;
  - (b) if regulatory options are under consideration, notifying the Office of Best Practice Regulation (OBPR); and
  - (c) if our proposed option has more than minor or machinery impact on business or the not-for-profit sector, preparing a Regulation Impact Statement (RIS).
- 27 All RISs are submitted to the OBPR for approval before we make any final decision. Without an approved RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.
- 28 To ensure that we are in a position to properly complete any required RIS, please give us as much information as you can about our proposals or any alternative approaches, including:
- (a) the likely compliance costs;
  - (b) the likely effect on competition; and
  - (c) other impacts, costs and benefits.
- 29 See 'The consultation process', p. 4.

## Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services  Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act  Note: This is a definition contained in s761A.
ASIC	Australian Securities and Investments Commission
ASIC Market Integrity Rules (ASX 24)	ASIC Market Integrity Rules (ASX 24 Market) 2010
ASX	ASX Limited or the exchange market operated by ASX Limited
Australian domestic licensed financial market	A financial market licensed under s795B(1) of the Corporations Act
CASS	The <a href="#">Client assets sourcebook</a> administered by the UK Financial Conduct Authority
client money account	An account maintained for the purpose of s981B of the Corporations Act
client money reporting rules	The draft ASIC Client Money Reporting Rules 2017 attached to this consultation paper
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
Div 2 (for example)	A division of the Corporations Act (in this example numbered 2), unless otherwise specified
market integrity rules	Rules made by ASIC, under s798G of the Corporations Act, for trading on domestic licensed markets
OTC	Over the counter
Part 2.2 (for example)	A part of the draft client money reporting rules (in this example numbered 2.2), unless otherwise specified
Pt 7.8 (for example)	A part of the Corporations Act (in this example numbered 7.8), unless otherwise specified
reg 7.8.02 (for example)	A regulation of the Corporations Regulations (in this example numbered 7.8.02), unless otherwise specified

<b>Term</b>	<b>Meaning in this document</b>
reportable client money	Money that: <ul style="list-style-type: none"><li>• is derivative retail client money within the meaning of the Corporations Act; and</li><li>• is or relates to a derivative other than a derivative entered into on a market that is licensed under s795B(1) of the Corporations Act and no exemption under s791C or 798M covers the market</li></ul>
retail client	A client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of Ch 7 of the Corporations Regulations
wholesale client	A client who is not a retail client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations

## List of proposals and questions

Proposal	Your feedback
<p>B1 For the purpose of the client money reporting rules, we propose that reportable client money be defined as money that:</p> <ul style="list-style-type: none"> <li>(a) is 'derivative retail client money' within the meaning of the Corporations Act; and</li> <li>(b) is or relates to a derivative other than a derivative entered into on a market that is licensed under s795B(1) of the Corporations Act and no exemption under s791C or 798M covers the market.</li> </ul> <p>See Part 1.3 of the draft client money reporting rules attached to this consultation paper.</p>	<p>B1Q1 Do you consider this definition, and its effect on the application of the proposed requirements in proposals B2–B5 below, provides adequate protection for retail clients?</p> <p>B1Q2 Do you agree that the client money reporting rules should apply to:</p> <ul style="list-style-type: none"> <li>(a) all derivative retail client money received by an AFS licensee, other than client money that relates to a derivative that is traded on a fully licensed domestic market; and</li> <li>(b) retail client money held in relation to overseas exchange-traded derivatives?</li> </ul> <p>B1Q3 Should we undertake further consultation on whether AFS licensees that are not market participants, but that facilitate the trading of derivatives on licensed markets for their clients through an arrangement with a market participant (commonly referred to as 'indirect market participants' or 'shadow brokers'), should be required to comply with the client money reporting rules? Do you consider that:</p> <ul style="list-style-type: none"> <li>(a) the retail clients of these intermediaries are adequately protected by the existing regulatory framework; or</li> <li>(b) there are regulatory benefits to be derived from extending the rules to apply to these intermediaries?</li> </ul>

Proposal	Your feedback
<p>B2 For the purpose of the client money reporting rules, we propose that an AFS licensee must:</p> <p>(a) keep the following records for at least seven years from the date the record is made:</p> <p>(i) a record of the amount of reportable client money it has received from, on behalf of, or for the benefit of a client and is required under Div 2 of Pt 7.8 of the Corporations Act to hold in a client money account for that client; and</p> <p>(ii) a record of the total amount of reportable client money it has received from, on behalf of, or for the benefit of all clients and is required under Div 2 of Pt 7.8 of the Corporations Act to hold in a client money account for all clients; and</p> <p>(b) comply with:</p> <p>(i) a written request from a client for any record kept by the licensee for that client in accordance with the requirement in proposal B2(a)(i) within two business days after the request; and</p> <p>(ii) a written request from ASIC for any record kept by the licensee in accordance with the requirement referred to in proposal B2(a)(i) or B2(a)(ii) within two business days after the request.</p>	<p>B2Q1 Do you consider these proposals will improve the transparency of an AFS licensee's receipt and use of derivative retail client money?</p> <p>B2Q2 What impact will the proposals have on your business? What do you estimate the additional costs to your business will be? What steps will your business be required to take as a result of incurring these additional costs?</p> <p>B2Q3 Do you consider that it is too onerous to comply with a written request for these records within two business days? If so, why?</p>
<p>See Part 2.1 of the draft client money reporting rules attached to this consultation paper.</p>	

Proposal	Your feedback
<p>B3 For the purpose of the client money reporting rules, we propose that an AFS licensee must:</p> <p>(a) complete—by 7 pm on the business day following the business day to which the reconciliation relates—an accurate reconciliation of:</p> <p>(i) the amount of reportable client money held in a client money account for each client, and on a total basis, as at 7 pm on each business day; and</p> <p>(ii) the corresponding amount of reportable client money recorded for each client, and on a total basis, in the licensee’s records, which are kept in accordance with the requirements in proposal B2(a); and</p> <p>(b) complete—and give to ASIC within 10 business days of the end of the calendar month to which the reconciliation relates—an accurate reconciliation of:</p> <p>(i) the amount of reportable client money held in a client money account for each client, and the corresponding amount recorded in the licensee’s records in accordance with the requirement in proposal B2(a), as at 7 pm on the last business day of each calendar month, and signed by a director, or a person authorised by a director, attesting to the accuracy of the reconciliation; and</p> <p>(ii) the total amount of reportable client money held in a client money account for all clients, and the corresponding amount recorded in the licensee’s records in accordance with the requirement in proposal B2(a), as at 7 pm on the last business day of each calendar month; and</p> <p>(c) retain a written record of the reconciliations required by the client money reporting rules for at least seven years from the date the record is made.</p> <p>See Part 2.2 of the draft client money reporting rules attached to this consultation paper.</p>	<p>B3Q1 Do you consider these proposals will:</p> <p>(a) be effective in enhancing ASIC’s surveillance of the derivatives sector; and</p> <p>(b) help ASIC identify discrepancies in an AFS licensee’s client money account in a more timely manner?</p> <p>B3Q2 What impact will these proposals have on your business? What do you estimate the additional costs to your business will be? What steps will your business be required to take as a result of incurring these additional costs?</p> <p>B3Q3 Will it be possible for your business to reconcile the amount of reportable client money held in a client money account for each client against the corresponding amount in your records?</p> <p>B3Q4 Will it be possible for your business to perform a daily reconciliation by 7 pm on the following business day?</p> <p>B3Q5 Do you consider that the reconciliations required to be performed should be less frequent? If so, please provide reasons.</p> <p>B3Q6 Is it sufficiently clear what must be set out in the reconciliation?</p>

Proposal	Your feedback
<p>B4 For the purpose of the client money reporting rules, we propose that an AFS licensee must:</p> <ul style="list-style-type: none"> <li>(a) provide a written report to ASIC within five business days if it: <ul style="list-style-type: none"> <li>(i) fails to perform a reconciliation in accordance with the requirements in proposal B3; or</li> <li>(ii) identifies a discrepancy when performing a reconciliation in accordance with the requirements in proposal B3; and</li> </ul> </li> <li>(b) prepare and give to ASIC within three calendar months of the end of each financial year: <ul style="list-style-type: none"> <li>(i) a directors' declaration that states whether, in the directors' opinion, the licensee has complied with the client money reporting rules (the declaration must be made in accordance with a resolution of the directors, specify the date on which the declaration is made and be signed by a director); and</li> <li>(ii) an external auditor's report that states whether, in the auditor's opinion, the licensee has systems that have enabled it to comply with the client money reporting rules.</li> </ul> </li> </ul> <p>See Part 3.1 of the draft client money reporting rules attached to this consultation paper.</p>	<p>B4Q1 Do you consider these proposals will be effective in ensuring that AFS licensees use reportable client money for permitted purposes only?</p> <p>B4Q2 What impact will these proposals have on your business? Does your business already record and reconcile reportable client money as part of its existing processes? What do you estimate the additional costs to your business will be? What steps will your business be required to take as a result of incurring these additional costs?</p> <p>B4Q3 Do you consider requiring AFS licensees to obtain an external auditor's report on their ability to comply with the client money reporting rules will provide additional protection to retail clients?</p> <p>B4Q4 Do you consider that it is too onerous to require an AFS licensee to obtain an external auditor's report on its ability to comply with the client money reporting rules? Do you consider that this requirement is appropriate given the existing obligations of an auditor to report certain matters to ASIC under Pt 7.8 of the Corporations Act?</p> <p>B4Q5 It is currently proposed that the requirement to prepare and give to ASIC an external auditor's report will commence on 1 July 2018 to align with the start of the new financial year. Do you consider this will provide an adequate amount of time for audit firms to develop appropriate standards to refer to when preparing a report on the AFS licensee's systems?</p>
<p>B5 We propose that an AFS licensee must:</p> <ul style="list-style-type: none"> <li>(a) establish and implement policies and procedures designed to ensure compliance with the client money reporting rules; and</li> <li>(b) keep those policies and procedures up to date.</li> </ul> <p>See Part 4.1 of the draft client money reporting rules attached to this consultation paper.</p>	<p>B5Q1 Do you consider this proposal will be effective in ensuring that AFS licensees comply with the proposed client money reporting rules?</p> <p>B5Q2 What impact will this proposal have on your business? What do you estimate the additional costs to your business will be? What steps will your business be required to take as a result of incurring these additional costs?</p>