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The Australian CFD & FX Forum ("CFD & FX Forum") response to Consultation Paper 291, Reporting rules: Derivative retail client money

1. Preamble

The CFD & FX Forum is pleased to provide comments on the consultation paper for Reporting rules: Derivative retail client money.

The CFD & FX Forum and each of its members ("Members") are committed to enhancing the efficient operation, transparency and overall investor understanding and confidence in CFDs and FX within Australia, and in the Australian CFD and FX industry as a whole.

Representing 64%¹ of Australian CFD & FX providers by market share, the CFD & FX Forum has established Best Practice Standards ("Standards") for the purpose of continuously improving existing CFD and FX industry standards and addressing specific CFD and FX industry issues and investor concerns, building upon existing legislation to deliver additional benefits to investors and elevating investor perception and understanding in dealing in CFD and FX products.

The CFD & FX Forum considers the response to this paper as an opportunity to work with ASIC in implementing best practice across the wider industry.

2. Introduction

The CFD & FX Forum has the following general comments to make regarding the proposals outlined within the paper. Specific comments are considered further below when addressing the questions posed by the paper.

- We endorse regulatory change that delivers better client outcomes
- We support more formal and consistent OTC derivative & FX industry standards
- We consider that reporting rules are fundamental to controls and processes that support the derivative retail client money reform.

¹ June 2016 Investment Trends Report

3. Responses to the Proposals:

B1Q1

Yes, we consider this definition provides adequate protection for retail clients.

B1Q2

Yes we agree to both (a) and (b).

B1Q3

Any licensee holding reportable client money should be required to comply with the client money reporting rules.

B2Q1

Yes, we consider the proposals outlined in section (a) to be fundamental to the client money reconciliation process.

B2Q2

Our members currently have these or similar processes in place and therefore the impact will be minimal.

B2Q3

Generally under standard conditions we expect it would not be onerous to comply with a written request within two working days however it may be difficult if there were unforeseen or extenuating circumstances and would suggest an alternative timeframe of 5 working days.

B3Q1

Yes, we agree.

B3Q2

Our members currently have some but not all proposed processes in place and there will be some impact and cost related to establishing new processes and reporting to ASIC.

As a report detailing client money held for each client will be very large for many of our members, it may be difficult for ASIC to identify discrepancies in a timely manner and we suggest that a template is developed for the reporting to ASIC proposed in section (b)(i) and (b)(ii).

B3Q3

Yes.

B3Q4

Some members have established client money reconciliation processes that operate at a regional or global level with different time zone challenges. We believe the principal is about daily client money control discipline, therefore we suggest an arrangement which ensures that the licensee is required to reconcile the client money position from the prior day snapshot (cut-off time/time stamp should be explicitly stated on the reports), by the same working day or by the next working day. The definition of working day should also be defined as a foreign public holiday may fall on a working day in Australia.

Without prescribing a particular time such as 5pm will allow members the flexibility for operational processes to be completed and to resolve any issues with other group entities or the parent entity which may commence business outside of Australian business hours, particularly on a Monday. We believe that there is no risk or detrimental impact to this more flexible approach

provided reconciliation is performed daily and completed by next business day for prior day snapshot.

B3Q5

We agree with the proposed frequency of reconciliations.

B3Q6

Further clarity is sought regarding what must be set out in the reconciliation and specific examples would be useful along with further technical guidance.

As mentioned above we also suggest that a template is used for the proposed reporting to ASIC and the CFD & FX Forum would be happy to assist ASIC with developing this template.

B4Q1

Yes, we agree.

B4Q2

In relation to section (a), there will be some impact in establishing reporting to ASIC however the proposed reconciliation processes are predominantly in place amongst our members. We would also ask for clarification of ASIC's view of or a definition for "discrepancy". For instance, would this be items to do with timing as well as where client cash has been incorrectly calculated or misapplied? We also suggest that ASIC consider a materiality level rather than have all discrepancies reported.

In relation to section (b)(i), our members already have existing controls and oversight of client money reconciliation processes in place and there will be minimal impact to ensure that this is now extended to include the proposed reporting rules.

Section (b)(ii) proposal relating to an auditor's report and opinion is a new requirement and will incur additional expense to our members. In this regard, we suggest that ASIC provide an exemption to licensees that are also foreign prudentially regulated licensees and required to comply with, or engage an auditor to produce, an equivalent auditors report and opinion.

B4Q3

Yes, as effective systems and/or processes underpin the ability to comply with the proposed reporting rules.

B4Q4

We consider it appropriate to require an external auditors report or an exemption as mentioned above. Whilst there is an obligation to report certain matters under Pt 7.8 of the *Corporations Act 2001*, we feel it is unlikely that the scope of an audit would include systems that have enabled the licensee to comply with the client money reporting rules unless this was specifically required.

B4Q5

We believe the commencement date of 1 July 2018 provides an adequate amount of time for audit firms to develop appropriate standards however it is worth noting that our members do not have a common financial year end.

Does the proposed commencement date mean that licensees with an earlier year end are not required to comply with the external auditors report until the following year end, or in this case are all licensees subject to a 30 June financial year end, or should provision of (b)(i) and (b)(ii) correspond with licensee's financial year end?

B5Q1

Yes, we believe policies and procedures are fundamental to ensuring compliance with the proposed reporting rules.

B5Q2

There will be minimal impact to members to ensure that current policies and procedures are aligned to the proposed client money reporting rules.

Finally, we note the maximum penalty for failure to comply with a contravention of each Rule within the draft client money reporting rules and whilst ASIC has not asked for comment on these penalties it would be useful for our members to understand if these are aligned to client money rules penalties for market participants and how the maximum penalty was determined, as well as how ASIC would determine actual penalties for breaches of the client money reporting rules and under what circumstances might ASIC take further regulatory action.

Thank you for the opportunity to participate in this consultation process. We are happy to engage in further discussion and please do not hesitate to contact us for any further assistance.

Yours sincerely

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