

8 August 2017

Ms Katie Ryder  
 Senior Lawyer, Market Integrity Group  
 Australian Securities and Investments Commission  
 Level 5, 100 Market Street  
 SYDNEY NSW 2000  
 By email: policy.submissions@asic.gov.au

Dear Ms Ryder

**Submissions in Response to Consultation Paper 291**

International Capital Markets Pty Ltd (**IC Markets**) thanks ASIC for the opportunity to provide submissions on the draft rules set out in Consultation Paper 291 *Reporting rule: Derivative retail client money* ("CP 291") (**Draft Rules**). IC Markets believes regulatory consultation to be an important part of regulatory change and welcomes the opportunity to be part of this process.

Whilst IC Markets is in general agreement with the purpose and effect of the Draft Rules (see below), we would like to make a few brief comments regarding a number of concerns with the rules and their penalties as they currently stand. Specifically, IC Markets would like to note that:

- a) The requirement given to undertake reconciliations on the next business day given to perform the daily reconciliation may not be sufficient
- b) There is a more appropriate time as at which the daily reconciliation should be performed (New York Close time)
- c) The penalties for breaching the rules are inconsistent with similar regimes
- d) The penalties appear to be disproportionate to the rules themselves.

B3 - Reconciliation Requirements

Question Reference	Response
B3Q1	(a) We believe that properly implemented, these proposals will enhance ASIC's surveillance of the derivative sector. (b) Yes, subject to the concern raised in relation to B3Q4 below.
B3Q2	Subject to our broader comments below, we do not anticipate that the proposals will impose an overly burdensome requirement on the business, nor will they lead us to incur significant additional compliance costs.
B3Q3	Subject to our broader comments below, we do not anticipate any difficulties in performing this reconciliation.
B3Q4	See detailed discussion below.

*B3Q4 - Will it be possible for your business to perform a daily reconciliation by 7 pm on the following business day?*

The performance of the daily reconciliation in accordance with the Draft Rules is not an issue. That being said, the next business day requirement to undertake the reconciliation is too short (refer to Draft Rule 2.2.1(3)). In most cases the reconciliation will need to occur within a 24 hour window. We anticipate that discrepancies in reconciliation will arise through no fault of our own and this will need to be reported to ASIC under Chapter 3 of the Draft Rules on a regular basis.

In this regard, at least every day we have clients that fail to properly disclose their account reference details when transferring funds on account of trading to IC Markets. In order to identify the client, investigations may be required - including funds tracing exercises with financial institutions. This can take time, often greater than 24 hours, to resolve.

Other events may lead to anomalies in the reconciliation process, including banking errors and other black swan type events.

IC Markets submits that should ASIC insist on the next business day period to reconcile, there will be a few negative effects:

- ASIC will not provide enough of an opportunity for Licensees to investigate and resolve any issues causing difficulties in the reconciliation which have arisen outside the control of the Licensee. This will mean that Licensees will have to report to ASIC, potentially rendering them liable to penalty under Draft Rule 3.1.1(b).
- Any reports given to ASIC under Draft Rule 3.1.1(b) will contain a large amount of reconciliation issues which have been caused by anomalies and factors beyond the control of the licensee. This will not only cause an unnecessary drain on ASIC's resources (which can be passed on to the licensees by affording them the opportunity to investigate and resolve these issues before they need to be reported), but will also make it difficult for ASIC to identify genuine issues where they exist.

In order to resolve these issues, IC Markets proposes that Draft Rule 2.2.1(3) be amended to read:

*The reconciliations required by this Rule must be completed by New York Time [defined in rules] on the third business day following the business day to which the reconciliation relates.*

Such a time frame would allow Licensees adequate time to remedy an anomalies arising from the circumstances described above.

New York Close

IC Markets notes that the choice of 7 PM AEST as the required time at which the reconciliation must be performed is peculiar and will be difficult and costly to implement. IC Markets suggest a time which coincides with the New York Close (5 pm New York Time) is a more appropriate alternative.

This time is the global standard time for international financial transactions, and as an international business, this is the time that IC Markets uses to define its trading day (as do most international trading companies).

Further, all international participants in the FX Market use this time as part of Continuous Linked Settlements. The importance of defining the end of the trading day at this time is that IC Markets undertakes a process similar to the reconciliation required under the proposed rules at New York Close. Compliance with the reconciliation requirement in the Draft Rules would be made significantly easier if both reconciliations could occur at the same time.

We also note that 7 PM AEST is a time of heavy activity for IC Markets as other international markets open or experience peaks in activity at this time. It is at this point in time that performing a reconciliation of client money will be particularly burdensome.

If ASIC does maintain the 7 PM AEST time requirement for performing the reconciliation, IC Markets will need to implement new systems in order to facilitate this. This will mean the incurrance of (in our view) unnecessary costs. However, setting the time to be as at New York Close will greatly lessen if not completely ameliorate these costs, and hence we strongly encourage ASIC to consider this alternative.

#### Penalties

We would like to raise a concern about the penalty levels that ASIC has chosen to set for breaches of these rules. At paragraph 13 of CP 291, ASIC states that "*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*".

IC Markets is of the view that this is not necessarily accurate. The *ASIC Market Integrity Rules* for the ASX 24 Market do indeed create a similar reporting and compliance framework to the rules currently proposed for Retail Client Money. But the penalties that ASIC has chosen for breaches of the Client Money Reporting rules are out of scale with the penalties for similar breaches of the *ASX 24 Market Integrity Rules*.

For example, both rules set out daily and monthly reconciliation requirements (Rule 2.3.2 and 2.3.3 in the *ASIC Market Integrity (ASX 24 Market) Rules 2010*, Rules 2.2.1 and 2.2.2 in the proposed *Client Money Reporting Rules*). Should we encounter issues in the reconciliation (which is not unlikely - see above), we must then report this to ASIC. Failure to do so carries a \$100,000 penalty under the ASX 24 Market Integrity Rules, and a \$1,000,000 penalty in the Client Money Reporting Rules. We do not see any justification for this discrepancy and would therefore suggest that ASIC revises the penalties which it proposes to implement under the proposed rules.

Finally, IC Markets wishes to note that, not only are the penalties inconsistent with other similar regimes, but also, some rules carry disproportionately high penalties in comparison to the rule itself. One such example is Rule 3.1.1 discussed above, which places an obligation to report any reconciliation issues to ASIC under threat of a \$1,000,000 penalty. Another example is Rule 2.1.2, which imposes a \$1,000,000 penalty for failure to comply with a written request for records by any person or by ASIC within two business days.

#### Purpose and Scope of Draft Rules

Despite the above, IC Markets would like to reiterate that given the impending changes in respect of Licensee's handling of client moneys, it is in general agreement with the proposed rules and the requirement to undertake record keeping and reconciliation. These will serve to:

1. Will improve the transparency of a Licensee's receipt and use of derivative retail client money; and
2. Provide adequate protection for retail clients.



Thank you for considering these submissions.

Yours Sincerely,

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Angus Walker  
Director  
International Capital Markets Pty Ltd