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## **Saxo Capital Markets (Australia) Pty Ltd - Submission on ASIC CP 291 ASIC Client Money Reporting Rules 2017**

### **Background**

Saxo Capital Markets (Australia) Pty Ltd (SCMA) is part of the Saxo group. Saxo is a leading trading, investment and technology company, supporting an international client base from our headquarters in Copenhagen and offices in financial centres around the world including London, Singapore, Paris, Zurich, Dubai, Sydney and Tokyo. Established in 1992, Saxo Bank was one of the first financial institutions to develop an online trading platform for the private investor.

Saxo Bank's vision has always been to democratise investment and trading and to facilitate multi-asset trading by providing access to global financial markets, cutting-edge technologies, and industry-leading expertise. We enable clients to trade FX, CFDs, ETFs, stocks, bonds, futures, options and other derivatives via SaxoTraderGO.

### **Response to specific questions**

#### **Scope of the client money reporting rules**

##### ASIC 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.

#### **Requested response**

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**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?

SCMA response

SCMA agree with this proposal, therefore make no further comments.

**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?

SCMA response

SCMA agrees with both (a) and (b), therefore make no further comments.

**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?

SCMA response

At this time SCMA has not given adequate consideration to these points and therefore will not make further comments at this time.

## **Record-keeping requirements**

### ASIC 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.

#### Requested response

**B2Q1** Do you consider these proposals will improve the transparency of an AFS licensee's receipt and use of derivative retail client money?

#### SCMA response

SCMA have no issue with the retaining of these records for 7 years and believe this is consistent with other current legislation we are required to comply with.

What SCMA does not understand is the expectation that following a request, that the information must be provided within 2 days. SCMA would ask that any such requests for client data should be consistent with the expectations under the Privacy Act, currently 30 days.

**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?

#### SCMA response

The retention of this data will have no material impact as SCMA already comply with this and other parts of the proposed new Client Money Rules.

It will not be possible to comply with a client request for information within 2 days as this information is reliant upon data held outside of Australia and possibly involving issues such as, different time zones and overseas public holidays.

**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?

#### SCMA response

SCMA does think this is too onerous as for the reasons stated above and would ask that a more reasonable time of 30 days be given to respond.

### **Reconciliation requirements**

#### ASIC 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.

#### Requested response

**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?

#### SCMA response

SCMA agree that a daily reconciliation of client funds against client records will assist in both enhancing ASIC's surveillance of the derivatives sector and identify discrepancies in an AFS licensee's client money account. Saxo Group already complete a client money reconciliation in compliance with ASIC's proposed criteria for SCMA. This is in compliance with legislation within other major jurisdictions which Saxo Capital Markets operate, such as the UK, Japan and Singapore.

**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?

#### SCMA response

If SCMA was to be allowed to continue to perform daily reconciliations in their current form then there would be no 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?

#### SCMA response

SCMA already complete a client money reconciliation, of the amount of reportable client money held in a client money account for each client against the corresponding amount in our records.



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

SCMA response

SCMA ask that ASIC take note that there are some significant operational issues that mean it would not be possible for SCMA or indeed any part of the Saxo Group, to comply within the timeframes within the Rules.

Within a Registered Market and the MIR requirements, the Market (for example ASX) closes at 4.00pm. ASX Clear then settle all trades for the day and the Market Participant settles the cash and any internal records. By 7.00pm that same day (with no ongoing trade activity between Market close and 7.00pm) all client Trust Account and Participant records can be reconciled. General practice is that the reconciliation is then performed the following morning. This approach is not possible for SCMA because at 7.00pm Sydney time New York Markets (which many derivative contracts will be based) is only just opening. Also other Markets throughout the world are still part way through their trading day.

By having a cut off time of 7.00pm, with no consideration of matching the 3 hours of settlement and movement of money and assets that ASX Market Participants are afforded, this is clearly not a similar end of day reconciliation as required by Market Participants under the ASIC MIR.

For the reasons stated above it will not be possible for SCMA to comply with the 7.00pm cut off point. SCMA ask that the current reconciliation process undertaken to comply with other international client money reconciliation rules, be allowed to continue. The current process undertaken by SCMA (by Saxo Group) allows for the minimum market open impact, across the globe. This process also allows for a period of ensuring all records at a given time are a true reflection of the actual and that all client account records have been updated from funds already in transit. This is consistent with the settlement period of 3 hours afforded ASX Market Participants.

Not only does a 7.00pm Sydney time not work in practise for a global business but as stated we ask that ASIC allow for a difference between a close and calculation points (as with the ASX Market close at 4.00pm and reconciliation calculation at 7.00pm). SCMA close time (known as the "cut off") is 5.00pm NYT, with a reasonable time to complete the reconciliations for each region and then consolidate at a global level.

If all other Regulators around the globe were to have taken the same proposed approach to completing the reconciliation based on a single local time, Saxo would have had to complete multiple client money reconciliations across regions to suit the different local regulators. As it is other regulators allow for the daily timing of this to be a commercial decision and not one forced upon the business to suit the local regulator.

For SCMA to comply with the times within the draft Rules would be highly inefficient and incur considerable additional costs. SCMA cannot emphasise enough how strongly we feel that this part of the Rules will need to change.



**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?

SCMA response

SCMA believe the frequency is perfectly suitable as it is consistent with our current process.

## Reporting requirements

### ASIC 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

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.

### Requested response

**B4Q1** Do you consider these proposals will be effective in ensuring that AFS licensees use reportable client money for permitted purposes only?

SCMA response

SCMA agree with ASIC's proposed approach and therefore have no comments to make.

**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?

SCMA response

As stated under Question B3 SCMA already comply with the reconciliation of client money Trust Accounts against internal records held, and therefore the requirement to perform the reconciliation is in line with SCMA current process. As stated however the timing and period from "cut off" to "reconciliation calculation point" for SCMA is different from what the Rules propose and SCMA cannot see how it is possible to provide reconciliation at the time proposed by ASIC.



**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?

SCMA response

SCMA have considered the requirement to have an auditor assess to the level of an "*opinion, the licensee has maintained suitably designed and effective internal controls and systems to comply with these Rules.*" This would add a considerable financial burden and business time. SCMA already have financial audits completed at an Australian, regional and global level.

**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?

SCMA response

As stated above the current audit requirements are sufficient, particularly given that for Saxo group, Saxo Capital Markets and SCMA already have considerable audit requirements.

**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?

SCMA response

If ASIC are insistent on introducing this requirements, the commencement date should not be the following July after these Rules commence, but 1 July 2019. This would give both the business and our auditor time to prepare.

## **Supervisory policies and procedures**

### ASIC 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.

### Requested response

**B5Q1** Do you consider this proposal will be effective in ensuring that AFS licensees comply with the proposed client money reporting rules?

SCMA response

As SCMA already have policies and procedures to cover the reconciliation process and ensure consistency in the execution, we agree with ASIC's approach and therefore make no further comment.





**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?

SCMA response

As SCMA already have policies and procedures to cover the reconciliation process and ensure consistency in the execution, we agree with ASIC's approach and therefore make no further comment.

**Conclusion:**

As an international company providing access to trade derivatives across the globe, the reconciliation of client money is currently undertaken on a daily basis. There is no reason why most of ASIC's draft Rules cannot be complied with; although the requirement to have a single cut off point of 7.00pm Sydney time would be at least impractical, if not impossible to comply with.

The current reconciliation process and times are as follows:

We segregate client funds based on the account balance in respective currencies from the EOD files we received, cut off at 17:00 New York time/ 21:00 GMT (Daylight saving). These balances are further adjusted by cash with future value dates, unrealised P/L, unallocated funds and negative equity. The aggregate of all client funds is then matched against the balance of the Bank Trust account.

Please let us know if you require any further information.

Yours faithfully,

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