



**ASIC**

Australian Securities & Investments Commission

## REGULATORY GUIDE 212

# Client money relating to dealing in OTC derivatives

April 2018

### **About this guide**

This is a guide for Australian financial services (AFS) licensees who are required to hold client money and for investors who pay money to an AFS licensee for the purpose of trading in derivatives in the over-the-counter (OTC) market.

This guide provides an overview of the client money provisions in Div 2 of Pt 7.8 of the *Corporations Act 2001* (the client money provisions) generally and, in particular, the specific provisions that relate to derivatives. It also seeks better disclosure in connection with client money.

### 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 version was issued in April 2018 and is based on legislation and regulations as at the date of issue.

Previous version:

- Superseded Regulatory Guide 212, issued on 12 July 2010

### Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

# Contents

<b>A</b>	<b>Overview</b> .....	<b>4</b>
	Purpose of the client money provisions .....	4
	What is client money? .....	5
	What is not client money? .....	5
	What is a client money account? .....	6
	Other issues .....	7
	ASIC's role .....	7
<b>B</b>	<b>Client money accounts</b> .....	<b>8</b>
	Nature of a client money account .....	8
	No security .....	9
	What money can be paid into a client money account? .....	9
	Mixed money .....	9
	Unidentified money .....	10
	Licensee's money in client money accounts .....	10
	Interest on a client money account .....	10
<b>C</b>	<b>Derivative retail client money requirements</b> .....	<b>11</b>
	What is derivative retail client money? .....	11
	Restrictions on the use of derivative retail client money .....	11
	Client money reporting rules .....	12
<b>D</b>	<b>Permitted uses of, and withdrawals from, client money accounts</b> .....	<b>13</b>
	Permitted investments using client money .....	13
	Permitted withdrawals from a client money account .....	14
	Permitted use of client money for derivatives .....	16
<b>E</b>	<b>ASIC Client Money Reporting Rules 2017</b> .....	<b>18</b>
	Background .....	18
	Reportable client money .....	18
	Record-keeping requirements .....	19
	Reconciliation requirements .....	19
	Reporting requirements .....	20
	Supervisory policies and procedures .....	21
	Exemption for licensees subject to the market integrity rules .....	21
<b>F</b>	<b>Other aspects of client money</b> .....	<b>23</b>
	Financial records and auditor's certification .....	23
	How client money is dealt with if a licensee ceases to be licensed .....	24
	Administrative action and enforcement .....	24
	<b>Key terms</b> .....	<b>26</b>
	<b>Related information</b> .....	<b>28</b>

## A Overview

### Key points

In complying with the client money provisions, an AFS licensee must:

- identify which money is client money (see RG 212.2–RG 212.3);
- ensure that client money, and no other money, is paid into a client money account (see RG 212.19–RG 212.20); and
- only use and withdraw client money as provided for in the client money provisions, and properly inform clients about the risks associated with that use (see RG 212.34–RG 212.52).

Clients are exposed to counterparty risks despite these protections, and an AFS licensee must provide clear disclosure to allow clients to evaluate these risks (see RG 212.53–RG 212.57).

In April 2018, the *Treasury Laws Amendment (2016 Measures No. 1) Act 2017* and the *Corporations Amendment (Client Money) Regulations 2017* commenced. As a result of these reforms, the circumstances in which an AFS licensee may use client money have been significantly restricted.

We may take action if we become aware that an AFS licensee has failed to comply with the client money provisions: see RG 212.14.

## Purpose of the client money provisions

- RG 212.1 The client money provisions protect the interests of clients of AFS licensees by:
- (a) separating client money from money belonging to licensees;
  - (b) generally requiring that licensees hold client money on trust;
  - (c) limiting the uses of client money;
  - (d) limiting the circumstances in which client money may be withdrawn from client money accounts;
  - (e) specifying how client money may be dealt with if a licensee ceases to be licensed or becomes insolvent;
  - (f) requiring auditors to verify licensees' compliance with the client money provisions; and
  - (g) imposing sanctions on licensees who fail to comply with the client money provisions.

## What is client money?

- RG 212.2 Client money is money paid to an AFS licensee:
- (a) in connection with either a financial service that has been provided (or that will or may be provided) to a client or a financial product held by a client; and
  - (b) either:
    - (i) by a client or a person acting on behalf of a client; or
    - (ii) to the licensee in the licensee's capacity as a person acting on behalf of the client.

- RG 212.3 Money is also client money if it is received by an AFS licensee and:
- (a) the licensee is an issuer or seller of financial products;
  - (b) the money is received for the issue or purchase of a financial product;
  - (c) the issue or purchase does not occur immediately after receiving the money; and
  - (d) the licensee deposits it into a client money account.

Note: See s1017E and 981B(1)(b)(iv) of the *Corporations Act 2001* (Corporations Act) and regs 7.8.01(6)–(7) of the Corporations Regulations 2001 (Corporations Regulations).

## What is not client money?

- RG 212.4 The client money provisions do not apply to:
- (a) money paid by way of remuneration payable to the licensee;
  - (b) money paid to reimburse (or discharge a liability incurred by) the AFS licensee for payment made to acquire a financial product (or to indemnify the licensee in respect of such a liability);
  - (c) money paid to acquire a financial product or an increased interest in a financial product from the licensee;
  - (d) loan money;

Note: Loan money is defined in s982A and the provisions relating to loan money are contained in Subdivision B of Div 2 of Pt 7.8.

- (e) money deposited to the credit of a deposit product with the licensee; or
- (f) property other than money (e.g. share certificates).

Note: Div 3 of Pt 7.8 deals with other property given to a licensee by clients in connection with a financial service or financial product.

## What is a client money account?

RG 212.5 A client money account is an account maintained by a licensee into which client money is paid. It may consist of a single account or two or more accounts: s981B(2).

RG 212.6 A client money account must be established as one of the following:

- (a) an account with an Australian authorised deposit-taking institution (ADI);
- (b) an account with an approved foreign bank;
- (c) a cash management trust; or
- (d) a cash common fund.

Note: See s981B, regs 7.8.01(2) and (5), and ASIC Corporations (Client money – Cash common funds) Instrument 2016/671.

RG 212.7 Client money belonging to a client is held on trust by the licensee for the benefit of that client. The trust continues even where the licensee ceases to be licensed or there has been a breach of a relevant financial services law: s981H; regs 7.8.01(5), 7.8.03(5) and 7.8.04.

Note: The exemption in Class Order [CO 03/1112] *Relief from obligation to hold client money on trust*, which continues to apply by force of the ASIC (Amendment, Repeal and Transitional) Instrument 17/0839, grants a licensee that is an Australian ADI relief from the obligation to hold a client's money on trust where the client is a wholesale client and the licensee and client agree in writing.

RG 212.8 A licensee is not permitted to rely on an entitlement or a written direction from clients to use derivative retail client money from a client money account:

- (a) as the licensee's capital, including working capital;
- (b) for the purpose of meeting obligations incurred by the licensee other than on behalf of the client; or
- (c) for the purpose of entering into, or meeting obligations under, transactions that the licensee enters into to hedge, counteract or offset the risk to the licensee associated with a transaction between the licensee and the client: reg 7.8.02A(1).

RG 212.9 A licensee is not permitted to withdraw derivative retail client money from a client money account for the purpose of meeting obligations incurred by the licensee in connection with margining, guaranteeing, securing, transferring, adjusting or settling dealings in a derivative by the licensee unless:

- (a) the entry into of the derivative was or will be cleared through an authorised clearing and settlement facility; and

- (b) the licensee incurred the obligation in connection with the derivative under the operating rules of the facility (i.e. the obligation is incurred by the licensee as a member of the facility).

## Other issues

- RG 212.10 A licensee must keep financial records in sufficient detail to explain all money received or paid by it in relation to the client money accounts it holds.
- RG 212.11 The auditor's report accompanying the licensee's financial statements must contain a statement of the auditor's opinion of the licensee's compliance with the client money provisions.
- RG 212.12 The Corporations Act provides for how client money is to be dealt with if a licensee ceases to be licensed or becomes insolvent.
- RG 212.13 Licensees which hold derivative retail client money are also required to comply with the record-keeping, reconciliation and reporting requirements set out in the ASIC Client Money Reporting Rules 2017.

Note: See Section E for further information.

## ASIC's role

- RG 212.14 If we become aware that a licensee has not complied with the client money provisions, we may take appropriate action by:
  - (a) requiring the licensee to take remedial action;
  - (b) taking civil or criminal action in the courts against the licensee; or
  - (c) taking administrative action against the licensee, such as imposing additional conditions on its AFS licence or revoking the licence.

Note: See Section E for further information.

## B Client money accounts

### Key points

Client money accounts are generally trust accounts but can be operated as a clients' segregated account in certain circumstances: see RG 212.15.

Client money accounts must be designated as such and only certain money may be paid into them: see RG 212.19.

Licensees are not permitted to deposit their own funds into a client money account: see RG 212.25.

Licensees are entitled to the interest on money in a client money account provided this is disclosed to the client: see RG 212.28–RG 212.29.

### Nature of a client money account

- RG 212.15 A client money account must be opened as a trust account except where a licensee is required to call margins from a client under the operating rules of a licensed market or a licensed clearing and settlement (CS) facility. In this case, the licensee may operate the account as a clients' segregated account and may pay all client money into that account (i.e. even if some of that client money is not for the purposes of margins collected under the operating rules of a licensed market or licensed CS facility): reg 7.8.01(9).
- RG 212.16 However, in each case:
- (a) client money is segregated from the licensee's own funds; and
  - (b) one client's client money is commingled with other client funds. This means that clients are exposed to the risk that they may not receive all the money owed to them if there is a deficiency in the client money account and the licensee becomes insolvent or is otherwise unable to pay the deficiency.
- RG 212.17 Client money is taken to be held in trust for the benefit of the client (see s981H). A licensee is not required to hold money paid into a client money account on trust for the benefit of the person who is entitled to the money if the money has been paid to the licensee under its obligation to call margins from clients under the market integrity rules or the operating rules of a licensed market or licensed CS facility: reg 7.8.01(5). However, a client money account is taken to be subject to a trust in favour of each person who is entitled to be paid money from that account: reg 7.8.03(4).



## No security

- RG 212.18 Client money (both in a client money account and before or after it is paid into a client money account) is not capable of being attached or otherwise taken in execution or being made subject to a set-off, security interest, or charging order, or to any process of a similar nature (except at the suit of a person who is otherwise entitled to the money or investment): s981E.

## What money can be paid into a client money account?

- RG 212.19 The only money that may be paid into a client money account is:
- (a) client money;
  - (b) interest on client money;
  - (c) interest or other similar payments on permitted investments using client money or the proceeds of the realisation of permitted investments;
  - (d) an amount equivalent to any losses made on permitted investments using client money (see RG 212.34–RG 212.35);
  - (e) money paid to a licensee from or on behalf of an insured person for an insurer, or vice versa, in connection with a contract of insurance;
  - (f) money paid by a licensee into a client money account due to the requirements of operating rules of a licensed market;
  - (g) money received under s1017E by an issuer or seller of financial products where the issue or transfer of the financial product does not occur immediately after receiving the money;
  - (h) mixed money (see RG 212.21–RG 212.22); and
  - (i) unidentified money (RG 212.23–RG 212.24).

Note: See s981B and regs 7.8.01(3), (4), (4A) and (6).

- RG 212.20 A licensee must pay client money into a client money account on the day the licensee receives it or on the next business day: s981B.

## Mixed money

- RG 212.21 Mixed money is money that is received by the licensee as a single payment and is not wholly client money but includes client money.
- RG 212.22 If mixed money is paid into a client money account, the licensee must remove the part of the mixed money that is not client money as soon as practicable, but within one month after the mixed money is paid into the client money account: regs 7.8.01(12) and (14).

## Unidentified money

- RG 212.23 Unidentified money is money that the licensee receives as a single payment where, at the time of receipt, the licensee is unable to identify whether the money is client money or mixed money that might include client money.
- RG 212.24 If unidentified money is paid into a client money account, the licensee must identify any part of the money that is not client money and remove it from the client money account as soon as practicable: regs 7.8.01(13) and (14).

## Licensee's money in client money accounts

- RG 212.25 The client money provisions do not permit a licensee to deposit funds belonging to it into client money accounts, by way of 'buffer' or otherwise.
- RG 212.26 Depositing funds as mentioned above differs from the practice of leaving money in a client money account that the licensee becomes entitled to by way of commission or other fees and charges. While the law does not require this money to be withdrawn within a specified period of time, we consider it best practice for a licensee to withdraw this money from the client money account as soon as practicable. We note that these amounts are *not* client money and if they do remain in a client money account they will not 'mask' a client money deficit in the licensee's client money account. Such a deficit must be reported to ASIC under the Client Money Reporting Rules 2017 (see RG 212.71–RG 212.73).
- RG 212.27 Consequently, we do not consider that such amounts would remove the need to report a deficit in the client money account which may arise but for these other amounts being in the account.

## Interest on a client money account

- RG 212.28 If a licensee discloses to the client that the licensee is keeping any interest earned on the account, the licensee is entitled to the interest: see reg 7.8.02(7).
- RG 212.29 We consider that to meet this disclosure requirement and retain the interest, a licensee must clearly and prominently disclose that it intends to retain interest and clearly disclose to retail clients that they will not earn interest on their money in a client money account. This should be done when other details of the client money arrangements are disclosed, for example in the Product Disclosure Statement (PDS) for the product for which client money is required to be paid to the licensee.

## C Derivative retail client money requirements

### Key points

The circumstances in which AFS licensees are permitted to withdraw derivative retail client money from a client money account have been significantly restricted.

These restrictions prevent licensees from using derivative retail client money for a wide range of purposes, including as their own working capital.

### What is derivative retail client money?

- RG 212.30 Derivative retail client money is client money which:
- (a) has been paid to the licensee in connection with dealing in a derivative or a financial service relating to a dealing in a derivative; and
  - (b) relates to a derivative or financial service provided to a person that:
    - (i) is a retail client; or
    - (ii) would be a retail client if the person were not a sophisticated investor.

### Restrictions on the use of derivative retail client money

- RG 212.31 A licensee is not permitted to withdraw derivative retail client money from a client money account to meet obligations incurred by it in connection with margining, guaranteeing, securing, transferring, adjusting or settling dealings in a derivative by the licensee unless:
- (a) the entry into of the derivative was or will be cleared through an authorised clearing and settlement facility; and
  - (b) the licensee incurred the obligation in connection with the derivative under the operating rules of the facility (i.e. the obligation is incurred by the licensee as a member of the facility).
- RG 212.32 In addition, a licensee is not permitted to rely on an entitlement or written direction from clients to use derivative retail client money from a client money account:
- (a) as the licensee's capital, including working capital; or
  - (b) for the purpose of meeting obligations incurred by the licensee other than on behalf of the client; or

- (c) for the purpose of entering into, or meeting obligations under, transactions that the licensee enters into to hedge, counteract or offset the risk to the licensee associated with a transaction between the licensee and the client: reg 7.8.02A(1).

## **Client money reporting rules**

RG 212.33 We have the power to make client money reporting rules imposing record-keeping, reconciliation and reporting requirements on licensees for the use of derivative retail client money: see Section E for further details.

## D Permitted uses of, and withdrawals from, client money accounts

### Key points

In certain circumstances, client money may be invested in permitted investments, provided the licensee has obtained the client's written agreement to the terms of the investment: see RG 212.34–RG 212.38.

Subject to the restrictions on the use of derivative retail client money (RG 212.39–RG 212.52), a licensee may make certain withdrawals from a client money account, including:

- paying the licensee money to which it is entitled;
- making a payment according to the written direction of a person entitled to the money; and
- using certain client money relating to a derivative to meet obligations incurred by the licensee in connection with margining or for related purposes (see RG 212.47–RG 212.52).

### Permitted investments using client money

- RG 212.34 Client money may be invested in the following kinds of investments:
- (a) investment in any manner in which trustees are for the time being authorised by law to invest trust funds;
  - (b) investment on deposit with an eligible money market dealer;
  - (c) investment on deposit at interest with an Australian ADI;
  - (d) the acquisition of cash management trust interests;
  - (e) investment in a security issued or guaranteed by the Commonwealth or a state or territory; and
  - (f) investment on deposit with a licensed CS facility.

Note: See reg 7.8.02.

- RG 212.35 A licensee must not invest client money in any of the above ways unless the money is money to which the client is entitled and the licensee has obtained the client's written agreement to the following matters:
- (a) making the investment;
  - (b) how earnings on the investment are to be dealt with (including whether or not the earnings are to be shared, and whether or not the earnings are to be paid into the account);

- (c) how the realisation of the investment is to be dealt with (including whether or not the capital invested, and the proceeds of the investment, are to be deposited into the account);
- (d) how any losses made on the investment are to be dealt with (including the circumstances in which the licensee is required to pay an amount equal to the difference between the amount invested and the amount received, into the account or otherwise); and
- (e) the fee (if any) that the licensee proposes to charge for the investment.

Note: Client money that relates to money paid by an insured person for an insurer (or vice versa) in relation to a contract of insurance is not subject to the above requirements provided that the balance of the client money account and the amount invested is at least the sum of any amounts that the insurer and the insured are entitled to receive from the client money account. For further information, see reg 7.8.02.

RG 212.36 Interest or other earnings on permitted investments of client money or the proceeds of the realisation of such an investment must be dealt with according to the written agreement between the licensee and the client: reg 7.8.02(8).

RG 212.37 Making an investment according to the specific direction of a client is not considered a permitted investment. Rather this would be considered a withdrawal from the client money account under the written direction of a person entitled to the money: see RG 212.39.

RG 212.38 If money in a client money account has been invested, the investment is taken to be subject to a trust in favour of each person who is entitled to be paid money from the client money account to the extent that the person is entitled to the money: regs 7.8.03(5) and 7.8.04.

## Permitted withdrawals from a client money account

- RG 212.39 Payments may be made out of a client money account in any of the following circumstances:
- (a) making a payment to, or according to the written direction of, a person entitled to the money, unless the restrictions on the use of derivative retail client money apply (see RG 212.41–RG 212.46);
  - (b) defraying brokerage and other proper charges;
  - (c) paying to the licensee money to which it is entitled, unless the restrictions on the use of derivative retail client money apply (see RG 212.41–RG 212.46);
  - (d) paying money due to an insurer in connection with a contract of insurance;
  - (e) making a payment that is otherwise authorised by law; or

- (f) paying the licensee money to which it is entitled under the operating rules of a licensed market.

Note: See reg 7.8.02(1).

- RG 212.40 If a licensee makes a payment to another licensee from its client money account under a written direction, it must notify the receiving licensee that it has withdrawn the money from its client money account and the money should be paid into the receiving licensee's client money account: see reg 7.8.02(1A). The receiving licensee must pay the money into its client money account not later than the day after receipt.

### **Written direction of the client**

- RG 212.41 Subject to the legislative amendments referred to in RG 212.30, a licensee can withdraw money from a client money account to make a payment according to the written direction of a person entitled to the money: see reg 7.8.02(1)(a).
- RG 212.42 The circumstances in which a licensee is permitted to rely on such written directions to withdraw derivative retail client money from a client money account have been significantly restricted: see RG 212.32.
- RG 212.43 A licensee seeking to rely on reg 7.8.02(1)(a) should carefully consider its other obligations to its clients. These would include the general licensing obligations under the Corporations Act, such as the requirement to have adequate arrangements to manage conflicts of interest and to act efficiently, honestly and fairly.
- RG 212.44 The regulation requires that the direction obtained from the person entitled to the money must be in writing. We consider that best practice is for a licensee to ensure that the direction is given in circumstances where the client is fully informed about the nature and consequences of the direction.

### **Client money to which the licensee is entitled**

- RG 212.45 Subject to the legislative amendments referred to in RG 212.30, a licensee may also withdraw from the client money account funds to which it is entitled: reg 7.8.02(1)(c).
- RG 212.46 A licensee seeking to rely on this regulation should carefully consider its other obligations to clients. These would include the general licensing obligations under the Corporations Act, such as the requirement to have adequate arrangements to manage conflicts of interest and to act efficiently, honestly and fairly.

## Permitted use of client money for derivatives

- RG 212.47 Certain money which is required to be placed in a client money account and which relates to a derivative or a dealing in a derivative may be used by the licensee to meet its obligations incurred in connection with margining, guaranteeing, securing, transferring, adjusting or settling dealings in derivatives, including dealings on behalf of people other than the client: s981D.
- RG 212.48 This is only permitted where:
- (a) the money was paid to the licensee in connection with a derivative, or a financial service relating to a derivative, which was provided to a wholesale client (but not a client that would be a retail client if it were not a sophisticated investor under s761GA); or
  - (b) the entry into of the derivative was or will be cleared through an authorised clearing and settlement facility and the licensee incurred the obligation, in connection with the derivative, under the operating rules of the facility (i.e. the obligation is incurred by the licensee as a member of the facility): s981D.
- RG 212.49 This means the permitted uses in s981D do not extend to retail client money held in relation to derivatives which are not centrally cleared. A licensee is also unable to rely on s981D in relation to centrally cleared derivatives if it is not a member of an authorised clearing and settlement facility—as the licensee does not itself incur obligations under the operating rules of that facility.
- RG 212.50 We do not consider that the provision permits the use or withdrawal of client money from the client money account in anticipation of an obligation arising under the operating rules of the facility.
- RG 212.51 We also consider that the amount of client money that may be withdrawn under this provision is limited to the amount necessary to meet the licensee's obligations incurred in connection with margining, guaranteeing, securing, transferring, adjusting or settling dealings in derivatives.
- RG 212.52 AFS licensees seeking to rely on this provision should carefully consider their other obligations to clients. These would include general AFS licence obligations under the Corporations Act, such as the requirement to have adequate arrangements to manage conflicts of interest and to act efficiently, honestly and fairly.

### Nature of client money protections

- RG 212.53 The Corporations Act does not require an AFS licensee to maintain a separate client money account for each client. In practice, client money held for multiple clients is centrally pooled into one or more accounts.



- RG 212.54 Furthermore, as discussed in RG 212.51, in certain circumstances, s981D permits an AFS licensee to use money in a client money account to meet obligations incurred by it in connection with margining, guaranteeing, securing, transferring, adjusting or settling dealings in derivatives by the licensee. These include dealings on behalf of people other than the client.
- RG 212.55 In those circumstances where s981D continues to operate, a client may be subject to a risk that their money is withdrawn to meet obligations incurred by the licensee in connection with margining, guaranteeing, securing, transferring, adjusting or settling dealings in derivatives by the licensee which are not on behalf of that client. We note, however, that the circumstances in which licensees may use a client's money on behalf of a person other than the client have been significantly restricted: see RG 212.31–RG 212.32.
- RG 212.56 In circumstances where s981D continues to have application, licensees are strongly encouraged to clearly and prominently disclose in their PDS:
- (a) details of how the AFS licensee proposes to deal with client money and when, and on what basis, it makes withdrawals of client money (e.g. when does the licensee claim an entitlement to margin deposits and when will one client's client money be used to meet the obligations arising from trading of another client?);
  - (b) the extent of the statutory protections which apply to client money used for derivatives, including any relevant limitation on those protections; and
  - (c) that clients may reduce these risks by minimising the amount of money that is kept in the client money account.
- RG 212.57 This disclosure should be meaningful in the context of the particular derivative contract being offered. This could mean that a licensee needs to set out the mechanics of the customer contract and the timing of cash flows of a typical transaction entered into under the client agreement.

## E ASIC Client Money Reporting Rules 2017

### Key points

The ASIC Client Money Reporting Rules 2017 (client money reporting rules) require a 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 an aggregate basis;
- perform daily and monthly reconciliations of the amount of reportable client money it is holding in its client money accounts;
- notify ASIC if it fails to perform a reconciliation under the client money reporting rules or identifies a discrepancy between the amount of reportable client money it is holding and the amount of reportable client money it is required to hold;
- prepare and give to ASIC an annual directors' declaration and an external auditor's report in relation to 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.

Further guidance on complying with these requirements is available in [Information Sheet 226](#) *Complying with the ASIC Client Money Reporting Rules 2017* (INFO 226).

### Background

RG 212.58 The client money reporting rules impose record-keeping, reconciliation and reporting requirements on all AFS licensees that hold 'reportable client money'.

RG 212.59 The purpose of the client money reporting rules is to apply more formal and consistent standards across the derivatives sector and ensure greater transparency in relation to a licensee's receipt and use of derivative retail client money. The client money reporting rules enhance ASIC's surveillance of the retail derivatives sector by requiring licensees to report discrepancies in client money balances to ASIC in a timely manner. This can ultimately help reduce the risk of losses associated with non-permitted withdrawals, fraud and other operational breaches by the licensee.

### Reportable client money

RG 212.60 For the purposes of the client money reporting rules, 'reportable client money' is derivative retail client money that relates to derivatives which are not traded on a licensed domestic exchange (i.e. derivative retail client money that relates to overseas exchange-traded derivatives and OTC derivatives).

- RG 212.61 An exemption is provided in relation to client money held for derivatives traded on licensed domestic exchanges, as the participants of those exchanges are already subject to stringent reporting and reconciliation requirements under the ASIC market integrity rules. We are responsible for supervising compliance with the market integrity rules and therefore there is already greater regulatory transparency in relation to that client money.

## Record-keeping requirements

- RG 212.62 Under the client money reporting rules, a licensee is required to keep accurate records of the amount of reportable client money it is required to hold in a client money account for each client and on an aggregate basis.
- RG 212.63 To satisfy this requirement, a licensee's records should set out:
- (a) the balance of reportable client money owed to each of the licensee's clients; and
  - (b) records of transactions that affect the balance of reportable client money held by the licensee, including:
    - (i) withdrawals and deposits relating to the acquisition and disposal of derivatives for, on behalf of, or for the benefit of the client;
    - (ii) withdrawals of client funds under s981D of the Corporations Act; and
    - (iii) investment of client funds under s981C(a) of the Corporations Act.
- RG 212.64 A licensee must also comply, within five business days, with:
- (a) a written request from a client for records the licensee is required to keep under the client money reporting rules in relation to that client; and
  - (b) a written request from ASIC for any record the licensee is required to keep under the client money reporting rules.

## Reconciliation requirements

- RG 212.65 A licensee is also required under the client money reporting rules to perform daily and monthly reconciliations of the amount of reportable client money that, according to its records, it is required to hold in a client money account *against* the amount of reportable client money it is actually holding in that account. A licensee must also submit written records of its monthly reconciliations to ASIC.

Note: The monthly reconciliation records may be sent by email to [client.money.reporting@asic.gov.au](mailto:client.money.reporting@asic.gov.au).

- RG 212.66 Licensees are required to perform reconciliations on an aggregate basis and on an individual client basis. However, a licensee may satisfy these requirements by performing an aggregate reconciliation which is supported by individual client balances.
- RG 212.67 Amounts of money to which a licensee is solely entitled are *not* reportable client money. Any ‘buffer’ amounts or other amounts to which only the licensee is entitled that are in the account should not be included as part of the reportable client money the licensee is holding in that account for the purposes of the reconciliation. We expect that a licensee will perform reconciliations of the amount of reportable client money that, according to its records, it is required to hold in a client money account against the amount of reportable client money it is actually holding in that account.
- RG 212.68 As such, to comply with its reconciliation obligations under the client money reporting rules a licensee will be required to clearly identify in its reconciliation the amount of the total balance of its client money account which is reportable client money and any amount which is not reportable client money.
- RG 212.69 In particular, any money to which a licensee is solely entitled should have no effect on the requirement of the AFS licensee to report deficits in *reportable client money* to ASIC in compliance with its reporting requirements: see RG 212.71–RG 212.73. Further, money to which the licensee is solely entitled must not be otherwise used to ‘mask’ deficits in reportable client money.
- RG 212.70 Further guidance and templates setting out the information which a licensee should include in the records of reconciliations it submits to ASIC are available in [INFO 226](#).

## Reporting requirements

- RG 212.71 Under the client money reporting rules, a licensee is required to give ASIC a written report if:
- (a) the licensee fails to perform a reconciliation as required by the client money reporting rules; or
  - (b) a daily reconciliation performed under the client money reporting rules identifies a difference (regardless of its significance) between the amount of reportable client money held in the client money account and the amount of reportable client money the licensee is required, under the Corporations Act, to hold in that client money account.

- RG 212.72 The report given to ASIC must include:
- (a) the paragraph of subrule 3.1.1(1) of the client money reporting rules to which the report relates;
  - (b) if applicable, the record of the reconciliation in which a difference was identified;
  - (c) the details of the failure to perform a reconciliation or the difference identified by the reconciliation, including the cause of the failure or difference; and
  - (d) details of any remedial action taken or proposed to be taken by the licensee, including how the licensee has addressed or is planning to address:
    - (i) the problem which led to the difference or failure; and
    - (ii) any deficiency or surplus in client funds.

Note: The written reports may be sent by email to [client.money.reporting@asic.gov.au](mailto:client.money.reporting@asic.gov.au).

- RG 212.73 A licensee must also prepare and give to ASIC within four calendar months of the end of each financial year:
- (a) a directors' declaration that states whether, in the directors' opinion, the licensee has complied with the client money reporting rules; and
  - (b) an external auditor's report in the form specified in the Schedule to the client money reporting rules that states whether, in the auditor's opinion, the licensee has systems that have enabled it to comply with the client money reporting rules.

## Supervisory policies and procedures

- RG 212.74 The client money reporting rules require a licensee to:
- (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.

## Exemption for licensees subject to the market integrity rules

- RG 212.75 Market participants of the ASX 24 and FEX markets are eligible for an exemption from the reconciliation requirements under the client money reporting rules to the extent they are required to comply, and actually comply, with Part 2.3 of the ASIC Market Integrity Rules (ASX 24 Market) 2010, the ASIC Market Integrity Rules (FEX Market) 2013 or the ASIC Market Integrity Rules (Futures Markets) 2017.

RG 212.76 Specifically, reconciliations performed by these market participants under the client money reporting rules need not include amounts of reportable client money already covered by reconciliations that market participants are required to perform under the market integrity rules. For example, where an ASX 24 market participant includes client money it receives for trading in overseas futures in the reconciliations it performs under the ASIC Market Integrity Rules (ASX 24), it will not be required to include this overseas futures money in any reconciliations it performs under the client money reporting rules.

RG 212.77 In addition, and for the avoidance of doubt, if the participant's *total* balance of reportable client money is required to be included in reconciliations it performs under these market integrity rules, then it is not required to comply with the client money reporting rules.

## F Other aspects of client money

### Key points

A licensee must keep financial records in sufficient detail to explain all money received or paid by it in relation to client money accounts: see RG 212.78.

The auditor's report accompanying the licensee's financial statements must contain a statement of the auditor's opinion of the licensee's compliance with the client money provisions: see RG 212.79.

The Corporations Act provides for how client money is to be dealt with if a licensee ceases to be licensed or becomes insolvent: see RG 212.80–RG 212.82.

We may take administrative, civil or criminal action if the client money provisions have not been complied with: see RG 212.83–RG 212.89.

### Financial records and auditor's certification

RG 212.78 A licensee must keep financial records that correctly record and explain all money received or paid by the licensee in relation to a client money account: s988A and 988E; reg 7.8.11. We would expect this record-keeping to include prudent reconciliation processes to ensure the accuracy of the financial records.

RG 212.79 An auditor's report lodged with a licensee's financial statements under s989B(3) must contain a statement of the auditor's opinion of:

- (a) the effectiveness of internal controls used by the licensee to comply with the client money provisions;
- (b) whether each client money account required to be maintained by the licensee has been operated and controlled in accordance with the client money provisions; and
- (c) whether all necessary records, information and explanations were received from the licensee.

Note: See reg 7.8.13.

## How client money is dealt with if a licensee ceases to be licensed

RG 212.80 The Corporations Act provides for how client money is to be dealt with if a licensee:

- (a) ceases to be licensed (including a cessation because the licensee's AFS licence has been suspended or cancelled);
- (b) becomes insolvent under an administration, has an administrator or receiver appointed, or is subject to similar proceedings; or
- (c) ceases to carry on an activity authorised by the AFS licence and is paid money for that activity.

Note: See s981F and reg 7.8.03.

RG 212.81 If any of the above events occurs, client money is to be paid as follows:

- (a) the first payment is of money that has been paid into the account in error;
- (b) if money has been received on behalf of insured persons under a contract of insurance, the second payment is payment to each insured person entitled to receive money from the client money account for claims that have been made and then for other matters;
- (c) the next payment is payment to each person who is entitled to be paid money from the client money account;
- (d) if the money in the client money account is not sufficient to be paid in accordance with paragraph (a), (b) or (c), the money must be paid in proportion to the amount of each person's entitlement; and
- (e) if there is money remaining in the account after payments made in accordance with the above, the remaining money is taken to be money payable to the licensee.

Note: See reg 7.8.03(6).

RG 212.82 For each person who is entitled to be paid money from a client money account, the account is taken to be subject to a trust in favour of the person: reg 7.8.03(4). Similarly, if money in a client money account has been invested the investment is taken to be subject to a trust in favour of each person who is entitled to be paid money from the account: reg 7.8.03(5). These arrangements override anything to the contrary in the *Bankruptcy Act 1966* or a law relating to companies: reg 7.8.03(7).

## Administrative action and enforcement

RG 212.83 We take matters concerning the protection of client money particularly seriously. This is a reflection of the trust that investors place in a licensee when the AFS licensee holds money on behalf of its clients.



- RG 212.84 We may take administrative action to vary, suspend or cancel an AFS licence where breaches of the client money provisions have occurred: Subdiv C of Div 4 of Pt 7.6.
- RG 212.85 We may also take administrative action to ban or disqualify a person who has not complied with the client money provisions: Div 8 of Pt 7.6.
- RG 212.86 We may also seek to enforce breaches of the client money reporting rules through alternatives to civil proceedings such as infringement notices and enforceable undertakings.
- RG 212.87 We may apply to the court for an order to restrain dealings in respect of client money accounts and to make orders to pay or freeze money: s983A–983E.
- RG 212.88 A licensee commits an offence if it is required to pay client money into a client money account and does not do so or if the licensee fails to comply with the client money provisions: s993B and 993C.
- RG 212.89 A licensee may also be liable for a civil penalty for failing to comply with the client money reporting rules: s981M.

## 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 out a financial services business to provide financial services  Note: This is a definition contained in s761A.
AFS licensee	A person who holds an Australian financial services licence under s913B of the Corporations Act  Note: This is a definition contained in s761A.
ASIC	Australian Securities and Investments Commission
Australian ADI	An authorised deposit-taking institution within the meaning of the <i>Banking Act 1959</i> or a person who carries on state banking within the meaning of paragraph 51(xiii) of the Constitution  Note: This is a definition contained in s9.
authorised clearing and settlement facility	Has the meaning given in s761A
centrally cleared derivative	A derivative the entry into of which was or will be cleared through an authorised clearing and settlement facility
client money	Money that is paid to an AFS licensee under s981A
client money account	An account that is maintained for s981B, whether maintained as a trust account or a clients' segregated account
client money provisions	Div 2 of Pt 7.8 of the Corporations Act
client money reporting rules	ASIC Client Money Reporting Rules 2017
[CO 03/1112] (for example)	An ASIC class order (in this example numbered 03/1112)
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
derivative	Has the meaning given in s761D
derivative retail client money	Has the meaning given in s761A

Term	Meaning in this document
financial product	<p>Generally a facility through which, or through the acquisition of which, a person does one or more of the following:</p> <ul style="list-style-type: none"> <li>• makes a financial investment (see s763B);</li> <li>• manages financial risk (see s763C);</li> <li>• makes non-cash payments (see s763D)</li> </ul> <p>Note: See Div 3 of Pt 7.1 for the exact definition.</p>
financial service	Has the meaning given in Div 4 of Pt 7.1
licensed CS facility	A licensed clearing and settlement facility as defined in s761A
licensed market	Has the meaning given in s761A
licensee	An AFS licensee
OTC derivative	A derivative that is entered into over the counter and not through a licensed market
PDS	Product Disclosure Statement
Pt 7.8 (for example)	A part of the Corporations Act (in this example numbered 7.8)
reg 7.8.01 (for example)	A regulation in the Corporations Regulations (in this example numbered 7.8.01)
reportable client money	Has the meaning given in rule 1.3.2 of the client money reporting rules
s981D (for example)	A section of the Corporations Act (in this example numbered 981D)

## Related information

### Headnotes

buffers, client money, client money account, clients' segregated account, derivatives, mixed money, OTC derivatives, reportable client money, reporting and reconciliation requirements, trust account, unidentified money.

### Legislative instruments

ASIC (Amendment, Repeal and Transitional) Instrument 17/0839

ASIC Client Money Reporting Rules 2017

ASIC Corporations (Client money – Cash common funds) Instrument 2016/671

[CO 03/1112] *Relief from obligation to hold client money on trust*

### Legislation

*Bankruptcy Act 1966*

Corporations Act, Divs 4 and 8 of Pt 7.6, Div 2 of Pt 7.8; s981A–F, 981H, 981J, 981K, 981L, 981M, 981N, 981P, 982A, 983A–E, 988A, 988E, 989B, 993B–C, 1017E

*Corporations Amendment (Client Money) Regulations 2017*

Corporations Regulations, regs 7.8.01, 7.8.02, 7.8.02A, 7.8.03, 7.8.04, 7.8.11, 7.8.13, 10.26.01

*Treasury Laws Amendment (2016 Measures No. 1) Act 2017*

### Consultation papers, information sheets and reports

[CP 114](#) *Client money relating to dealing in OTC derivatives*

[CP 291](#) *Reporting rules: Derivative retail client money*

[INFO 226](#) *Complying with the ASIC Client Money Reporting Rules 2017*

[REP 202](#) *Response to submissions on CP 114 Client money relating to dealing in OTC derivatives*

[REP 546](#) *Response to submissions on CP 291 Reporting rules: Derivative retail client money*