



ASIC

Australian Securities & Investments Commission

10 April 2019

IG Markets Limited
Kylie Paton
Level 15, 55 Collins Street
Melbourne VIC 3000

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Melbourne VIC 3000
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By email: kylie.paton@ig.com

Dear Ms Paton,

Notice of Direction under s912C(1) of the *Corporations Act 2001*

I enclose a Notice of Direction (**Direction**) under s912C(1) of the *Corporations Act 2001* (Act).

You should read the Direction carefully. You will see that it requires IG Markets Limited (**Licensee**), Australian Financial Services Licence (**AFS Licence**) 220440 to give to the Australian Securities & Investments Commission (**ASIC**) a written statement containing certain information by 5pm on **15 May 2019**. Details are set out in the Direction.

The Licensee may comply with the Direction by **emailing** the written statement to **market.supervision.OTC@asic.gov.au**.

The Licensee is entitled to consult with its legal adviser in relation to its obligations under the Direction.

I draw your attention to the note enclosed with the Direction which contains information relevant to the Direction, including some definitions of expressions which may be used and some of the offence and penalty provisions relating to non-compliance with the Direction. It also deals with the application of legal professional privilege to the Direction.

The Direction should not be construed as an indication by ASIC that a contravention of the law has occurred, nor should it be considered a reflection upon any person or entity.

If you have any questions about the Direction, please contact either Elisabeth Saunders (03 9280 3453) or Steven Bebic (03 9280 4666).

Privacy

The books/information required to be produced may include personal information. Please refer to our Privacy policy (www.asic.gov.au/privacy) for information about how we handle your personal information, your rights to seek access to and correct personal information, and how to complain about breaches of your privacy.

Yours sincerely

A handwritten signature in black ink, appearing to be 'GK' or 'G Knight', written in a cursive style.

Gavin Knight

Analyst, OTC Intermediary Compliance



M01518643

ASIC

Australian Securities & Investments Commission

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
SUBSECTION 912C(1) OF THE *CORPORATIONS ACT 2001***

NOTICE OF DIRECTION TO GIVE A WRITTEN STATEMENT

To: IG Markets Limited (ABN 84 099 019 851)
Kylie Paton
Level 15, 55 Collins Street
Melbourne VIC 3000

Australian financial services licence number: **220440**

You are notified under s912C(1) of the *Corporations Act 2001* (Act) that you are directed to give:

to: Gavin Knight
Analyst
OTC Intermediary Compliance
Australian Securities & Investments Commission
at: Emailing it to **market.supervision.OTC@asic.gov.au**.
by: 5pm
on: 15 May 2019

a written statement in accordance with s912C(1A)(e), in the form of completion of the attached excel spreadsheet containing the information about the financial services business carried on by you or your representatives specified in the Schedule to this Direction.

Date: 10 April 2019

Signed:

Gavin Knight

a delegate of the Australian Securities & Investments Commission.

SCHEDULE

Definitions

For the purposes of this Schedule:

"Act" means the *Corporations Act 2001* (Cth)

"AFS Licence" means an Australian financial services licence granted under s913B of the Act.

"Change in Control" has the meaning given in sub-subregulation 7.6.04 (2)(a) of the Regulations.

"Client" means a person that has:

- (a) an agreement with the Licensee to be provided a financial service(s) that is covered under the Licensee's AFS Licence; and
- (b) placed a trade with the Licensee at least once in the 12 months prior to the date of this Direction.

"Client Money" means money that is paid to the Licensee under s981A of the Act.

"Compensation Arrangements" as required under s912B of the Act.

"Corporate Authorised Representative" means a body corporate authorised by the Licensee as per s916A of the Act.

"Derivative" has the meaning given by s761D of the Act.

"Hedging Counterparty" means the entity the Licensee uses to hedge its risk from client positions.

"Licensee" means IG Markets Limited the holder of AFS Licence no. 220440.

"Liquidity Provider" means the entity that provides liquidity to the Licensee by quoting prices and ensuring a reasonable size of trading can be done at those quotes.

"Marketing" means any advertising or disclosure material promoting the Licensee's business to a Client or a potential Client through any form of communication.

"OTC" means over-the-counter.

"Promotion Package" means any offer of incentives (e.g. bonuses) to a potential Client to open a client trading account.

"Referring Party" means any introducing broker, third party sales company, or any other person or entity who refers financial service clients to the Licensee, including other AFS licence holders.

"Regulations" means the *Corporations Regulations 2001*

"Related Body Corporate" has the same meaning as that given under s50 of the Act.

“Responsible Manager” means as listed on the AFS licence.

“Representative” means an, employee, director, officer, or contractor of the Licensee.

“Retail Client” means a client as defined in s761G of the Act.

“Turnover” means the total size of Client trades that have been processed through the Licensee’s business (i.e. margin + leverage amount).

Note: This is to be calculated on a trade by trade basis. For example, if a Client posted a margin of \$10 and a product has a leverage amount of \$190, the Turnover from that trade would be \$200 even if that particular trade remained open for 3 (three) consecutive days during the period requested.

“User” means the entity that the Licensee provides a source of liquidity for in relation to OTC derivative financial services.

“White Label” means the financial services provided by one entity and then rebranded by another entity to make it appear their own.

“Wholesale Client” means a client as defined under s761G of the Act.

Required Information

1. The number of Clients the Licensee has as at the following dates:

- a. 31 December 2017;
- b. 31 December 2018; and
- c. 31 March 2019.

Please include a breakdown of those Clients including the following:

- i. the number of Retail Clients;
- ii. the number of Wholesale Clients;
- iii. the jurisdiction in which these Clients are located in; and
- iv. the total Client Money held for each jurisdiction.

2. To the extent that this information is currently held by the Licensee, please provide the following breakdown in relation to the Licensee's Retail Clients as at 31 March 2019:

a. The number of Retail Clients that fall within the following age brackets:

- i. 18-21;
- ii. 22-30;
- iii. 31-50;
- iv. 51-64; and
- v. 65+

b. The number of Retail Clients that fall within the following income brackets (AUD):

- i. \$0-\$18,200;
- ii. \$18,201-\$37,000;
- iii. \$37,001-\$80,000;
- iv. \$80,001 - \$180,000; and
- v. \$180,001+

c. The total value (in AUD) of account balances as at the date of this Direction (inclusive of open positions) for each age bracket identified in 2 (a).

- d. For the period 1 January 2018 to 31 March 2019 provide the figure of the total number of transactions completed by Retail Clients in each age bracket identified in 2 (a).
3. The number of Clients that have been reclassified as Wholesale Clients from Retail Clients in the period 1 January 2018 to 31 March 2019 and the jurisdiction of these Clients.
4. The number of Clients (including their jurisdiction) that have opened a trading account with the Licensee from 1 January 2018 to 31 March 2019.
5. The number of Clients that have been transferred from a related entity (including a related entity based overseas) to the Licensee from 1 January 2018 to 31 March 2019.
6. The total annual Turnover of the Licensee for the following periods:
 - a. 1 January 2017 to 31 December 2017; and
 - b. 1 January 2018 to 31 December 2018.
7. The Licensee's number of Representatives as at 31 December 2017 and as at 31 March 2019.
8. Specify the name, role and address of each Representative as at 31 March 2019.
9. Specify whether any of the Representatives referred to in your response to question 8 received any performance benefits or remuneration based on a Clients:
 - a. Deposits;
 - b. Profit and Loss;
 - c. Transaction volume; and/or
 - d. Other.

Please provide detail as to how each of the above performance benefits or remuneration is calculated.

10. Provide for each Responsible Manager for the Licensee;
 - a. An estimate of the total number of hours spent providing financial services on behalf of the Licensee per week;
 - b. An estimate of the number of hours spent on the Licensee's premises each week, including the physical location (address) referred to;
 - c. Name(s) of other AFS Licensee's where they also hold the position as a Responsible Manager; and
 - d. Details of the arrangements in place for the assignment of the responsibilities managed by the Responsible Manager when he/she is not available.

11. Provide the following details in relation to retail OTC products offered by the Licensee under its AFS Licence to Retail Clients:

- a. The category of product (for example, including but not limited to, margin FX, CFDs, binary options), the underlying reference asset class (for example, currency pairs, commodities, cryptocurrencies, equity indices, individual equities, futures), and the underlying reference asset (for example, AUD/USD, Telstra shares, ASX200 index) offered during the period 1 January 2018 to 31 March 2019.
- b. A list and a product description of each type of binary option offered during the period 1 January 2018 to 31 March 2019.
- c. The net trading revenue of the Licensee in each category of product split by the underlying reference asset (as referred to in 11 (a) for the period 1 January 2018 to 31 December 2018).

Note: Net trading revenue is calculated as trading revenue after deducting payments to referring parties, where referring parties are defined as any introducing broker, third party sales company, or any other person or entity who refers financial service clients to the Licensee.

- d. Please advise if Clients are charged an overnight funding cost.
- e. Please advise how the cost of overnight funding is calculated, including but not limited to the Client's total leveraged exposure, the margin amount and product category.
- f. For each category of product, split by the underlying reference asset, offered during the period from period 1 January 2018 to 31 December 2018 provide the following:
 - i. Average opening position size;
 - ii. Average holding period;
 - iii. Average cost of overnight funding as an annualized rate of interest;
 - iv. Leverage cap range;
 - v. Number of mandatory close-outs; and
 - vi. Number of transactions.
- g. For binary option products, provide the payout levels for each product offered split by the term-to-maturity period covering the period 1 January 2018 to 31 December 2018.
- h. Provide a description of the methodologies used to determine payout levels for binary options.
- i. Provide a description of the pricing methodologies used for CFDs by the underlying reference asset.

- j. Please confirm the average trade execution response time for each underlying reference asset identified in 11 (a);
- k. Please confirm the number and percentage of trades which were rejected for each underlying reference asset identified in 11 (a) for the period 1 January 2018 to 31 December 2018;
- l. Please confirm the total number and proportion (calculated as a percentage of all Clients that traded the product) of Clients that were profitable and that were not profitable for each category of product split by underlying reference asset as referred to in 11(a) for the period from;
 - i. 1 January 2014 to 31 December 2014;
 - ii. 1 January 2015 to 31 December 2015;
 - iii. 1 January 2016 to 31 December 2016;
 - iv. 1 January 2017 to 31 December 2017; and
 - v. 1 January 2018 to 31 December 2018.

Note: In calculating whether a retail client account was profitable or not profitable during the period, the Licensee must calculate the realised and unrealised gains and/or losses on all retail client transactions opened in the account during the period, and subtract all fees, commissions, and any other charges posted to the account during the period (referred together as the 'transaction fees'), and add any interest income and other income or rebates credited to the account during the period. All deposits and/or withdrawals of funds made by a client during the period must be excluded from the calculation of whether the account was profitable or not profitable during the period.

- m. Please confirm the total number and proportion (calculated as a percentage of all Clients that traded the product) of Clients that were profitable and that were not profitable in each category of product split by the underlying reference asset as referred to in 11(a) for the periods used in 11(l) but with transaction fees as referred to in the Note to 11(l) not subtracted from the calculations.
12. Please advise if your business imposes leverage caps.
 13. Please advise if your Clients can be exempted from leverage caps?
 14. Please provide the number and proportion (calculated as a percentage of all Retail Clients that trade in leveraged products) that were exempted from leverage caps for the period from 1 January 2018 to 31 December 2018?
 15. Which of the following risk management strategies best describes your business (where necessary please separate by underlying asset, product category or business line):
 - a. An A-book strategy where each and every single Client transaction is automatically perfectly hedged with a counterparty;
 - b. An A-book strategy where Client transactions are netted off and the entire remaining market exposure is hedged with a counterparty every time;

- c. A pure B-book strategy where all market risk is held and managed internally by the Licensee;
 - d. A combination of an A-book and B-book strategy. Please explain the details of how this strategy is implemented. For example, including but not limited to, whether it is based on:
 - i. Individual client revenue;
 - ii. Overall client revenue;
 - iii. Overall liquidity of underlying assets relevant to the issued product;
 - iv. Market events;
 - v. Balance sheet risk; and/or
 - vi. A percentage of market risk.
 - e. Other (please provide details).
16. For the period 1 January 2018 – 31 December 2018, where the Licensee operated a B-book strategy or a combination of a A-book and B-book strategy, provide the percentage of the net trading revenue as defined in question 11 (c) generated by the Licensee for each category of product split by the underlying reference asset that can be attributed to losses incurred by the Client, as a consequence of the B-book strategy.
17. Where there are particular formulas used in the calculation of the strategy mentioned in item 15(d) or item 15(e), please provide those formulas.
18. Where the Licensee operates a combination of an A-book and B-book strategy, specify the following for each book as at, 1 January 2018, 30 June 2018 and 31 December 2018 by:
- a. Total number of Clients, distinguished between Retail and Wholesale; and
 - b. Total funds deposited in AUD.
19. Where the Licensee operates a combination of an A-book and B-book strategy, provide the following details for when Clients are moved from A-book to B-book or vice versa:
- a. Methodology used to determine if a Client should be moved from one to the other;
 - b. Representative(s) responsible for making the decision that Clients should be moved; and
 - c. Frequency of when a review of both A-book and B-book Clients is conducted to determine that each Client is correctly being categorised in either book.
20. Please advise if Wholesale client money is used to facilitate any of the risk management strategies outlined in item 15.

21. Please provide the following details about the sources of liquidity the Licensee uses to price the financial services it offers including:

- a. Pricing feed providers and/or price feeds used as a reference (for example, information from exchanges such as the ASX or price feeds such as Bloomberg etc);
- b. The name, address and contact number of any Liquidity Provider the Licensee has entered into an agreement with and the products covered under that agreement;
- c. Describe any other direct or indirect relationship the Licensee has with a Liquidity Provider mentioned in item 21(b) including, but not limited to, shared management, ownership or employees;
- d. Provide details of whether the Licensee alters the price obtained from the pricing feed providers or Liquidity Providers mentioned in item 21(a) or 21(b), including the specifics of any formulas or percentages used to alter the pricing offered to its Clients and/or any other factors that are taken into account in determining pricing offered to Clients;
- e. Provide information about any software product used, including its use to the Licensee's business, to facilitate the price feed from a Liquidity Provider;
- f. If a Liquidity Provider is also used as a Hedging Counterparty please indicate this in your response and include:
 - i. The types of products hedged; and
 - ii. A percentage of the amount of the Licensee's business that it hedged with that Liquidity Provider during the period 1 January 2018 to 31 March 2019; and
- g. Indicate whether a Liquidity Provider mentioned has the ability to reject an order even when the order matches its original quoted price and provide any known restrictions on this process.

22. Provide a list of any additional Hedging Counterparties used by the Licensee that have not been mentioned in item 21(f) and include:

- a. The name, address and contact number of the Hedging Counterparty the Licensee has entered into an agreement with;
- b. The types of products hedged;
- c. A percentage of the amount of the Licensee's business that it hedged with that Hedging Counterparty during the period 1 January 2018 to 31 March 2019;
- d. Any software product used to facilitate the hedging trade; and

- e. Describe any other direct or indirect relationship the Licensee has with the Hedging Counterparty including but not limited to, shared management, ownership or employees.
23. Provide a list of any White Label partners the Licensee has entered into an agreement with, indicating whether the Licensee is the provider of the White Label services or is a White Label client. Ensure the name, address and contact number of the White Label partner is included.
24. Where the Licensee is a source of liquidity for another provider of OTC derivative financial services, provide details including:
- a. The name of the User;
 - b. The products the Licensee is providing liquidity for;
 - c. The total amount of liquidity (in AUD terms) the Licensee provided to the User from 1 January 2018 to 31 December 2018;
 - d. Whether the Licensee is also acting as a Hedging Counterparty to the User. Include a percentage of the typical amount of the User's business that is hedged with the Licensee (if known); and
 - e. Indicate whether the Licensee has the ability to reject an order even when an order matches its original quoted price. If so, please provide an explanation of the circumstances of when this can take place, including a description of the process and any restrictions imposed. Please reference the Licensee's internal policies and procedures in your explanation
25. For the period 1 January 2017 to 1 March 2019, provide details of each Corporate Authorised Representative ("CAR") that the Licensee authorised to provide financial services on its behalf, including:
- a. The name and ACN of the CAR;
 - b. A list of all websites operated by the CAR or associated with the CAR;
 - c. The number of compliance reviews completed by the Licensee on the CAR and the nature and details of these reviews;
 - d. The number of on-site visits conducted by the Licensee on the CAR and the dates on which these occurred;
 - e. The number of compliance checks conducted on the CAR's disclosure documents and websites;
 - f. The names and titles of the Representative(s) responsible for signing off on the reviews referred to in 25(c) (d) and (e);
 - g. List the types of records kept by the Licensee in relation to items 25 (c), (d) and (e); and

- h. The number of Client complaints received by the Licensee (either directly to the Licensee, through the CAR or through AFCA) relating to the conduct of the CAR.
26. Provide the name of each Referring Party the Licensee has entered into a contractual relationship, arrangement or other understanding either locally or overseas from 1 July 2017 to the date of this Direction, also include:
- a. If the Referring Party is a company or individual;
 - b. Explain the material difference in the agreements entered into with the Licensee if the Referring Party is a company or individual;
 - c. Confirmation if any compliance checks are conducted on Referring Parties prior to a contractual relationship or arrangement occurring and the scope of these checks;
 - d. Confirmation if any compliance checks are conducted on Referring Parties during the contractual relationship or arrangement and the scope of these checks;
 - e. The date any agreement was entered into;
 - f. If the relationship has terminated, the date of termination; and
 - g. The jurisdiction of the Referring Party.
27. Provide a description of the different type of advertising channels used by the Referring Parties to source clients for the Licensee, including but not limited to seminars, search engines, websites, social media and radio, television or newspaper advertisements.
28. Provide a description and breakdown for each fee and remuneration arrangement associated with a Referring Party mentioned in item 26 covering the lifecycle of a Client relationship, including:
- a. In what part of the Client relationship is payment(s) due and levied between the Licensee and the Referring Party;
 - b. Whether it is the Licensee or Referring Party that is the recipient of the payment;
 - c. What is the amount of the payment and/or any formula or methodology used to calculate the payment;
 - d. Any conditions required to be met for a payment to be made by the Licensee to the Referring Party; and
 - e. Provide the amount paid to and received from each Referring Party identified in item 26 for the period 1 January 2018 to 31 December 2018.
29. Please advise if the Licensee outsources any functions that relate to its Licence. If so, specify what functions are outsourced and to whom, including but not limited to:
- a. The name of the entity/individual;
 - b. Confirmation if the entity/individual is a Related Body Corporate and
 - c. The jurisdiction of the entity/individual.

30. Provide a description of the Compensation Arrangements in place for the Licensee, including:

- a. Name of provider;
- b. Policy number;
- c. Contact name and number for Provider;
- d. Date the relevant coverage commenced and expires;
- e. Amount covered;
- f. Value of revenue which the amount covered is based on;
- g. Number of reinstatements;
- h. Amount of premium paid per year
- i. Cost of each claim;
- j. Process of how a claim is made;
- k. Frequency of when premium is paid, i.e. Annually, Half-yearly, Quarterly or Other; and
- l. Number of claims made against the policy for the period 1 January 2016 to 31 December 2018.

31. Provide a description of the Licensee's process in determining a potential Client's suitability prior to being accepted as a Client of the Licensee, including:

- a. Whether the potential Client is required to pass a test before being accepted;
- b. The number of questions included in the test shown to the potential Client;
- c. The number of questions the Licensee has in its database that it could potentially include in the test;
- d. The number of attempts a potential Client has at passing the test;
- e. If the potential Client has exceeded the maximum number of attempts, specify if there is a minimum time frame before they can attempt to again sign up to become a Client of the Licensee;
- f. If the potential Client fails the initial test, a description of the materials or training courses the Licensee refers the potential Client to in order to attempt to become a Client;

- g. The number of potential Clients that initially failed to pass the test referred to in 31(a), before subsequently passing the test and becoming a Client of the Licensee, for the period 1 January 2018 to 31 December 2018;
- h. The number of potential Client's that failed to pass the test referred to in 31(a) and subsequently were denied becoming a Client of the Licensee for the period 1 January 2018 to 31 December 2018;
- i. A list of the documentation a potential Client is required to provide the Licensee when seeking to open an account with the Licensee;
- j. At what stage the client suitability assessment is completed:
 - i. prior to deposit;
 - ii. after deposit but prior to trading;
 - iii. at withdrawal request; or
 - iv. not at all.
- k. Confirmation at what point the Licensee conducts an AML/CFT check on their Client and a description of what documents are reviewed by the Licensee to ensure the Client passes the AML/CFT check

32. Provide a brief description of the Licensee's internal and external dispute resolution process for the period 1 January 2018 to 31 December 2018, including:

- a. The number of Client disputes received by the Licensee;
- b. From the figure provided in 32(a), the number that the Licensee resolved internally without the external dispute resolution scheme becoming involved;
- c. From the figure provided in 32(a), the number of disputes which were referred to the external dispute resolution scheme;
- d. The number of Clients which went directly to the external dispute resolution scheme rather than contacting the Licensee;
- e. The number of Client disputes which were lodged by a Client of the Licensee's CAR that related to the financial services being provided by the Licensee;
- f. A list of all areas of concern which formed the basis of the Client disputes referred to in 32(a);
- g. Whether the Licensee has been the subject of any systemic issue investigations by its external dispute resolution scheme;
- h. If the Licensee has been subject to investigations referred to in (g), provide the number of times the Licensee has been investigated and the concerns which these relate to; and

- i. Whether the Licensee has any unpaid determinations as at the date of this Direction.
33. If a Change in Control event has occurred with the Licensee since 1 January 2016, provide:
 - a. Confirmation of the date which a Change in Control event had taken place; and
 - b. Confirmation that the Licensee has notified ASIC of the Change in Control event.
34. Provide a brief description of any software products the Licensee uses (as at the date of this Direction:) in connection with its OTC derivative financial services business under its AFS Licence (both the software provided to Clients and the software used internally to manage the Licensee's financial services business) including:
 - a. The name of the product;
 - b. The function of the product; and
 - c. Whether it is a proprietary software product or a product supplied by a third party. If provided by a third party, provide the name, address and contact number for that third party.
35. Specify the domain names of all websites used by the Licensee in connection with its financial services business as at the date of this Direction.
36. Provide the following details in relation to any bank accounts (including overseas bank accounts) the Licensee is using for its financial services as at the date of this Direction:
 - a. A description of the account's use (including whether it constitutes a Client account, business operation account, business savings account etc);
 - b. Name of institution;
 - c. Account name;
 - d. Account number;
 - e. Currency of the account;
 - f. Account balance as at the date of this Direction; and
 - g. The name(s) and role(s) of the persons authorised to make transactions on behalf of the Licensee on the accounts.
37. Specify the Licensee's required NTA as at 31 March 2019 as required for it to comply with its AFS licence and/or CO 12/572.
38. Specify the Licensee's actual NTA as at 31 March 2019 as required for it to comply with its AFS licence and/or CO 12/572.

39. Specify the Licensee's actual cash or cash equivalents as at 31 March 2019 as required for it to comply with its AFS licence and/or CO 12/572.

40. Confirmation whether the Licensee provides negative balance protection for retail OTC products. If yes, explain how the Licensee manages the risk in relation to absorbing such losses.

If no, provide information on how the Licensee recovers negative balances from the Retail Client.

41. For the period 1 January 2018 to 31 December 2018, provide the number and value of Client accounts which had a negative account balance at any given time for retail OTC products.

42. How many of those Client's identified in 41 managed to add the required level of capital to ensure their account is no longer negative?

43. What is the Licensee's daily maximum loss allowance for:

- a. Retail Clients;
- b. Wholesale Clients;
- c. If a Client holds more than one account, whether the maximum loss allowance is an aggregate of all accounts.

44. In relation to the 3 January 2019 Yen flash crash event, provide the following details:

- a. How many Clients were affected?
- b. How many Client accounts resulted in negative balances?
 - i. What was the breakdown of Clients by jurisdiction of each Client affected?
 - ii. How many of the negative balances were due to fees or charges imposed?
- c. How many Client accounts referred to in b above are still in arrears?
- d. What was the total exposure incurred by the Licensee to their Clients?
 - i. What was the breakdown of Clients by jurisdiction and dollar amount per jurisdiction of the affected Clients?
- e. What was the total dollar negative balances?
 - i. What was the breakdown of Clients by jurisdictions and dollar amount per jurisdiction of the affected Clients?
- f. How did the Licensee prioritise Client orders during this period?
- g. Did the Licensee amend the maximum loss allowance from the figures provided in 43?

- h. How did the Licensee treat stop loss levels?
 - i. If there was gapping in the market, did the Licensee honour the higher price for which the stop loss was set?
 - j. What did the Licensee do in relation to any losses incurred by the Client?
 - i. How was this communicated?
 - k. Did the Licensee change the manner for which it manages negative balances from the response in 40?
 - l. What controls did the Licensee have with its Liquidity Providers, including how the Licensee managed the flow of funds?
45. The total annual cost to the Licensee spent on Marketing and the percentage that is attributable to online advertising, print advertising, and telemarketing (including call centre costs) for the period:
- a. 1 January 2017 to 31 December 2017; and
 - b. 1 January 2018 to 31 December 2018.
46. Provide a percentage breakdown of the annual online advertising costs in 45 by all sub-category types (e.g. social media platforms, cookie-based advertising as separate sub-categories).
47. Please confirm how many of your Clients between 1 January 2018 – 31 December 2018, signed up as part of a Promotion Package for retail OTC products.
48. Does your client trading platform display to the Client the Client's real-time total leveraged exposure position?

INFORMATION ABOUT THE NOTICE OF DIRECTION

Relevant Statutory Provisions

[All section references are to the *Corporations Act 2001* (the Act) unless otherwise indicated] Subsection 912C(1) provides that the Australian Securities & Investments Commission (ASIC) may, by giving written notice to a financial services licensee, direct the licensee to give to ASIC a written statement containing the specified information about:

- (a) the financial services provided by the licensee or its representatives; or
- (b) the financial services business carried on by the licensee.

Under s912C(3), the licensee must comply with a direction given under s912C:

- (a) within the time specified in the direction if that is a reasonable time; or
- (b) in any other case, within a reasonable time.

ASIC may extend the time within which the licensee must comply with the direction by giving written notice to the licensee: s912C(3).

ASIC may suspend or cancel a licence under s915C(1)(a) of the Act if the licensee has not complied with its obligations under s912A. Among the list of obligations under s912A, is the obligation to comply with the financial services laws: s912A(1)(c).

Non-compliance with a direction that ASIC gives under s912C(1), within the time set out in s912C(3), may constitute a failure to comply with a financial services law.

ASIC may only suspend or cancel a licence if it first gives the licensee an opportunity:

- (a) to appear or be represented at a hearing before ASIC. The hearing is conducted in private: s915C(4); and
- (b) to make submissions to ASIC on the matter: s915C(4).

Legal Professional Privilege

For the purposes of your obligations arising from the Direction, legal professional privilege is a reasonable excuse for not providing information pursuant to the Direction. Accordingly, you are not obliged to provide under the Direction information that is covered by a valid claim of legal professional privilege.

A person who claims legal professional privilege must establish that the privilege exists. If you claim that any information that you are required to provide is subject to legal professional privilege, you must provide ASIC with sufficient information to allow its officers to make an informed decision about whether the claim for privilege can be supported.

For that purpose, if the information over which you claim legal professional privilege was or is currently, comprised in the whole or part of a document, you should prepare a list, in writing, which specifies for each document or part thereof you claim is privileged:

- (a) the time, date, type, author, recipient and subject matter of that document or part thereof, and whether it is an original or copy;
- (b) if the original or a copy of the document or part thereof has been provided to any person who is not the privilege holder or a legal representative of the privilege holder, the identity of the persons to whom the original or a copy of the document or part thereof has been provided and the basis on which it was provided to those persons;
- (c) the grounds on which legal professional privilege is claimed;

- (d) the facts that are relied upon as giving rise to the claim of legal professional privilege. Those facts should include (but not be limited to) details of the dominant and any other purpose for which the information was brought into existence.

You will be requested to specify whether an in-house legal counsel was involved in the preparation of that document or part thereof and to provide sufficient details about that person's independence and the capacity in which they acted in relation to the preparation of that document or part thereof; and

- (e) the identity of the person in whose name the claim of legal professional privilege is made.

If the information over which you claim legal professional privilege was the subject of an oral communication, you should prepare a list, in writing, which specifies for each oral communication you claim is privileged:

- (i) the grounds on which legal professional privilege is claimed;
- (ii) the facts that are relied upon as giving rise to the claim of legal professional privilege. Those facts should include (but not be limited to) details of the dominant and any other purpose for which the communication was made.

You will be requested to specify whether an in-house legal counsel was involved in the communication and to provide sufficient details about that person's independence and the capacity in which they acted in relation to the communication;

- (iii) the identity of the person in whose name the claim of legal professional privilege is made;
- (iv) the date and time of, and parties to, the communication; and
- (v) the subject matter of, location at, and means by which, the communication took place.

Unless ASIC otherwise agrees, you should provide the list(s) relating to your privilege claims to ASIC on or before the due date of the Direction.

Definitions

"financial service" has the meaning given by Division 4 of Part 7.1: s766A. A person provides a financial service if they:

- (a) provide financial product advice (see section 766B); or
- (b) deal in a financial product (see section 766C); or
- (c) make a market for a financial product (see section 766D); or
- (d) operate a registered scheme; or
- (e) provide a custodial or depository service (see section 766E); or
- (f) engage in conduct of a kind prescribed by regulations made for the purpose of this paragraph.

[s766A(1)]

"financial services business" means a business providing financial services: s761A.

Note: The meaning of "carry on a financial services business" is affected by s761C of the Act.

"financial services licensee" means a person who holds an Australian financial services licence: s761A.

"representative" has the meaning given by s910A of the Act and includes:

- an authorised representative of the Licensee; or
- an employee or director of the Licensee; or
- an employee or director of a related body corporate of the Licensee; or
- any other person acting on behalf of the Licensee.

"financial services law" means:

- (a) a provision of Chapter 7 or of Chapter 5C, 5D, 6, 6A, 6B, 6C or 6D of the Corporations Act; or
- (b) a provision of Chapter 9 of the Corporations Act as it applies in relation to a provision referred to in paragraph (a); or
- (c) a provision of Division 2 of Part 2 of the ASIC Act; or
- (d) any other Commonwealth, State or Territory legislation that covers conduct relating to the provision of financial services (whether or not it also covers other conduct), but only in so far as it covers conduct relating to the provision of financial services.
- (e) in relation to a financial services licensee that is a licensed trustee company (in addition to paragraphs (a) to (d))—any rule of common law or equity that covers conduct relating to the provision of financial services that are traditional trustee company services (whether or not it also covers other conduct), but only in so far as it covers conduct relating to the provision of such services.

[s761A]

Offences

A person who, in a document required by or for the purposes of the Corporations Act or lodged with or submitted to ASIC, makes or authorises the making of a statement that to the person's knowledge is false or misleading in a material particular, or omits or authorises the omission of any matter or thing without which the document is to the person's knowledge misleading in a material respect, is guilty of an offence: s1308(2).

A person who, in a document required by or for the purposes of the Corporations Act or lodged:

- (a) makes or authorises the making of a statement that is false or misleading in a material particular; or
- (b) omits or authorises the omission of any matter or thing without which the document is misleading in a material respect;

without having taken reasonable steps to ensure that the statement was not false or misleading or to ensure that the statement did not omit any matter or thing without which the document would be misleading, as the case may be, is guilty of an offence: s1308(4).

A person must not, without lawful excuse, obstruct or hinder ASIC, or any other person, in the performance or exercise of a function or power under the Corporations Act: s1310.