

PROPOSED CLIENT MONIES REFORMS FOR RETAIL DERIVATIVES

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Legal Briefings - By **Steven Rice**

IN BRIEF

- The ways in which monies may currently be withdrawn from a client monies account are proposed to be amended.
- These reforms will apply to 'retail derivative client money'.
- Consultation about these reforms ends on 25 March 2016.

OVERVIEW

The Australian Government has released consultation documents for significant proposals to amend regulation of client monies in respect of derivatives and retail clients.

THE CURRENT CLIENT MONIES PROVISIONS

The current client monies provisions are relevantly contained in Part 7.8 of the Corporations Act 2001 (**Act**) and associated regulations. Generally, they apply to money paid to an Australian financial services licensee by a client, a person acting on a client's behalf, or to a licensee acting for a client, and in connection with a financial service or a financial product held by the client.

Client monies must be paid into a 'client monies account'. A client monies account generally needs to be held with an Australian authorised deposit-taking institution. The monies paid into the account are taken to be held in trust by the licensee for the benefit of the client.

There are a number of ways in which monies may currently be withdrawn from a client monies account. Monies may be withdrawn including under the written direction of the client, or to pay the licensee monies to which the licensee is entitled. Under s 981D of the Act, client monies paid by retail clients or wholesale clients for derivatives may also be used for margining purposes.

PROPOSED CLIENT MONIES REFORMS

The Government's proposed reforms to the client monies provisions would apply only to 'derivative retail client monies'. These are client monies paid in respect of derivatives by a retail client, including a 'sophisticated investor' as defined in s 761GA of the Act.

The reforms proposed for derivative retail client monies are:

1. Section 981D of the Act will be amended such that derivative retail client monies may only be used for margining purposes when the derivatives are market-traded or centrally cleared and the margining obligation is incurred under the operating rules of the market or clearing facility.
2. Regulations will be made which will prevent derivatives retail client monies from being used (amongst other things) for the licensee's working capital. Written directions by a client will not be able to authorise the use of derivative retail client monies for such purposes.
3. ASIC will be given the power to make 'client money reporting rules' (Rules), enforceable by civil penalties and infringement notices, for the purpose of derivative retail client monies. The Rules could impose requirements relating to reporting of information and reconciliations.

A further proposed amendment will ensure the client monies provisions do not apply to monies in respect of non-centrally cleared derivatives entered into by a licensee with a wholesale client, where the wholesale client agrees that the licensee will deal with the monies other than under the client monies provisions in Part 7.8 of the Act.

NEXT STEPS

Consultation about the retail derivative client money reforms ends on 25 March 2016. The consultation documents can be accessed [here](#).

MORE INFORMATION

For information regarding possible implications for your business, contact [Steven Rice](#).

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