



10 February 2016

Ms Megan Quinn
Division Head
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

cc: Mr Jerome Davidson

By e-mail: resilienceandcollateral@treasury.gov.au

Dear Ms Quinn

Enhanced Protection of Client Money

AFMA is pleased to provide this response to the Government policy paper of 21 December 2015 titled *Enhanced Protection of Client Money*. AFMA may provide a further submission once the draft legislative amendments are released, which we understand is imminent.

The Australian Financial Markets Association (AFMA) is a member-driven and policy-focused industry body that represents participants in Australia's financial markets and providers of wholesale banking services. AFMA's membership reflects the spectrum of industry participants including banks, stockbrokers, dealers, market makers, market infrastructure providers and fund managers.

In principle, AFMA members support the initiative to reform client money regulation in Australia. However, there is an opportunity, as well as a need, to consider far more significant reform in addition to section 981D of the Corporations Act.

The effectiveness of Australia's client money regime has been put to the test on a number of occasions in the 16 years since the text of Chapter 7 was circulated in an exposure draft of the FSR Bill. This includes in the insolvencies of (amongst others) Sonray, MF Global and most recently BBY. Similar to the experience offshore, the Australian regime did not perform perfectly, and the well-appreciated defect with section 981D was frequently identified as a contributor to its poor performance. However, this disregards that a number of other aspects of Australia's client money laws have also played a role in poor insolvency outcomes.

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Even pre-insolvency, licensees face difficulties complying with the regime because of the state of the law and ASIC's regulatory approach to it, which has resulted in some participants exiting the Australian market and others reducing as far as possible their exposure to the Australian client money regime. This is not a positive regulatory outcome.

Our purpose in this response is to highlight a number of these problems with the Australian client money regime. These are described in more detail in the Annexure. We also offer some comments on the way in which the Government policy paper proposes to deal with section 981D (in Schedule 1), followed by a diagram showing a representation of standard exchanged-traded derivative clearing arrangements.

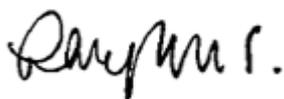
Finally, as a reference and for context, we have set out in Schedule 2 a short history of Australia's client money regulation, which was of course significantly impacted by the Wallis FSI and the Corporate Law Economic Reform Program (CLERP). We found this background relevant for a few reasons, one of which was to remind ourselves of the significance of the changes that put Chapter 7 in the Corporations Act. A point made in the Wallis report is that changes to financial markets regulation do need to be made in response to changes in the markets themselves:

The financial system has entered an era of accelerated change that is likely to continue into the next century. Change in the financial system implies the need to adapt regulations imposed on financial institutions and markets. Regulation must adapt both to facilitate greater competition and efficiency in the financial sector and to secure the integrity and stability of its operations. (Wallis FSI, Overview, The Financial System: Towards 2010 page 1)

While client money regimes offshore used the experience of failures of financial institutions like Lehmans and MF Global to examine and reform client money regulation, Australia's regime has been largely untouched since its inception. Our view is that there is an opportunity for Australia to critically consider the fitness for purpose of its client money regime and be willing to adapt it as necessary.

Please contact me on 02 9776 7997 or tlyons@afma.com.au if you would like to discuss any aspect of this submission.

Yours sincerely



Tracey Lyons
Head of Policy