

EXPOSURE DRAFT

2013-2014-2015-2016

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT

Corporations Amendment (Client Money) Bill 2016

No. , 2016

(Treasury)

A Bill for an Act to amend the *Corporations Act 2001*, and for related purposes

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1 **A Bill for an Act to amend the *Corporations Act***
2 ***2001, and for related purposes***

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Corporations Amendment (Client*
6 *Money) Act 2016*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.

12

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The 28th day after this Act receives the Royal Assent.	

13 Note: This table relates only to the provisions of this Act as originally
14 enacted. It will not be amended to deal with any later amendments of
15 this Act.

16 (2) Any information in column 3 of the table is not part of this Act.
17 Information may be inserted in this column, or information in it
18 may be edited, in any published version of this Act.

19 **3 Schedules**

20 Legislation that is specified in a Schedule to this Act is amended or
21 repealed as set out in the applicable items in the Schedule
22 concerned, and any other item in a Schedule to this Act has effect
23 according to its terms.

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Schedule 1 Client money

1 **Schedule 1—Client money**

2 *Corporations Act 2001*

3 **1 Section 761A**

4 Insert:

5 *client money reporting rules* has the meaning given by
6 section 981K.

7 *derivative retail client money* has the meaning given by
8 section 981J.

9 *derivative retail client property* has the meaning given by
10 subsection 984B(4).

11 **2 After paragraph 793B(2)(c)**

12 Insert:

13 (d) the client money reporting rules;

14 **3 At the end of subsection 793B(2)**

15 Add:

16 Note 3: If there is an inconsistency between the market integrity rules, the
17 derivative transaction rules or the derivative trade repository rules and
18 the client money reporting rules, the market integrity rules, the
19 derivative transaction rules or the derivative trade repository rules
20 prevail: see subsection 981N(2).

21 **4 After paragraph 822B(2)(b)**

22 Insert:

23 (c) the client money reporting rules;

24 **5 Subsection 822B(2) (note)**

25 Omit “Note”, substitute “Note 1”.

26

1 **6 At the end of subsection 822B(2)**

2 Add:

3 Note 2: If there is an inconsistency between the derivative transaction rules or
4 the derivative trade repository rules and the client money reporting
5 rules, the derivative transaction rules or the derivative trade repository
6 rules prevail: see subsection 981N(2).

7 **7 At the end of subsection 901E(2)**

8 Add:

9 Note 3: If there is an inconsistency between the derivative transaction rules
10 and the client money reporting rules, the derivative transaction rules
11 prevail: see subsection 981N(2).

12 **8 At the end of section 903D**

13 Add:

14 Note 6: If there is an inconsistency between the derivative trade repository
15 rules and the client money reporting rules, the derivative trade
16 repository rules prevail: see subsection 981N(2).

17 **9 Subsection 981A(1)**

18 After “(3)”, insert “, (3A)”.

19 **10 After subsection 981A(3)**

20 Insert:

21 (3A) This Subdivision does not apply to money paid as mentioned in
22 subsection (1) if:

23 (a) either:

24 (i) the financial service referred to in subparagraph (1)(a)(i)
25 is or relates to a dealing in a derivative; or

26 (ii) the financial product referred to in
27 subparagraph (1)(a)(ii) is a derivative; and

28 (b) the entry into of the derivative is not cleared through a central
29 counterparty; and

30 (c) the financial service or product would be provided to the
31 client as a wholesale client if the service or product were
32 provided to the client when the money is paid; and

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Schedule 1 Client money

1 (d) the licensee has obtained the client's written agreement to the
2 money being dealt with other than in accordance with this
3 Subdivision.

4 Example: The client and the licensee agree that the money need not be held
5 in an account maintained for the purposes of section 981B. As a
6 result, this Subdivision does not apply to the money at all.

7 Note 1: It is not necessary for the agreement to mention this Subdivision
8 explicitly.

9 Note 2: If the licensee obtains the agreement after the money is paid, this
10 Subdivision ceases to apply to the money when the licensee
11 obtains the agreement.

12 (3B) For the purposes of paragraph (3A)(c), disregard section 761GA
13 (about sophisticated investors).

14 **11 Section 981D**

15 Before "Despite", insert "(1)".

16 **12 At the end of section 981D**

17 Add:

18 (2) However, if the money is derivative retail client money,
19 subsection (1) only applies to an obligation if:

20 (a) either:

21 (i) the derivative referred to in paragraph (1)(a) or (b) is
22 entered into, or acquired, on a licensed market; or

23 (ii) the entry into of the derivative referred to in
24 paragraph (1)(a) or (b) is cleared through a licensed CS
25 facility; and

26 (b) the licensee incurred the obligation, in connection with the
27 derivative, under:

28 (i) the market integrity rules; or

29 (ii) the operating rules of the licensed market or licensed CS
30 facility.
31

1 **13 After Subdivision A of Division 2 of Part 7.8**

2 Insert:

3 **Subdivision AA—Client money reporting rules**

4 **981J Meaning of derivative retail client money**

5 (1) Money paid as mentioned in subsection 981A(1) is *derivative*
6 *retail client money* if:

7 (a) either:

8 (i) the financial service referred to in
9 subparagraph 981A(1)(a)(i) is or relates to a dealing in a
10 derivative; or

11 (ii) the financial product referred to in
12 subparagraph 981A(1)(a)(ii) is a derivative; and

13 (b) the financial service or product would be provided to the
14 client as a retail client if the service or product were provided
15 to the client when the money is paid.

16 (2) For the purposes of paragraph (1)(b), disregard section 761GA
17 (about sophisticated investors).

18 **981K Client money reporting rules**

19 (1) ASIC may, by legislative instrument, make rules (the *client money*
20 *reporting rules*) dealing with matters as permitted by this
21 Subdivision, for purposes relating to derivative retail client money.

22 (2) The regulations may provide that the client money reporting rules:

23 (a) cannot impose requirements (or certain kinds of
24 requirements) in relation to certain classes of persons or
25 money; or

26 (b) can only impose requirements (or certain kinds of
27 requirements) in relation to certain classes of persons or
28 money in certain circumstances.

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Schedule 1 Client money

1 **981L Matters that may be dealt with in client money reporting rules**

- 2 (1) The client money reporting rules may impose any of the following
3 kinds of requirements:
4 (a) requirements to report information (see paragraph (2)(b));
5 (b) reconciliation requirements (see paragraph (2)(c));
6 (c) requirements that are incidental or related to the requirements
7 mentioned in paragraph (a) or (b).
- 8 (2) The client money reporting rules may also deal with matters
9 incidental or related to requirements referred to in subsection (1),
10 including any of the following:
11 (a) the classes of money in relation to which particular
12 requirements apply;
13 (b) for requirements to report information:
14 (i) to whom information is required to be reported; and
15 (ii) the information that is required to be reported;
16 (c) for reconciliation requirements:
17 (i) the information that is required to be reconciled; and
18 (ii) how reconciliations are required to be reviewed or
19 approved, including who is required to review or
20 approve reconciliations; and
21 (iii) to whom reconciliations are required to be submitted;
22 (d) the financial services licensees who are required to comply
23 with requirements imposed by the rules;
24 (e) the manner and form in which persons must comply with
25 requirements imposed by the rules;
26 (f) the circumstances in which persons are, or may be, relieved
27 from complying with requirements in the rules that would
28 otherwise apply to them;
29 (g) the keeping of records, or the provision of records or other
30 information, relating to accounts maintained for the purposes
31 of section 981B;
32 (h) the keeping of records, or the provision of records or other
33 information, relating to compliance with (or determining
34 whether there has been compliance with) the rules;

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Client money **Schedule 1**

- 1 (i) any matters that the regulations provide, for the purposes of
2 this paragraph, may be dealt with in the client money
3 reporting rules;
- 4 (j) any other matters that the provisions of this Act provide may
5 be dealt with in the client money rules.
- 6 (3) The client money reporting rules may include a penalty amount for
7 a rule. A penalty amount must not exceed \$1,000,000.
- 8 *Making provision by reference to instruments as in force from time*
9 *to time*
- 10 (4) Despite subsection 14(2) of the *Legislation Act 2003*, the client
11 money reporting rules may make provision in relation to a matter
12 by applying, adopting or incorporating any matter contained in an
13 instrument or other writing:
- 14 (a) as in force or existing at a particular time; or
15 (b) as in force or existing from time to time.

16 **981M ASIC to consult before making rules**

- 17 (1) ASIC must not make a client money reporting rule unless ASIC
18 has consulted the public about the proposed rule.
- 19 (2) Without limiting the ways in which ASIC may comply with the
20 obligation in subsection (1) to consult the public about a proposed
21 rule, ASIC is taken to comply with that obligation if ASIC, on its
22 website:
- 23 (a) makes the proposed rule, or a description of the content of
24 the proposed rule, available; and
25 (b) invites the public to comment on the proposed rule.
- 26 (3) A failure to consult as required by subsection (1) does not
27 invalidate a client money reporting rule.
28

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Schedule 1 Client money

1 **981N Complying with client money reporting rules**

2 (1) Financial services licensees must comply with the client money
3 reporting rules.

4 Note: This subsection is a civil penalty provision (see section 1317E). For
5 relief from liability to a civil penalty relating to this subsection, see
6 section 1317S.

7 (2) If there is an inconsistency between the client money reporting
8 rules, and any of the following other rules:

- 9 (a) the market integrity rules;
10 (b) the derivative transaction rules;
11 (c) the derivative trade repository rules;

12 those other rules prevail to the extent of the inconsistency.

13 Note: If there is an inconsistency between the client money reporting rules
14 and the operating rules of a licensed market or of a licensed CS
15 facility, the client money reporting rules prevail: see
16 subsections 793B(2) and 822B(2).

17 **981P Alternatives to civil proceedings**

18 (1) The regulations may provide for a person who is alleged to have
19 contravened subsection 981N(1) (complying with client money
20 reporting rules) to do one or more of the following as an alternative
21 to civil proceedings:

- 22 (a) pay a penalty to the Commonwealth;
23 (b) undertake or institute remedial measures (including education
24 programs);
25 (c) accept sanctions other than the payment of a penalty to the
26 Commonwealth;
27 (d) enter into a legally enforceable undertaking.

28 (2) The penalty payable under regulations made for the purposes of
29 paragraph (1)(a) in relation to a client money rule must not exceed
30 three-fifths of the penalty amount set out in the client money rules
31 for the rule.
32

- 1 (3) Without limiting regulations that may be made for the purposes of
2 paragraph (1)(d), those regulations may provide for one or more of
3 the following kinds of undertakings:
4 (a) an undertaking to take specified action within a specified
5 period;
6 (b) an undertaking to refrain from taking specified action;
7 (c) an undertaking to pay a specified amount within a specified
8 period to the Commonwealth or to some other specified
9 person.

10 **981Q Compliance with requirements to provide data or other**
11 **information: protection from liability**

- 12 If:
13 (a) a person (the *protected person*):
14 (i) provides data or information to another person; or
15 (ii) otherwise allows another person access to data or
16 information; and
17 (b) the protected person does so, in good faith, in compliance
18 with a requirement imposed by or under a provision of the
19 client money reporting rules;
20 the protected person is not liable to an action or other proceeding,
21 whether civil or criminal, for or in relation to the conduct
22 mentioned in paragraph (a).

23 **14 Subsection 984A(1)**

24 Omit “subsection (2)”, substitute “subsections (1A) and (2)”.

25 **15 After subsection 984A(1)**

26 Insert:

- 27 (1A) This Division does not apply to property given as mentioned in
28 subsection (1) if:
29 (a) either:
30 (i) the financial service referred to in subparagraph (1)(a)(i)
31 is or relates to a dealing in a derivative; or
32 (ii) the financial product referred to in
33 subparagraph (1)(a)(ii) is a derivative; and
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- 1 (b) the entry into of the derivative is not cleared through a central
2 counterparty; and
3 (c) the financial service or product would be provided to the
4 client as a wholesale client if the service or product were
5 provided to the client when the property is given; and
6 (d) the licensee has obtained the client's written agreement to the
7 property being dealt with other than in accordance with this
8 Division.

9 Example: The client and the licensee agree that the property may be used
10 for a particular purpose, and that use is not permitted by
11 section 984B. As a result, this Division does not apply to the
12 money at all.

13 Note 1: It is not necessary for the agreement to mention this Division
14 explicitly.

15 Note 2: If the licensee obtains the agreement after the property is given,
16 this Division ceases to apply to the property when the licensee
17 obtains the agreement.

- 18 (1B) For the purposes of paragraph (1A)(c), disregard section 761GA
19 (about sophisticated investors).

20 **16 At the end of section 984B**

21 Add:

- 22 (3) However, if the property is derivative retail client property,
23 subsection (2) only applies to an obligation if:
24 (a) either:
25 (i) the derivative referred to in paragraph (2)(a) or (b) is
26 entered into, or acquired, on a licensed market; or
27 (ii) the entry into of the derivative referred to in
28 paragraph (2)(a) or (b) is cleared through a licensed CS
29 facility; and
30 (b) the licensee incurred the obligation, in connection with the
31 derivative, under:
32 (i) the market integrity rules; or
33 (ii) the operating rules of the licensed market or licensed CS
34 facility.
35

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Client money Schedule 1

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- 1 (4) Property given as mentioned in subsection 984A(1) is *derivative*
2 *retail client property* if:
3 (a) either:
4 (i) the financial service referred to in
5 subparagraph 984A(1)(a)(i) is or relates to a dealing in a
6 derivative; or
7 (ii) the financial product referred to in
8 subparagraph 984A(1)(a)(ii) is a derivative; and
9 (b) the financial service or product would be provided to the
10 client as a retail client if the service or product were provided
11 to the client when the property is given.
- 12 (5) For the purposes of paragraph (4)(b), disregard section 761GA
13 (about sophisticated investors).

14 **17 At the end of paragraph 1100A(1)(b)**

15 Add “or 981N(1) (complying with client money reporting rules)”.

16 **18 Paragraph 1101B(1)(d)**

17 After “subsection 798H(1) (complying with market integrity rules)”,
18 insert “or 981N(1) (complying with client money reporting rules)”.

19 **19 Paragraph 1101B(4)(b)**

20 Omit “or of the derivative transaction rules or the derivative trade
21 repository rules”, substitute “of the derivative transaction rules, of the
22 derivative trade repository rules or of the client money reporting rules”.

23 **20 Subparagraphs 1101B(4)(c)(i) and (d)(i)**

24 Omit “or of the derivative transaction rules or the derivative trade
25 repository rules”, substitute “of the derivative transaction rules, of the
26 derivative trade repository rules or of the client money reporting rules”.

27 **21 After paragraph 1317C(gdc)**

28 Insert:

- 29 (gdd) a decision by ASIC to make client money reporting rules
30 under section 981K; or
31

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Schedule 1 Client money

1 (gde) a decision by ASIC to do or not do anything under
2 regulations made for the purposes of section 981P
3 (alternatives to civil proceedings for contraventions of client
4 money reporting rules); or

5 **22 Section 1317DA (paragraph (b) of the definition of**
6 ***financial services civil penalty provision*)**

7 Repeal the paragraph, substitute:
8 (b) items 23 to 31;
9 (c) items 32 to 45.

10 **23 Subsection 1317E(1) (after table item 31)**

11 Insert:
12 31A subsection 981N(1) complying with client money reporting rules

13 **24 Subsection 1317G(1C) (heading)**

14 Repeal the heading, substitute:
15 *Market integrity rules and client money reporting rules*

16 **25 At the end of paragraph 1317G(1C)(b)**

17 Add “or 981N(1) (complying with client money reporting rules)”.

18 **26 Section 1317HB (heading)**

19 Repeal the heading, substitute:

20 **1317HB Compensation orders—market integrity rules and client
21 money reporting rules**

22 **27 Paragraph 1317HB(1)(a)**

23 After “subsection 798H(1) (complying with market integrity rules)”,
24 insert “or 981N(1) (complying with client money reporting rules)”.

25 **28 Section 1324B**

After “section 901E or 903D”, insert “, subsection 981N(1)”.

1 **29 Subsections 1325(1), (2) and (3)**

2 After “subsection 798H(1)” (wherever occurring), insert “or 981N(1)”.

3 **30 Application of amendments**

4 (1) In this item:

5 *start time* means the commencement of this item.

6 *Money*

7 (2) Subsection 981A(3A) of the *Corporations Act 2001*, as amended by this
8 Schedule, applies in relation to agreements obtained on or after the start
9 time, whether the money was paid to the licensee as mentioned in
10 subsection 981A(1) of that Act before, on or after the start time.

11 (3) Subsection 981D(2) of the *Corporations Act 2001*, as amended by this
12 Schedule, applies to a use of money on or after the start time, whether
13 the money was paid to the licensee as mentioned in subsection 981A(1)
14 of that Act before, on or after the start time.

15 *Property*

16 (4) Subsection 984A(1A) of the *Corporations Act 2001*, as amended by this
17 Schedule, applies in relation to agreements obtained on or after the start
18 time, whether the property was given to the licensee as mentioned in
19 subsection 984A(1) of that Act before, on or after the start time.

20 (5) Subsection 984B(3) of the *Corporations Act 2001*, as amended by this
21 Schedule, applies to a use of property on or after the start time, whether
22 the property was given to the licensee as mentioned in
23 subsection 984A(1) of that Act before, on or after the start time.