

23 February 2012

Manager, Financial Services Unit  
Retail Investor Division  
The Treasury  
Langton Crescent.  
PARKES ACT 2600

by email: [clientmoney@treasury.gov.au](mailto:clientmoney@treasury.gov.au)

Dear Sir or Madam

We refer to your letter of 3 February 2012 with our response to the request for feedback and comments on the discussion paper released in November 2011, entitled "Handling and use of money in relation to over-the-counter derivatives transactions".

You would be no doubt aware that since that response, the judgment in *Georges v Seaborn International (Trustee), in the matter of Sonray Capital Markets Pty Ltd (in liq)* [2012] FCA 75 (10 February 2012) was delivered.

It is highly pertinent to the discussion paper and to our response that the outcome of the Orders given in that case closely reflects the outcome achieved by the security trust structure described in our response, which has been and continues to be adopted by several issuers as a matter of reality, not abstract proposals.

Two noteworthy differences are:

1. The Orders gave priority to reimbursing the costs of the liquidator out of client moneys (over the interests of clients). As mentioned in our response, the alternative solution of the security structure prevents this loss of client moneys by preserving the benefit of all recovered moneys in priority to client interests.
2. The Orders gave the next priority to reimbursing some legal costs of the litigation and of the recovery activities. This loss of moneys available to clients is also prevented by the security structure described in our response.

Indeed, litigation of that type and its costs ought to be prevented in the first place if the security structure is adopted.

Since it might be expected that liquidators would legally challenge any trust in favour of clients that secures funds away from their use to pay their own fees, the protection of client funds from that outcome might best be achieved by legislative recognition of such security trusts or, at least, by giving priority to clients' interests in their moneys held or later recovered.

Yours faithfully



Andrew MacDonald  
Solicitor/Director  
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