

2013-2014-2015-2016

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CORPORATION AMENDMENT (CLIENT MONEY) BILL 2016

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Assistant Treasurer, the Hon Kelly O'Dwyer MP)

Table of contents

Overview	5
Glossary	1
Chapter 1 Client Money	3
Chapter 2 Statement of Compatibility with Human Rights	19

Overview

The *Corporations Amendment (Client Money) Bill 2016* (the Bill) amends the existing client money regime in the *Corporations Act 2001* (Corporations Act) to better protect retail clients of financial services providers and facilitate the efficient operation of wholesale derivatives markets.

Date of effect: The amendments will commence on the 28th day after the Bill receives Royal Assent.

Proposal announced: In October 2015, the Government released its response to the Financial System Inquiry (the Inquiry). It included a commitment to develop legislation to facilitate participation of Australian entities in international derivative markets, and better protect client money.

Financial impact: The measures have no financial impact on Commonwealth expenditure or revenue.

Human rights implications: This Bill does not raise any human rights issues. See *Statement of Compatibility with Human Rights* — Chapter 2.

Compliance cost impact: There is no regulatory compliance cost associated with this Bill.

A regulatory impact statement for the Bill is being finalised, and will be informed by consultation.

Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
AFS licensee	Australian financial services licensee
ASIC	Australian Securities and Investments Commission
MIRs	ASIC's Market Integrity Rules
the Bill	<i>Corporations Amendment (Client Money) Bill 2016</i>
Corporations Act	<i>Corporations Act 2001</i>
Corporations Regulations	<i>Corporations Regulations 2001</i>
the Inquiry	The Financial System Inquiry
IOSCO	The International Organization of Securities Commissions
ISDA	International Swaps and Derivatives Association Inc.
OTC	Over-the-counter
Regulatory Powers Act	<i>Regulatory Powers (Standard Provisions) Act 2014</i>

Chapter 1

Client Money

Overview

1.1 In October 2015, the Government announced that it would develop legislation to better protect client money, as part of its response to its root and branch examination of Australia's financial system (the Inquiry).

1.2 The Bill delivers on this commitment to protect retail customers, while also providing for the efficient operation of wholesale derivatives markets. The changes align the Australian client money regime with international best practice and community expectations of consumer protection.

1.3 This Chapter explains the context for, and nature of, the Bill's amendments.

Context of amendments

1.4 The Corporations Act establishes a regulatory framework governing how AFS licensees must deal with certain money and property that they receive from clients. These requirements are set out in Divisions 2 and 3 of Part 7.8 of the Act and Regulations 7.8.01 to 7.8.07 of the Corporations Regulations.

1.5 The client money regulatory framework does not generally distinguish between retail and wholesale clients.

1.6 Under the Corporations Act, client money is money paid to an AFS licensee in connection with a financial service or product (and held on behalf of the client), but not as remuneration or payment for that service or product.

1.7 Typically, AFS licensees are required to keep client money in designated 'client money accounts', to which a statutory trust is applied by virtue of the client money regime. This means that an AFS licensee must ensure that money to which the client money regime applies is paid into a trust account which complies with the requirements set out in the Corporations Act and Corporations Regulations. The money in that account (except for money paid to the licensee under the licensee's

obligation to call margins from a client under relevant rules) must be held on trust for the benefit of the person who is entitled to the money.

1.8 However, there are broad exceptions to these protections. Section 981D of the Corporations Act and paragraphs 7.8.02(1)(a) and (c) of the Corporations Regulations limit the protections otherwise provided.

1.9 Section 981D applies in respect of dealing in derivatives. It provides that:

Despite anything in regulations made for the purposes of section 981C, if:

- (a) the financial service referred to in subparagraph 981A(1)(a)(i) is or relates to a dealing in a derivative; or*
- (b) the financial product referred to in subparagraph 981A(1)(a)(ii) is a derivative;*

the money concerned may also be used for the purpose of meeting obligations incurred by the licensee in connection with margining, guaranteeing, securing, transferring, adjusting or settling dealings in derivatives by the licensee (including dealings on behalf of people other than the client).

1.10 Section 981D permits money deposited by one client to be used (and withdrawn from the client account) in connection with dealings in derivatives. This is not limited to dealings ‘on behalf of’ a particular client or to margins required by, for example, clearing and settlement facility operators — as distinct from counterparties to over-the-counter (OTC) derivative trades with the licensee.

1.11 Paragraphs 7.8.02(1)(a) and (c) of the Regulations also permit money to be withdrawn from client accounts for transactions where authorised by general written directions or for which the licensee is entitled. It is understood that some AFS licensees obtain broad authorisations in their client agreements to make withdrawals from client money for any purpose, including as working capital.

1.12 Once money has been withdrawn from client accounts (under the broad permitted use set out in s981D of the Corporations Act or paragraphs 7.8.02(1)(a) or (c) of the Regulations), it ceases to have the protections afforded to it by the statutory trust and may be exposed to higher levels of counterparty risk, for which clients are not compensated.

1.13 This is considered appropriate for wholesale clients (institutional clients), who typically have considerable experience dealing in derivatives; the capacity to assess risks associated with the use of their

client money other than as envisioned by 981H; and a need to comply with global margin standards in order to participate effectively in wholesale derivatives markets.

1.14 Under these amendments, wholesale clients will still be able to meet the margin and collateral requirements of their counterparties and therefore continue to access global derivative markets.

1.15 However, retail clients do not always understand that their derivative client money may be afforded less protection, and may assume that it is subject to protections otherwise given under the Corporations Act and ASIC's supervisory regime.

1.16 Thorough evaluation of counterparty risk in derivatives markets is complex, and cannot be reasonably expected of retail — or, indeed, sophisticated investors (as defined by 761G of the Corporations Act). Retail clients who have sufficient assets to qualify as sophisticated clients still may not have the capacity to understand the ways in which their derivative client money may be handled by their respective AFS licensees, or understand the increased risk that they may suffer losses due to these uses of derivative client money.

1.17 Global margin standards are directed towards wholesale (institutional) participants and the new exemptions are therefore directed towards those participants rather than retail or sophisticated investors.

Summary of new law

1.18 The new law will enable wholesale clients to contract out of the client money regime if they so desire. This will facilitate the ongoing efficiency of wholesale derivatives markets, ensuring the client money regime does not impose unnecessary limitations on institutional investors.

1.19 The new law will, however, offer far more protection to retail clients (including, for this purpose, sophisticated investors). The Bill requires that financial services providers hold all derivative retail client money and property in trust, and only use it to meet obligations incurred by the licensee in connection with dealings in the derivative where the obligation is incurred under market integrity rules or the operating rules of a licensed market or clearing and settlement facility.

1.20 This is a significant departure from the current law, which allows derivative client money and property to be used for a broad range of purposes, resulting in the client money no longer being held in trust on behalf of the client.

1.21 However, the amendments will make the treatment of derivative client money consistent with the treatment of all other retail client money — and community expectations of consumer protection.

1.22 The new law will also empower the Australian Securities and Investments Commission (ASIC) to make rules about retail client money reporting and reconciliation; and provide for appropriate penalties for breaching those rules.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<i>Maintaining efficiency of wholesale derivative markets</i>	
<p>A wholesale client (determined at the point at which the money is paid or property is given) may agree in writing with their licensee that their non-centrally cleared derivative client money or property need not be held in an account for the purposes of s981B, and the ways in which it may otherwise be dealt with.</p> <p>In this instance, ‘sophisticated investors’ (as defined by s761GA) are to be subject to the same protections as retail clients (i.e. their derivative client money and property must be held in trust). Retail clients’ status is also to be determined at the point at which the money or is, or was, paid — or the property is, or was, given.</p>	<p>The current law does not differentiate between retail clients, sophisticated investors, and wholesale clients for the purposes of dealing with client money and property.</p> <p>Regulation 7.8.02(1)(a) allows derivative client money and property to be used as agreed by the client, rather than be held in an account for the purposes of s981B, or in trust (as per s981H).</p>
<i>Protecting retail clients</i>	
<p>The s981D exemption now only applies to derivative retail client money and property if:</p> <p>(a) either:</p> <p>(i) the derivative is entered into, or acquired, on a licensed market; or</p> <p>(ii) the entry into of the derivative is cleared through a licensed CS facility; and</p> <p>(b) the licensee incurred the obligation, in connection with the derivative, under:</p>	<p>Section 981D provides that if client money or property is related to derivatives (held in connection with a product or financial service or that is, or relates to, a dealing in a derivative) it may be used to meet obligations incurred by the licensee in connection with margining, guaranteeing, securing, transferring, adjusting or settling dealings in derivatives by the licensee (including dealings on behalf of people other than the client).</p>

<i>New law</i>	<i>Current law</i>
(i) the market integrity rules; or (ii) operating rules of a licensed market or licensed CS facility.	
<i>Client money reporting rules</i>	
ASIC may, by legislative instrument, make rules (the client money reporting rules) dealing with matters as permitted by subdivision AA (Client money reporting rules), for purposes relating to derivative retail client money.	ASIC does not have the power to make or enforce reconciliation or reporting rules about derivative client money unless the derivative is traded on a licensed financial market (s798G(1)(c)).
The client money rules may impose requirements to report information, perform reconciliations, or do other incidental or related tasks.	
ASIC must consult before making client money reporting rules, although a failure to consult will not invalidate a client money reporting rule.	
Financial services licensees must comply with the client money reporting rules.	
<i>Compliance and enforcement of client money reporting rules</i>	
The client money reporting rules may include a penalty amount for a rule. A penalty must not exceed \$1,000,000.	
New regulation-making power to designate alternatives to civil proceedings in relation to client money reporting rules.	
Protection from liability for providing information. If a person (the protected person) provides data or information to another person, or otherwise allows another person to access data or information; and the protected person does so in good faith, in compliance with a requirement imposed by or under a provision of the client money reporting rules; the protected person is not liable to an action or other proceeding, whether civil or criminal,	

<i>New law</i>	<i>Current law</i>
for or in relation to doing so.	
<p>The Court may also make an order or orders, as it thinks fit, if: on the application of a person aggrieved by an alleged contravention by another person of subsection 981N(1) (complying with client money reporting rules), it appears to the Court that:</p> <p>(i) the person did contravene the provision; and</p> <p>(ii) the applicant is aggrieved by the contravention.</p> <p>The Court may give orders to comply with the client money reporting rules; disclose specified information that they have, or have access to, to the public, specified persons, or a specified class of persons; or publish advertisements in accordance with the order at their own expense, if they have contravened a provision of the client money reporting rules or been part of such a contravention.</p>	<p>The Court may make an order or orders, as it thinks fit, if: on the application of a person aggrieved by an alleged contravention by another person of subsection 798H(1) (complying with market integrity rules), or a provision of the operating rules or the compensation rules (if any) of a licensed market, it appears to the Court that:</p> <p>(i) the person did contravene the provision; and</p> <p>(ii) the applicant is aggrieved by the contravention.</p> <p>The Court may give orders to comply with the rules, or disclose information publicly or to specified persons, if they have contravened or been part of such a contravention.</p>
<p>ASIC may now also make such an application on behalf of an aggrieved person, where another person has contravened the client money rules and the former has suffered, or is likely to suffer, loss or damage as a consequence. Consistent with current law, ASIC needs written consent from the aggrieved person.</p>	<p>In a Court proceeding, ASIC may make an application on behalf of an aggrieved person or persons, where another person is found to have contravened certain subsections of the Corporations Act, although ASIC must have their written consent.</p>
<p>A Court may order a person to pay the Commonwealth a pecuniary penalty of the relevant maximum amount if the contravention is of subsection 798H(1) (complying with market integrity rules) or 981N(1) (complying with client money reporting rules).</p>	<p>A Court may order a person to pay the Commonwealth a pecuniary penalty of the relevant maximum amount if the contravention is of subsection 798H(1) (complying with market integrity rules).</p>
<p>The new law will also allow the Court to order compensation for damage associated with contravention of the client money rules.</p>	<p>A Court may also order a person (the liable person) to compensate another person (including a corporation), or a registered scheme, for the damage suffered by the person or scheme if</p>

<i>New law</i>	<i>Current law</i>
	the damage resulted from the contravention.
Applications cannot be made to the Administrative Appeals Tribunal about a decision by ASIC to make client money reporting rules (s981K), or to do or not do anything in relation to regulations made for the purposes of s981P. (alternatives to civil proceedings).	
<i>Hierarchy of rules and their legal effect</i>	
<p>If there is inconsistency between the client money reporting rules and any of the following other rules:</p> <ul style="list-style-type: none"> (a) market integrity rules; (b) the derivative transaction rules; (c) the derivative trade repository rules; <p>Those other rules prevail to the extent of the inconsistency. However, if there is any inconsistency between the client money rules and the operating rules of a licensed market or of a licensed CS facility, the client money reporting rules prevail.</p>	<p>If there is an inconsistency between the operating rules of a licensed financial market or CS facility, and any of the following other rules:</p> <ul style="list-style-type: none"> (a) the market integrity rules; (b) the derivative transaction rules; (c) the derivative trade repository rules; <p>Those other rules prevail over the operating rules to the extent of the inconsistency.</p>
<p>ASIC may, on application, approve codes of conduct that relate to any aspect of the activities of:</p> <ul style="list-style-type: none"> (a) financial services licensees; or (b) authorised representatives of financial services licensees, or 981N(1) (complying with client money rules); or (c) issuers of financial products; being activities in relation to which ASIC has a regulatory responsibility. The approval must be in writing. 	<p>ASIC may, on application, approve codes of conduct that relate to any aspect of the activities of:</p> <ul style="list-style-type: none"> (a) financial services licensees; or (b) authorised representatives of financial services licensees; or (c) issuers of financial products; being activities in relation to which ASIC has a regulatory responsibility. The approval must be in writing.

Detailed explanation of new law

Part 1 — Maintaining efficiency in wholesale derivatives markets

1.23 Due to fundamental differences in the nature of retail clients and wholesale clients, different policy considerations apply. Greater

protection is appropriate for retail clients, while wholesale clients will continue to need a degree of autonomy in determining the nature and content of their commercial arrangements with their licensees and counterparties.

1.24 Subsection 981A(3A) allows wholesale clients to determine how their non-centrally cleared derivative client money should be dealt with, via written agreement with their AFS licensee.

1.25 For instance, the client and the licensee could agree that the money need not be held in an account maintained for the purposes of s981B. As a result, the client money regime does not apply to the money at all. It is not necessary for the agreement to mention Subdivision A of Division 2 of Part 7.8 explicitly. If the licensee obtains the agreement after the money is paid to the licensee, client money protections cease to apply to the money when the licensee obtains the agreement.

1.26 Of course, this would not, of itself, allow such a wholesale client to deal with the client money or client property of its own clients which are not wholesale clients in this way.

1.27 Subsection 981A(3A) also requires that wholesale clients' status be determined for the purposes of this subdivision at the point at which the money is paid to the AFS licensee. **[Schedule 1 — after subsection 981A(3)]**

1.28 Subsection 984A(1A) provides for wholesale clients' property connected with derivatives to be dealt with in the same way as their derivative client money.

1.29 Both in relation to client money and property, sophisticated investors are to be afforded more protection — consistent with that which is given to retail clients. Subsection (3B) requires that sophisticated investors (as defined s761GA) be disregarded for the purposes of paragraph 981A (3A) (c) above. **[Schedule 1 — after subsection 984A(1); after subsection 981A(3)]**

Part 2 — Defining derivative retail client money and property

1.30 The Bill defines *derivative retail client money* and *derivative retail client property* for the purposes of the amended regime (s981J and 984B(4) respectively). **[Schedule 1 — section 981J Meaning of derivative client money; after section 984B]**

1.31 Subsections 984B(5) and 984A(1B) effectively provide that the definitions of *retail derivative client money* and *retail derivative client property* include sophisticated investors' client money and property, and

afford them the same level of protection. **[Schedule 1 — at the end of section 981D; at the end of section 984B]**

Part 3 — Protecting retail clients

1.32 The client money regime under the Corporations Act is amended to provide that section 981D only operates in respect of a retail client's money if, either the derivative is entered into, or acquired, on a licensed market — or the entry into the derivative is cleared through a licensed clearing and settlement (CS) facility; and the licensee incurred the obligation under the market integrity rules or the operating rules of the licensed market or licensed CS facility. **[Schedule 1 — at the end of section 981D]**

1.33 This is because the central clearing of derivatives through a clearing house generally means that counterparty risk is mitigated by the novation, and relevant clearing participants are subject to enhanced requirements such as capital, reporting and reconciliation requirements on the client segregated accounts they operate.

1.34 Therefore other than as described below, retail clients' client money will not be able to be used by the AFS licensee as working capital, or in connection with proprietary trading, hedging, or to meet the obligations in relation to any person other than the client.

1.35 Consistent with the change to section 981D, the Regulation will restrict retail clients' ability to rely on general directions and an AFS licensee's entitlement to client money.

1.36 The Regulation will prevent the use of derivatives retail client money from being used as the licensee's working capital; or to meet obligations incurred by the licensee other than on behalf of the client; or to enter into, or meet obligations under, transactions the licensee enters into to hedge, counteract or offset the risk to the licensee and the client. This will not change the requirements about payments of broker commissions from the account.

1.37 This reflects the policy that general directions about the use of money by the AFS licensee relating to derivatives are prohibited except to the extent that the direction allows for the use of money for liabilities directly arising from transactions undertaken on behalf of the client. In other words, general directions will not enable an AFS licensee to withdraw money from the client money account unless the liability in respect of which the money was withdrawn directly arose from transactions undertaken on behalf of the client.

1.38 The AFS licensee will not be able to enter into an agreement or arrangement with the client under which the licensee establishes an entitlement to the client money other than in relation to transactions undertaken on behalf of that client. Transactions that the AFS licensee enters into with another person to hedge, contract or offset the risk associated with the derivative transaction entered into between the retail client and the AFS licensee are an example of the type of liability that would not be permitted to be covered by the prohibition about general directions.

1.39 It also reflects the policy that an AFS licensee could not rely on Corporations Regulations in respect of any direction given by a retail client or any entitlement which purported to allow an AFS licensee to use a retail client's client money as the AFS licensee's working capital or for the purpose of meeting obligations incurred in respect of margining, guaranteeing, securing or transferring, adjusting or settling dealings in derivatives by the AFS licensee (including dealings on behalf of people other than the client) in circumstances where s981D (as amended) would not otherwise apply in respect of that use. However the policy is not intended to prevent the direction being used for other purposes.

1.40 Subsection 984B(3) restricts what AFS licensees can do with derivative retail client property, effectively mirroring the provisions for derivative retail client money in subsection 981D(2). Both the property and money must be held in trust, unless they are used to meet specific kinds of obligations relating to derivatives, on the client's behalf.
[Schedule 1- at the end of section 984B]

Part 4 — Client money reporting and reconciliation rules

1.41 ASIC will be able to set reporting and reconciliation rules for retail clients' client money in respect of derivatives, to enhance accountability and promote compliance with the client money requirements. **[Schedule 1 — insert: Subdivision AA — Client money reporting rules]**

1.42 Section 981K empowers ASIC to make, by legislative instrument, reporting and reconciliation rules for purposes relating to derivative retail client money, and s981M requires financial services licensees to comply with them. **[Schedule 1 — 981K Client money reporting rules, and s981N — Complying with client money reporting rules]**

1.43 It also allows for regulations to limit the requirements or types of requirement that client money reporting rules can make (e.g. in relation

to certain classes of persons or money; or certain classes of persons or money in certain circumstances).

1.44 These regulations will provide a mechanism by which certain persons and transactions may be carved out of the potential reach of the client money reporting rules. For example, they may specify thresholds of activity that must be met before a person might become subject to one or other requirements. Likewise, they may provide that certain transactions for certain purposes cannot be made subject to a certain requirement.

1.45 The regulations will provide a means by which the scope of the client money reporting rule making powers to support compliance with the client money regime may be clarified, should this be necessary in the future. **[Schedule 1 — 981K Client money reporting rules]**

1.46 Section 981L defines matters that may be dealt with in the client money reporting rules. Rules may make reporting and reconciliation requirements; and incidental or related requirements (the list of which includes a range of matters that may be necessary to understand in order to monitor and enforce the new regime). The rules could, for example, impose reconciliation and reporting requirements similar to those which currently apply to exchange-traded derivatives under the market integrity rules, and other requirements as appropriate. **[Schedule 1 — 981L — Matters that may be dealt with in client money reporting rules]**

1.47 Section 981L further provides that the client money reporting rules may include a penalty amount for a rule, and that the amount must not exceed \$1,000,000. This is equivalent to the maximum penalty under the market integrity rules, under which reporting and reconciliation requirements have been made in connection with dealings in exchange-traded derivatives.

1.48 Section 981L allows client money reporting rules to make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing: as in force or existing at a particular time; or as in force or existing from time to time.

1.49 Section 981M requires ASIC to consult the public before making rules, and defines what this involves. However, failure to consult will not render a rule invalid. This is consistent with provisions made for derivative transaction and trade reporting regimes. **[Schedule 1 — 981M — ASIC to consult before making rules]**

Part 5 — Hierarchy and legal effect of rules

1.50 The Bill makes a series of amendments to position client money reporting rules in the established hierarchy of rules (market integrity rules, derivative transaction rules, the trade repository rules and the operating rules of a licensed market or licensed CS facility). This ensures that, to the extent that there is any inconsistency between them, it is clear which type of rule should prevail.

1.51 Subsection 793B(2) and subsection 981N(2) now provide that if there is inconsistency between the client money reporting rules, and any of the following rules: the market integrity rules, the derivative transaction rules, the derivative trade repository rules; those other rules prevail to the extent of the inconsistency. [**Schedule 1 — at the end of subsection 793B(2); note at the end of subsection 822B(2); note at the end of subsection 901E(2); note at the end of section 903D; 981N(2)**]

1.52 However, if there is any inconsistency between the client money rules and the operating rules of a licensed market or a licensed CS facility, the client money reporting rules are to prevail. [**Schedule 1, s793B(2) and after paragraph 822B(2)(b)**]

Part 6 — Compliance and enforcement

1.53 Section 981P creates a regulation-making power to designate alternatives to civil proceedings in relation to client money reporting rules.

It provides for a tailored infringement notice and enforceable undertaking regime for the client money reporting rules; and is consistent with the corresponding regimes for the market integrity rules, derivative transaction rules, and derivative trade repository rules (see sections 798K, 901A and 903E respectively). It is also more appropriate to conduct of the kind covered by the client money reporting rules than the regime under the Regulatory Powers (Standard Provisions) Act 2014 — particularly in relation to matters such as quantum of penalty, application to multiple contraventions, availability of sanctions other than a penalty, and ability to publish infringement notices. [**Schedule 1 — Section 981P — Alternatives to civil proceedings**]

1.54 Section [981Q] provides that if a person (the protected person) provides data or information to another person, or otherwise allows another person to access data or information; and the protected person does so in good faith, in compliance with a requirement imposed by or under a provision of the client money reporting rules; the protected person is not liable to an action or other proceeding, whether civil or criminal, for

or in relation to doing so. This provision only affects liability for the conduct of providing data or information. It does not affect liability for any conduct revealed by the provision of the data. **[Schedule 1 — [981Q] — Compliance with requirements to provide data or other information: protection from liability]**

1.55 Subsection 1100A(1)(b) provides that a person has qualified privilege in respect of the giving of any information to ASIC that the person gives in relation to a contravention or suspected contravention of subsection 798H(1) (complying with market integrity rules), or 981N(1) (complying with client money reporting rules). **[Schedule 1 — at the end of paragraph 1100A(1)(b)]**

1.56 Section 1101A(1) provides that ASIC may approve codes of conduct, on application, that relate to any aspect of the activities of financial services licensees or their authorised representatives, including compliance with client money reporting rules. **[Schedule 1 — at the end of paragraph 1101A(1)(b)]**

1.57 Subsection 1101B(1)(d) provides that the Court may make an order or orders, as it thinks fit, if: on the application of a person aggrieved by an alleged contravention by another person of subsection 981N(1) (complying with client money reporting rules), it appears to the Court that the person did contravene the provision; and the applicant is aggrieved by the contravention. **[Schedule 1- at the end of paragraph 1101B(1)(d)]**

1.58 Subsection 1101B(4) provides that the Court may give orders with directions to comply with the client money reporting rules; disclose specified information that they have, or have access to, to the public, specified persons, or a specified class of persons; or publish advertisements in accordance with the order at their own expense, if they have contravened a provision of the client money reporting rules or been part of such a contravention. **[Schedule 1 — paragraph 1101B(4)(b) and subparagraphs 1101B(4)(c)(i) and (d)(i); section 1324B]**

1.59 Subsections 1317C(gdd) and (gde) make clear that applications cannot be made to the Administrative Appeals Tribunal about a decision by ASIC to make client money reporting rules (s981K), or to do or not do anything in relation to regulations made for the purposes of s981P ((alternatives to civil proceedings). **[Schedule 1 — after paragraph 1317C(gdc)]**

1.60 Subsection 1317G(1C)(b) provides that a Court may order a person to pay the Commonwealth a pecuniary penalty of the relevant maximum amount if the contravention is of 981N(1) (complying with client money reporting rules). **[Schedule 1 — at the end of paragraph 1317G(1C)(b)]**

1.61 Subsection 1317HB(1)(a) also allows a Court to order a person (the liable person) to compensate another person (including a corporation), or a registered scheme, for the damage suffered by the person or scheme if the damage resulted from the contravention. **[Schedule 1 — paragraph 1317HB(1)(a)]**

1.62 Subsections 1325 (1), (2) and (3) provide for the Court to make such orders as is appropriate against the person or persons who contravened, or were involved in a contravention, of the client money reporting rules to compensate someone who has suffered, or is likely to suffer, loss or damage as a result. This may occur in a proceeding; on application by the aggrieved person or persons; or on application by

ASIC, if it has prior written agreement from the aggrieved. [Subsections 1325(1), (2), (3)]

Part 7 — Application of amendments

1.63 The amendments to client money in s981(3A) and client property in subsection 984A(1A) will apply in relation to agreements obtained on or after the start time (commencement of the legislation), irrespective of when the money was paid, or property given, to the licensee.

1.64 It is noted that AFS licensees will still be able to comingle client money within a client money account where this is permitted under the Act and the relevant market integrity rules and operating rules, and the statutory trust created under the client money regime under the Act will not attach to or affect subsequent transactions in respect of money which was previously client money, as it is understood that this could have significant impacts on certainty in financial markets. This broadly reflects some of the principles enunciated by Black J in *Re MF Global Australia Ltd (in liq)* (2012) 267 FLR 27.

1.65 The amendments to subsection 981D(2) apply to use of money on or after the start time, irrespective of when the money was paid to the licensee.

Chapter 2

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Corporations Amendment (Client Money) Bill 2016

2.1 This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

2.2 The Bill amends the existing client money regime in the Corporations Act to enhance the protection provided to retail clients of financial services providers whilst facilitating the efficient operation of wholesale derivatives markets.

Human rights implications

2.3 This Bill does not engage any of the applicable rights or freedoms.

Conclusion

2.4 This Bill is compatible with human rights as it does not raise any human rights issues.

