

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

2014 - 2015

Department/Agency: Australian Securities and Investment Commission

Question: BET 328 - 331

Topic: - Regulations governing Australian licenced CFD and FX providers

Reference: written - 15 June 2015

Senator: Dastyari, Sam

Question:

Australia is the only major market (Cyprus is the only other market) that has not yet reformed their client money handling requirements to prevent the use client funds for other purposes and ensure they are segregated and protected.

CORPORATIONS ACT 2001 - SECT 981D

Money related to derivatives may be used for general margining etc. purposes

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).

- 328. Is there a reason why has this anomaly not been addressed?
- 329. Has ASIC offered any advice to government to make changes to section 981 D of the Corporations Act to protect client monies?
- 330. Are Australian investors at risk of a collapse, like MF Global?
- 331. Given that BBY went into voluntary liquidation in May, and the widespread uncertainty about client monies, does the government accept that the area needs further consideration?

Answer:

- 328. ASIC is unable to answer this question. Changes to this provision would require law reform. This is a question for Treasury and government.
- 329. ASIC first wrote to Treasury in December 2008, setting out various risks to clients that arise by operation of the client money provisions in Division 2 of Part 7.8 of the Corporations Act. In this letter, we also advised Treasury that we intended to prepare a Regulatory Guide concerning the client money provisions.

In July 2010 ASIC published Regulatory Guide 212 *Client money relating to dealing in OTC derivatives* (RG 212).

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On 30 August 2010, Treasury emailed to ASIC for comment a draft consultation paper that would propose legislative reforms to the client money rules. ASIC provided comments to Treasury on the draft consultation paper by letter dated 23 September 2010.

Treasury and ASIC then corresponded on the draft consultation paper in October 2010 and from April 2011 until Treasury released its Discussion Paper in November 2011. As discussed above, on 20 April 2012, ASIC made a confidential submission to Treasury's Discussion Paper.

Treasury continues to liaise with ASIC about the responses to the Discussion Paper and the potential for reform in this area.

330. ASIC notes the regulatory requirements have not changed since the MF Global event and therefore a similar event could occur.
331. Consideration of law reform issues is a matter for Treasury and Government. ASIC notes other jurisdictions do have requirements that are stricter than Australian requirements on the following matters:
- allowed uses of client money;
 - capital requirements; and
 - caps on leverage.