

EXPOSURE DRAFT



EXPOSURE DRAFT

Corporations Amendment (Client Money Reporting Rules Enforcement Powers) Regulations 2018

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2018

Peter Cosgrove
Governor-General

By His Excellency's Command

Kelly O'Dwyer [**DRAFT ONLY—NOT FOR SIGNATURE**]
Minister for Revenue and Financial Services

EXPOSURE DRAFT

EXPOSURE DRAFT

Contents

1	Name.....	1
2	Commencement	1
3	Authority.....	1
4	Schedules.....	1
Schedule 1—Amendments		2
Part 1—Main amendments		2
<i>Corporations Regulations 2001</i>		2
Part 2—Other amendments		12
<i>Corporations Regulations 2001</i>		12

EXPOSURE DRAFT

1 Name

This instrument is the *Corporations Amendment (Client Money Reporting Rules Enforcement Powers) Regulations 2018*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	
2. Schedule 1	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

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

3 Authority

This instrument is made under the *Corporations Act 2001*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

EXPOSURE DRAFT

Schedule 1 Amendments
Part 1 Main amendments

Schedule 1—Amendments

Part 1—Main amendments

Corporations Regulations 2001

1 Subregulation 1.0.02(1)

Insert:

client money reporting infringement notice: see regulation 7.8.05A.

client money reporting infringement notice period: see regulation 7.8.05A.

recipient:

- (a) in relation to an infringement notice given under regulation 7.2A.04, has the meaning given by regulation 7.2A.03; and
- (b) in relation to a client money reporting infringement notice, has the meaning given by regulation 7.8.05A; and
- (c) in relation to an infringement notice given under regulation 7.5A.104, has the meaning given by regulation 7.5A.103.

2 After regulation 7.8.05

Insert:

Subdivision AA—Client money reporting rules

7.8.05A Definitions for Subdivision AA of Division 2

In this Subdivision:

client money reporting infringement notice means an infringement notice given under regulation 7.8.05C.

client money reporting infringement notice period has the meaning given by subregulation 7.8.05H(2).

recipient, in relation to a client money reporting infringement notice, means the person to whom ASIC gives the infringement notice, or intends to give the infringement notice, under regulation 7.8.05C.

7.8.05B Enforceable undertakings

- (1) For the purposes of paragraph 981N(1)(d) of the Act, ASIC may accept a written undertaking, given by a person who is alleged to have contravened subsection 981M(1) of the Act, as an alternative to civil proceedings.
- (2) Without limiting subregulation (1), ASIC may accept an undertaking that includes any of the following:
 - (a) an undertaking to take specified action within a specified period;
 - (b) an undertaking to refrain from taking specified action;

- (c) an undertaking to pay a specified amount within a specified period to the Commonwealth or to some other specified person.

Note: An undertaking may relate to a client money reporting infringement notice given in relation to the alleged contravention. For example, an infringement notice may require a person to give an undertaking, a person may give an undertaking to comply with an infringement notice or a person may give an undertaking if the person does not comply with an infringement notice or if the infringement notice is withdrawn.

- (3) If ASIC agrees, in writing, to the withdrawal or variation of the undertaking, the person who gave the undertaking may withdraw or vary the undertaking.
- (4) If ASIC is satisfied that the person who gave the undertaking has breached a term of the undertaking, ASIC may apply to a Court for an order under subregulation (5).
- (5) If the Court is satisfied that the person has breached a term of the undertaking, the Court may make one or more of the following orders:
- (a) an order directing the person to comply with the term of the undertaking;
 - (b) an order directing the person to pay to the Commonwealth an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
 - (c) an order directing the person to compensate another person who has suffered loss or damage as a result of the breach;
 - (d) any other order that the Court considers appropriate.
- (6) This regulation does not affect the liability of a person to civil proceedings if ASIC does not accept an undertaking in relation to the alleged contravention referred to in subregulation (1).

7.8.05C Client money reporting infringement notices

- (1) This regulation is made for the purposes of subsection 981N(1) of the Act.
- (2) If ASIC has reasonable grounds to believe that a person has contravened subsection 981M(1) of the Act, ASIC may give the person an infringement notice (a *client money reporting infringement notice*) in relation to the alleged contravention.
- (3) A client money reporting infringement notice may relate to one or more alleged contraventions of a client money reporting rule.
- (4) If ASIC withdraws a client money reporting infringement notice given to a person in relation to an alleged contravention of a client money reporting rule, ASIC may give the person a new infringement notice in relation to the alleged contravention.

EXPOSURE DRAFT

Schedule 1 Amendments

Part 1 Main amendments

Example: A client money reporting infringement notice given to a person in relation to an alleged contravention of a client money reporting rule may be withdrawn, and a new infringement notice given to the person in relation to that alleged contravention, if the original infringement notice contained an error.

7.8.05D Effect of client money reporting infringement notice provisions

- (1) Regulations 7.8.05C to 7.8.05Q do not require ASIC to give a client money reporting infringement notice to a person in relation to an alleged contravention of a client money reporting rule.
- (2) Regulations 7.8.05C to 7.8.05Q do not affect the liability of a person to civil proceedings if ASIC does not give a client money reporting infringement notice to the person in relation to an alleged contravention of a client money reporting rule.
- (3) Regulations 7.8.05C to 7.8.05Q do not affect the liability of a person to civil proceedings if:
 - (a) ASIC gives a client money reporting infringement notice to the person in relation to an alleged contravention of a client money reporting rule; and
 - (b) either:
 - (i) the infringement notice is withdrawn; or
 - (ii) the person does not comply with the infringement notice in accordance with regulation 7.8.05H.
- (4) Regulations 7.8.05C to 7.8.05Q do not limit or otherwise affect the penalty that a Court could impose on the person for a contravention of a client money reporting rule.

7.8.05E Statement of reasons must be given

- (1) Before giving a recipient a client money reporting infringement notice, ASIC must:
 - (a) give the recipient a written statement that sets out ASIC's reasons for believing that the recipient has contravened a client money reporting rule; and
 - (b) give the recipient, or a representative of the recipient, an opportunity to:
 - (i) appear at a private hearing before ASIC; and
 - (ii) give evidence to ASIC; and
 - (iii) make submissions to ASIC;in relation to the alleged contravention of the client money reporting rule.
- (2) If a recipient, or a representative of a recipient, gives ASIC evidence or information under paragraph (1)(b) in relation to the alleged contravention of a client money reporting rule, the evidence or information is not admissible in evidence in any proceedings against the recipient, other than proceedings relating to the evidence or information being false or misleading.

7.8.05F Contents of client money reporting infringement notice

A client money reporting infringement notice:

- (a) must state the date on which it is given; and

- (b) must be identified by a unique code; and
- (c) must state the name and address of the recipient; and
- (d) must state that it is being given by ASIC under regulation 7.8.05C; and
- (e) must specify details of each alleged contravention of a client money reporting rule to which the infringement notice relates, including:
 - (i) the conduct that made up each alleged contravention (including, to the extent known, the date on which it occurred and the place at which it occurred); and
 - (ii) each client money reporting rule that ASIC alleges the recipient has contravened; and
- (f) must, in relation to each client money reporting rule to which the infringement notice relates, state the maximum pecuniary penalty that a Court could order the recipient to pay for contravening the rule; and
- (g) must, in relation to each alleged contravention of a client money reporting rule to which the infringement notice relates:
 - (i) specify the penalty (if any) payable for the alleged contravention; and
 - (ii) specify the remedial measures (if any) that the recipient must undertake or institute; and
 - (iii) specify the sanctions (if any) that the recipient must accept; and
 - (iv) specify the terms of an undertaking (if any) that the recipient must give under regulation 7.8.05B; and
- (h) if one or more penalties are specified in the infringement notice—must:
 - (i) specify the total penalty that the recipient must pay to the Commonwealth; and
 - (ii) state that the penalty is payable to ASIC on behalf of the Commonwealth; and
 - (iii) explain how the penalty can be paid; and
- (i) must state that the recipient may choose not to comply with the infringement notice, but that if the recipient does not comply, civil proceedings may be brought against the recipient in relation to the alleged contravention; and
- (j) must explain what the recipient must do to comply with the infringement notice and the effect of compliance with the infringement notice; and
- (k) must state that the recipient may apply to ASIC:
 - (i) for withdrawal of the notice under regulation 7.8.05L; or
 - (ii) for an extension of time under regulation 7.8.05J; and
- (l) must state that ASIC may publish details of the infringement notice under regulation 7.8.05Q; and
- (m) may include any other information that ASIC considers necessary.

Note: For the purposes of subparagraph (h)(i), the total penalty is the sum of the penalties payable under subparagraph (g)(i).

7.8.05G Amount of penalty payable to the Commonwealth

- (1) The penalty payable for an alleged contravention of a client money reporting rule is the amount determined by ASIC (which may be nil), subject to subsection 981N(2) of the Act.

EXPOSURE DRAFT

Schedule 1 Amendments Part 1 Main amendments

Note: Under subsection 981N(2) of the Act, the penalty payable under regulations made for the purposes of paragraph 981N(1)(a) of the Act in relation to a client money reporting rule must not exceed three-fifths of the penalty amount set out in the client money reporting rules for the rule.

- (2) If a client money reporting infringement notice relates to more than one alleged contravention, the total penalty payable under the infringement notice is the sum of the penalties (if any) payable for the alleged contraventions.

7.8.05H Compliance with client money reporting infringement notice

- (1) A recipient complies with a client money reporting infringement notice if, during the client money reporting infringement notice period, the recipient does all of the following:
 - (a) pays the total penalty specified in the infringement notice under subparagraph 7.8.05F(h)(i) (if any);
 - (b) undertakes or institutes the remedial measures specified in the infringement notice under subparagraph 7.8.05F(g)(ii) (if any);
 - (c) accepts the sanctions specified in the infringement notice under subparagraph 7.8.05F(g)(iii) (if any);
 - (d) gives an undertaking (including an undertaking to comply with the infringement notice) with the terms specified in the infringement notice under subparagraph 7.8.05F(g)(iv) (if any).
- (2) The *client money reporting infringement notice period* for a client money reporting infringement notice:
 - (a) starts on the day on which the infringement notice is given to the recipient; and
 - (b) ends:
 - (i) 27 days after the day on which the infringement notice is given to the recipient; or
 - (ii) on another day permitted by this regulation.
- (3) If the recipient applies for a further period of time in which to comply with the client money reporting infringement notice, and the application is granted, the client money reporting infringement notice period ends at the end of the further period allowed.
- (4) If the recipient applies for a further period of time in which to comply with the client money reporting infringement notice, and the application is refused, the client money reporting infringement notice period ends on the later of:
 - (a) 28 days after the day on which the infringement notice was given to the recipient; and
 - (b) 7 days after the notice of refusal is given to the recipient.
- (5) If the recipient applies for the client money reporting infringement notice to be withdrawn, and the application is refused, the client money reporting infringement notice period ends 28 days after the notice of refusal is given to the recipient.

7.8.05J Extension of client money reporting infringement notice period

- (1) During the client money reporting infringement notice period, a recipient may apply, in writing, to ASIC for a further period of no more than 28 days in which to comply with the client money reporting infringement notice.
- (2) The application must:
 - (a) specify the client money reporting infringement notice's unique identification code; and
 - (b) set out the reasons for the application.
- (3) Within 14 days after receiving the application, ASIC must:
 - (a) grant or refuse a further period no longer than the period sought (and no longer than 28 days); and
 - (b) notify the recipient in writing of the decision and, if the decision is a refusal, the reasons for the decision.
- (4) If ASIC refuses a further period under paragraph (3)(a), the recipient may not make a further application under subregulation (1) in relation to that client money reporting infringement notice.
- (5) If ASIC does not grant or refuse a further period under paragraph (3)(a) within 14 days after receiving the application, ASIC is taken to have refused a further period.

7.8.05K Effect of compliance with client money reporting infringement notice

- (1) Subject to subregulation (3), if:
 - (a) a client money reporting infringement notice is given to a recipient in relation to an alleged contravention of a client money reporting rule; and
 - (b) the infringement notice is not withdrawn; and
 - (c) the recipient complies with the infringement notice;the effects in subregulation (2) apply.
- (2) The effects are:
 - (a) any liability of the recipient to the Commonwealth for the alleged contravention of the client money reporting rule is discharged; and
 - (b) no civil or criminal proceedings may be brought or continued by the Commonwealth against the recipient for the conduct specified in the client money reporting infringement notice as being the conduct that made up the alleged contravention of the client money reporting rule or rules; and
 - (c) no administrative action may be taken by ASIC under section 914A, 915B, 915C or 920A of the Act against the recipient for the conduct specified in the infringement notice as being the conduct that made up the alleged contravention of the client money reporting rule; and
 - (d) the recipient is not taken to have admitted guilt or liability in relation to the alleged contravention; and
 - (e) the recipient is not taken to have contravened the client money reporting rule.

EXPOSURE DRAFT

Schedule 1 Amendments

Part 1 Main amendments

Note: Third parties are not prevented from commencing civil proceedings against the recipient, including under section 1101B of the Act. ASIC is not prevented from applying for an order on behalf of a plaintiff in accordance with the Act.

- (3) Subregulation (2) does not apply if the recipient has knowingly:
 - (a) provided false or misleading information to ASIC; or
 - (b) withheld evidence or information from ASIC;in relation to the alleged contravention of the client money reporting rule.

7.8.05L Application to withdraw client money reporting infringement notice

- (1) During the client money reporting infringement notice period, a recipient of a client money reporting infringement notice may apply, in writing, to ASIC for the infringement notice to be withdrawn.
- (2) The application must:
 - (a) specify the client money reporting infringement notice's unique identification code; and
 - (b) set out the reasons for the application.
- (3) Within 14 days after receiving the application, ASIC must:
 - (a) withdraw or refuse to withdraw the client money reporting infringement notice; and
 - (b) notify the recipient in writing of the decision and, if the decision is a refusal, the reasons for the decision.
- (4) In deciding whether to withdraw the client money reporting infringement notice, ASIC may take the following matters into account:
 - (a) whether the recipient has previously been found to have contravened subsection 981M(1) of the Act;
 - (b) the circumstances in which the contravention set out in the infringement notice is alleged to have occurred;
 - (c) whether an infringement notice has previously been given to the recipient in relation to an alleged contravention of subsection 981M(1) of the Act, and whether the recipient complied with the infringement notice;
 - (d) any other relevant matters.
- (5) If ASIC refuses to withdraw the client money reporting infringement notice, the recipient may not make a further application under subregulation (1) in relation to that infringement notice.
- (6) If ASIC has not withdrawn, or refused to withdraw, the client money reporting infringement notice within 14 days after receiving the application, ASIC is taken to have refused to withdraw the infringement notice.

7.8.05M Withdrawal of client money reporting infringement notice by ASIC

- (1) ASIC may withdraw a client money reporting infringement notice given by ASIC without an application under regulation 7.8.05L having been made.
- (2) In deciding whether to withdraw a client money reporting infringement notice under this regulation, ASIC may take the matters referred to in subregulation 7.8.05L(4) into account.

7.8.05N Notice of withdrawal of client money reporting infringement notice

- (1) A notice withdrawing a client money reporting infringement notice must include the following information:
 - (a) the name and address of the recipient;
 - (b) the date the infringement notice was given;
 - (c) the infringement notice's unique identification code.
- (2) The notice must also state that the client money reporting infringement notice is withdrawn.

7.8.05P Withdrawal of notice after compliance

- (1) ASIC may withdraw a client money reporting infringement notice after the recipient has complied with the infringement notice only if the recipient agrees, in writing, to the withdrawal.
- (2) If a client money reporting infringement notice is withdrawn after the penalty specified in it (if any) has been paid, the Commonwealth must refund the amount of the penalty to the person who paid it.
- (3) If a client money reporting infringement notice is withdrawn after the recipient has complied with a requirement specified in the infringement notice:
 - (a) to undertake or institute remedial measures; or
 - (b) to accept sanctions other than a payment of a penalty to the Commonwealth; or
 - (c) to give an undertaking;the remedial measures, sanctions or undertaking are taken to no longer be enforceable by ASIC.

7.8.05Q Publication of details of client money reporting infringement notice

- (1) If ASIC gives a client money reporting infringement notice to a recipient, ASIC may, at the end of the client money reporting infringement notice period, publish details of the infringement notice.
- (2) If ASIC decides to publish details of the client money reporting infringement notice, ASIC must publish the details in accordance with either or both of subregulations (3) and (4).
- (3) ASIC may publish details of a client money reporting infringement notice by publishing in the Gazette:
 - (a) a copy of the infringement notice; and
 - (b) a statement as to whether the recipient has complied with the infringement notice; and
 - (c) if the recipient has complied with the infringement notice—a statement that:
 - (i) compliance is not an admission of guilt or liability; and
 - (ii) the recipient is not regarded as having contravened a client money reporting rule; and

EXPOSURE DRAFT

Schedule 1 Amendments

Part 1 Main amendments

- (d) if the recipient has not complied with the infringement notice—a statement that:
 - (i) the giving of an infringement notice to a recipient is only an allegation that the recipient has contravened a client money reporting rule; and
 - (ii) the recipient is not regarded as having contravened the client money reporting rule or rules specified in the infringement notice.
- (4) ASIC may publish details of a client money reporting infringement notice by issuing a written or oral statement that includes:
 - (a) an accurate summary of the details of the infringement notice, including:
 - (i) the name of the recipient; and
 - (ii) the amount of the penalty specified in the infringement notice (if any); and
 - (iii) the remedial measures specified in the infringement notice (if any); and
 - (iv) the sanctions specified in the infringement notice (if any); and
 - (v) the terms of an undertaking specified in the infringement notice (if any); and
 - (vi) the conduct specified in the infringement notice as being the conduct that made up the alleged contravention; and
 - (b) a statement as to whether the recipient has complied with the infringement notice; and
 - (c) if the recipient has complied with the infringement notice—a statement that:
 - (i) compliance is not an admission of guilt or liability; and
 - (ii) the recipient is not regarded as having contravened a client money reporting rule; and
 - (d) if the recipient has not complied with the infringement notice—a statement that:
 - (i) the giving of an infringement notice to a recipient is only an allegation that the recipient has contravened a client money reporting rule; and
 - (ii) the recipient is not regarded as having contravened the client money reporting rule or rules specified in the infringement notice.

3 In the appropriate position in Chapter 10

Insert:

Part 10.28—Application provisions related to the Corporations Amendment (Client Money Reporting Rules Enforcement Powers) Regulations 2018

10.28.01 Application—client money reporting rules enforcement powers

Subdivision AA of Division 2 of Part 7.8, as inserted by Schedule 1 to the *Corporations Amendment (Client Money Reporting Rules Enforcement Powers) Regulations 2018*, applies in relation to alleged contraventions of

EXPOSURE DRAFT

Amendments **Schedule 1**
Main amendments **Part 1**

subsection 981M(1) of the Act occurring on or after the commencement of that Schedule.

EXPOSURE DRAFT

EXPOSURE DRAFT

Schedule 1 Amendments
Part 2 Other amendments

Part 2—Other amendments

Corporations Regulations 2001

4 Before regulation 7.8.01A

Insert:

Division 2—Dealing with clients' money

Subdivision A—Money other than loans

5 Before regulation 7.8.06

Insert:

Subdivision B—Loan money

6 Before regulation 7.8.06A

Insert:

Division 3—Dealing with other property of clients

7 Before regulation 7.8.08

Insert:

Division 4—Special provisions relating to insurance

8 Before regulation 7.8.08A

Insert:

Division 4A—Special provisions relating to margin lending facilities

Subdivision A—Responsible lending conduct for margin lending facilities

9 Before regulation 7.8.11

Insert:

Division 6—Financial records, statements and audit

Subdivision B—Financial records of financial services licensees

10 Before regulation 7.8.12A

Insert:

EXPOSURE DRAFT

Amendments **Schedule 1**
Other amendments **Part 2**

Subdivision C—Financial statements of financial services licensees

11 Before regulation 7.8.14B

Insert:

Subdivision D—Appointment etc. of auditors

12 Before regulation 7.8.17

Insert:

Division 7—Other rules about conduct

13 Before regulation 7.8.21A

Insert:

Division 8—Miscellaneous