



14 February 2014

Dr Richard Chadwick  
General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission  
23 Marcus Clarke Street  
CANBERRA ACT 2601

By email: [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au)

Dear Dr Chadwick

**Australian CFD Forum Limited & Ors – application for authorisation A91403 & A91404**

The Australian Financial Markets Association (AFMA) is responding to your invitation for comment on the applications for authorisation from the Australian CFD Forum Limited and its members. AFMA is the leading industry association promoting efficiency, integrity and professionalism in Australia's financial markets. AFMA represents over 130 market participants, including Australian and international banks, leading brokers, securities companies, fund managers, and participants in electricity and other specialised markets, including the Contracts for Difference (CFD) market. Our members who conduct CFD<sup>1</sup> business include two of the providers submitting the application for authorisation, and four others who are not members of the Australian CFD Forum.

Our submission does not comment on the likely public benefits and effect on competition, or any public detriment, from the proposed arrangements. We are aware that our members have a range of views on the proposed best practice standards, and they have/may be making direct submissions to the Commission. Rather, our comments focus on the discussions AFMA facilitated between members on a key policy issue addressed in the application and one of the standards subject to the authorisation application; the appropriate treatment of client money and the associated requirements under the *Corporations Act 2001*.

---

<sup>1</sup> References to the CFD industry in this submission includes Margin FX providers.

In November 2011, the Government issued a discussion paper canvassing potential reforms to the handling and use of client money that would have an impact on the business practices of providers in the CFD industry<sup>2</sup>. AFMA subsequently facilitated meetings and discussions of interested members to discuss the reform options proposed in the discussion paper, with a view to facilitating an agreement between members on the best option for reform. All members supported the objectives of reform, to ensure that the law surrounding the holding of client money in connection with OTC derivative transactions provides sufficient protections for retail clients, and acknowledged the current ambiguity in the law as it applies to CFD providers. However, members could not reach a consensus on the most appropriate option for reform, and our subsequent submission did not identify a preferred industry option but set out the different impacts that the reform options would have for members operating under different business models<sup>3</sup>.

The client money provisions in the Corporations Act forms an integral part of the investor protection framework in Australia, and its effectiveness and efficiency in achieving the objective of protecting retail clients is critical. Currently, section 981D of the Act enables client money to be used by CFD providers for hedging purposes, although these provisions were not designed with the growing retail OTC derivatives market in mind. The general nature of the provisions and the lack of clarity as to what constitutes client money has resulted in differing interpretations of the provisions within the CFD industry. This outcome is not desirable, as regulation should be applied consistently and on a neutral basis across the industry. The only adequate way to address this regulatory issue is to have clarity in both the policy objectives and the associated law that applies to licensees offering retail OTC derivative products. Once the statutory regime is established in this way, then providers may compete by way of any commercial arrangement that complies with the regime. While industry self-regulatory initiatives have an important role to play in promoting good practice and, thus, supplementing formal regulation, the policy issues in relation to client money are a matter that should be the subject of law reform.

We note that the submission in support of the application suggests that AFMA may not be an effective vehicle for the CFD industry to drive reform. AFMA had previously attempted to assist members conducting CFD businesses in establishing best practice standards on a range of professional and business conduct matters, including around the area of handling client money. However, given the diversity of views in relation to these business practices, AFMA concluded that there was insufficient consensus between members to support the establishment of such standards. From our perspective, and as reflected in the Commission's *Guidelines for developing effective voluntary industry codes of conduct*, an effective code requires the input and support from a majority of the industry's participants. Over the past five years, AFMA has facilitated constructive industry discussions on a range of matters, including client suitability, disclosure and advertising amongst other issues.

---

<sup>2</sup> *Handling and use of client money in relation to over-the-counter derivatives transactions*, Discussion Paper, November 2011.

<sup>3</sup> AFMA, *Submission on handling and use of client money in relation to over-the-counter derivatives transactions*, February 2012,

<http://www.treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/Consultations/2011/Handling%20of%20client%20money%20in%20OTC%20derivatives/Submissions/PDF/AFMA.ashx>

Thank you for the opportunity to comment on the application for authorisation by the Australian CFD Forum. Please contact Denise Hang on (02) 9776 7994 or [dhang@afma.com.au](mailto:dhang@afma.com.au) if we could be of further assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read "David Lynch". The signature is written in a cursive, slightly slanted style.

**David Lynch**  
**Chief Executive Officer**