REPORT 724

Response to submissions on CP 348 Extension of the CFD product intervention order

April 2022

About this report

This report summarises ASIC's analysis of the impact of its product intervention order imposing conditions on the issue and distribution of contracts for difference to retail clients.

This report highlights the key issues raised in the submissions received on Consultation Paper 348 *Extension of the CFD product intervention order* (CP 348) and details our responses to those issues.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

This report does not contain ASIC policy.

Contents

A Overview

Background

1 On 22 October 2020, we made ASIC Corporations (Product Intervention Order—Contracts for Difference) Instrument 2020/986 (CFD Order), a product intervention order imposing conditions on the issue and distribution of contracts for difference (CFDs) to retail clients after finding that CFDs have resulted in, and are likely to result in, significant detriment to retail clients. The conditions in the CFD Order became effective on 29 March 2021 (Effective Date).

2 The conditions of the CFD Order:

(a) restrict CFD leverage offered to retail clients to a maximum ratio of between 30:1 and 2:1, depending on the underlying asset class;

(b) standardise CFD issuers' margin close-out arrangements that act as a circuit breaker to close out one or more of a retail client's CFD positions before all or most of the client's investment is lost;

(c) protect against negative account balances by limiting a retail client's CFD losses to the funds in their CFD trading account; and

(d) prohibit giving or offering certain inducements to retail clients.

3 In Consultation Paper 348 *Extension of the CFD product intervention order* (CP 348), we summarised our analysis of the impact of our CFD Order and consulted on our proposal to extend it until it is revoked or sunsets on 1 April 2031.

4 The CFD Order will expire on 23 May 2022 unless it is extended. We can extend the CFD Order for a period of time, or until it is revoked, by declaration in a legislative instrument with the approval of the Minister.

Assessing the impact of the CFD Order

Our approach to analysis

5 We have analysed data obtained from 63 CFD issuers. The data includes details of the number of clients, the gross notional value of CFDs issued and metrics relating to client outcomes such as profit- and loss-making accounts, margin close-outs and negative balances.

6 At the time of publication of CP 348, we had obtained and analysed data for the four quarters prior to the Effective Date (1 April 2020 – 28 March 2021) and the first quarter after the Effective Date (29 March 2021 – 30 June 2021) (First Quarter). We have now obtained and analysed additional data for the period 1 July 2021 – 30 September 2021 (Second Quarter). ASIC has therefore analysed data obtained from licensed CFD issuers for an 18-month period that spans the year before and six months after the measures in the CFD Order took effect.

7 A small number of CFD issuers submitted revised data following publication of CP 348, which is incorporated in our analysis in Section B. The revised data from CFD issuers did not materially impact the aggregate data reported, other than the number of negative balance occurrences in the four quarters prior to the Effective Date (substantially more occurrences reported) and implementation costs of the CFD Order. Further explanation is set out in Section B.

Summary of analysis

8 We have continued to observe significant improvements in a number of key metrics and indicators of retail client detriment from CFD trading in the Effective Period. Section B also includes other observations relevant to our assessment of the impact of the CFD Order. Our analysis of additional data available for the Second Quarter supports our earlier assessment of the impact of the CFD Order in CP 348.

Responses to consultation

9 We received feedback from 49 respondents to CP 348 from nine CFD issuers, 32 CFD investors, an industry body representing some CFD issuers, a consumer advocate, a stockbroker and five confidential submissions. We are grateful to respondents for taking the time to send us their comments.

10 This report summarises the key issues raised in the submissions received on the proposal in CP 348 and our responses to those issues. It is not meant to be a comprehensive summary of all responses received.

11 For a list of the non-confidential respondents to CP 348, see Appendix 3. The submissions are publicly available on the CP 348 page on the ASIC website, excluding confidential submissions.

12 In summary, the submissions we received were largely supportive of the margin close-out protection, negative balance protection and prohibition on inducements in the CFD Order but were largely unsupportive of the leverage ratio limits in the CFD Order.

13 The main issues raised by respondents related to:

(a) the effectiveness of the CFD Order in reducing significant detriment to retail clients;

(b) the impact of the CFD Order on retail clients;

(c) the impact of the CFD Order on the business of issuers;

(d) the effects of the CFD Order on competition in the financial system; and

(e) the period of the proposed extension of the CFD Order.

14 On balance, having considered the consultation feedback and having conducted further data analysis, we consider the CFD Order is achieving its objectives effectively and efficiently and it is appropriate to extend the CFD Order without amendment for a period of five years. We have obtained the Minister's approval to declare that the CFD Order remains in force for the period ending at the end of 23 May 2027.

B Assessing the impact of the CFD Order

Key points

We have analysed data obtained from licensed CFD issuers for an 18-month period that spans the period before and after the measures in the CFD Order took effect.

In CP 348, we analysed data representing the four quarters prior to the Effective Date and the First Quarter after the Effective Date.

We have now gathered and analysed data for the Second Quarter. We continue to see a substantial reduction in detriment to retail clients resulting from CFDs as a result of the CFD Order.

Our approach to analysis

15 To assess the impact of the CFD Order, we have gathered and analysed data obtained from 63 CFD issuers, including details of the number of clients, the gross notional value of CFDs issued and metrics relating to client outcomes such as profit- and loss-making accounts, margin close-outs and negative balances.

16 In CP 348, we summarised our analysis of data for the four quarters prior to the Effective Date and for the First Quarter.

17 Since publication of CP 348, we have obtained and analysed additional data for the Second Quarter (the period from 1 July 2021 – 30 September 2021). Further, a small number of CFD issuers submitted revised data, which is incorporated in our analysis below. The revised data from CFD issuers did not materially change the aggregated data, except for a substantial increase in the number of negative balances occurring in the four quarters prior to the Effective Date and some additional implementation costs (explained further in our summary of analysis below).

18 The summary of our analysis in this section therefore covers data obtained from the licensed CFD issuers for an 18-month period that spans the year before and six months after the measures in the CFD Order took effect.

Summary of analysis

19 We have continued to observe significant improvements in a number of key metrics and indicators of retail client detriment from CFD trading in the Effective Period.

20 In this section, we summarise other observations relevant to our assessment of the impact of the CFD Order, including changes in the number of retail

and wholesale active clients and in the gross notional value of CFDs traded by retail and wholesale clients.

21 Where relevant we have updated the data comparison to incorporate the revised submissions or to include a quarterly average for the Effective Period.

Retail client losses reduced

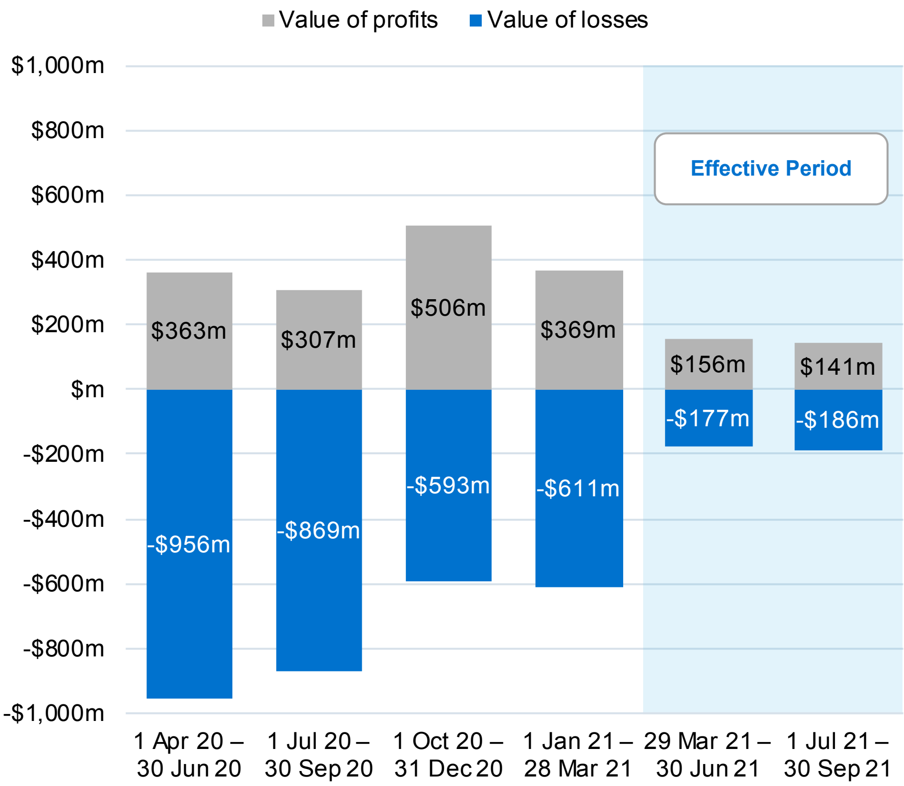
22 In the Effective Period, we observed:

(a) a substantial reduction in retail clients' aggregate net losses—from a quarterly average of $371 million in the year prior to the CFD Order to $33 million on average per quarter in the Effective Period;

(b) there were 51% fewer loss-making retail client accounts on average per quarter in the Effective Period compared with the quarterly average in the year prior to the CFD Order, whereas the number of profit-making retail client accounts reduced by 21% across the same period; and

(c) reductions in aggregate and average losses made by loss-making retail client accounts and aggregate and average profits made by profit-making retail client accounts.

Figure 1: Total profits and losses of retail client accounts

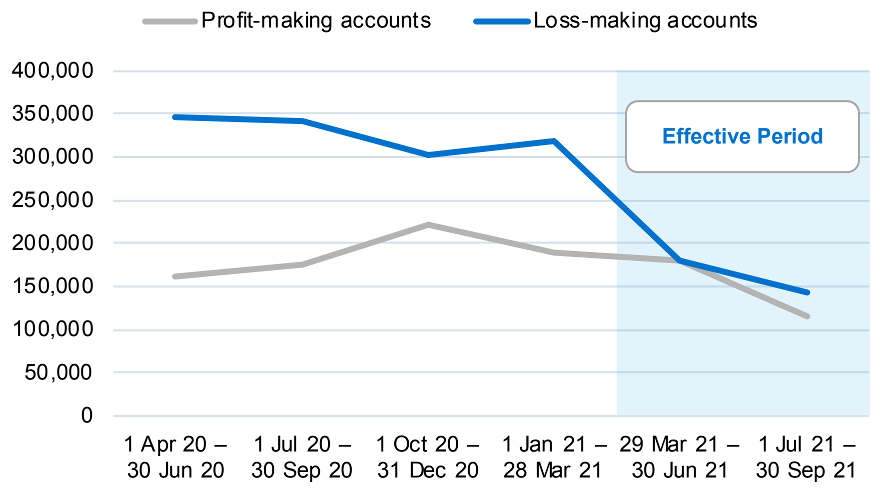


Note: See Table 3 in Appendix 2 for the data in this figure (accessible version).

Proportion of profit-making and loss-making retail client accounts

23 The quarterly average percentage of retail client loss-making accounts in the Effective Period was 54%. This compares with quarterly averages of 64% retail client loss-making accounts in the four quarters prior to the Effective Date.

Figure 2: Changes in number of profit-making and loss-making retail client accounts



Note: See Table 4 in Appendix 2 for the data in this figure (accessible version).

24 In contrast to retail client outcomes, the wholesale client outcomes remained relatively stable with quarterly averages of 65% wholesale client loss-making accounts compared to 62% wholesale client loss-making accounts prior to the CFD Order. The CFD Order does not apply to CFDs issued to wholesale clients. These proportions remained relatively stable despite the increase in the number of wholesale client accounts.

Active retail client accounts decreased

25 In the Second Quarter, the number of active retail client accounts continued to decrease with the number of active retail client accounts reducing to 246,855. The overall reduction in the number of active retail client accounts since the Effective Date is 51% from a quarterly average of 512,011.

26 This is largely due to a declining number of foreign retail clients trading CFDs with Australian financial services (AFS)-licensed CFD issuers after the Effective Date. The number of active Australian clients in each quarter of the Effective Period is higher than the corresponding quarter in the year prior to the CFD Order.

Retail client CFD positions reduced

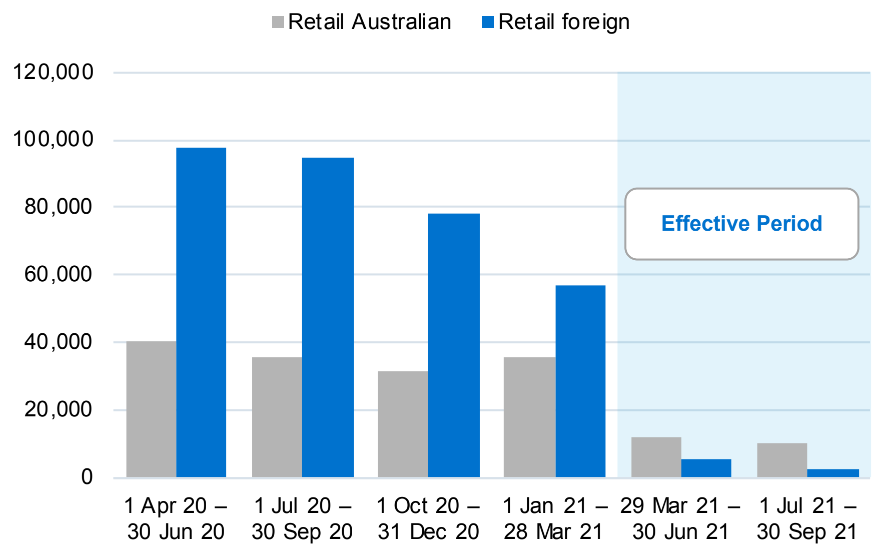
27 With the introduction of leverage ratio limits, the size of retail clients' new CFD exposures reduced. The gross notional value of CFDs issued to retail clients in the Effective Period reduced to $659 billion in the First Quarter and to $532 billion in the Second Quarter, an average of $595.5 billion. The quarterly average is a reduction of 85% from $4 trillion on average in the four quarters prior to the Effective Date. We also saw a reduction in the average gross notional value of CFDs issued per active retail client account.

28 Even when taking into account the volatility and trading of the quarter ending 30 June 2020 the average gross notional value of CFDs issued per active retail client account is substantially reduced.

Margin close-outs down 87% for retail clients

29 Margin close-outs were reduced by 87% from a quarterly average of 117,458 prior to the Effective Date to a quarterly average of 15,008 in the Effective Period. The proportion of active retail client accounts experiencing at least one margin close-out fell from more than one in four active retail client accounts in the quarter to 30 June 2020 to less than one in 20 active retail client accounts in the Effective Period.

Figure 3: Retail client accounts experiencing at least one margin close-out



Note: See Table 5 in Appendix 2 for the data in this figure (accessible version).

Negative balance instances reduced substantially for retail clients

30 The negative balance protection measure in the CFD Order applies to CFDs issued to retail clients on or after the Effective Date. A retail client may yet

incur liabilities from CFDs issued before the Effective Date that exceed the funds in their CFD trading account, resulting in a negative balance.

31 Average instances of retail client accounts entering negative balance fell to 2,524 per quarter since the Effective Date, compared to 21,727 per quarter on average in the year prior to the Effective Date. The retail client accounts that had a negative balance lost all of the funds in their CFD trading account—and potentially more if a CFD position was opened before the Effective Date.

Regulatory compliance costs lower than anticipated

32 Regulatory compliance costs of implementing the CFD Order were considerably lower than expected. Ongoing costs of the CFD Order were also lower than expected for most CFD issuers. Data gathered from licensed CFD issuers indicates implementation costs of $6.2 million and ongoing compliance costs of $3.5 million for the First Quarter reducing to $2.3 million for the Second Quarter.

33 A substantial proportion of these implementation and ongoing costs were incurred by a small number of CFD issuers. For instance:

(a) one CFD issuer accounted for 11% of the total implementation costs;

(b) five CFD issuers accounted for 55% of the total ongoing compliance costs; and

(c) one CFD issuer, representing less than 1% of active retail clients, accounted for over 20% of the total ongoing costs, on the basis the costs were incurred for required work for its global operation.

Inducements to retail clients drop, redirected to wholesale clients

34 As anticipated, the prohibition against giving or offering certain inducements in the CFD Order continued to result in the value of benefits given to retail clients falling substantially in the Effective Period. We also continued to see a significant increase in benefits provided to wholesale clients after the Effective Date.

Regression analysis

35 We again conducted regression analysis to incorporate data from the Second Quarter and control for market volatility. There continued to be statistically significant, negative correlations between the CFD Order being in place and the following measures of consumer detriment:

(a) the proportion of client accounts experiencing a margin close-out; and

(b) the proportion of loss-making client accounts.

36 As stated in CP 348, these associations were found using a standard linear model that explicitly controls for changes in identified variables such as market volatility. We have also conducted a difference-in-differences regression model that compares the relative changes in outcomes between retail clients affected by the CFD Order and wholesale clients unaffected by the CFD Order, to attribute the relative difference in observed changes between these groups to our intervention, and implicitly control for changes in unidentified market factors. The difference-in-differences approach helps to identify the causal impact of the CFD Order and mitigate the effects of any other factors.

37 These results support our earlier analysis and give us a high degree of confidence that the CFD Order was responsible for the reductions in these measures of retail client detriment, rather than external market factors.

Comparison with data published in CP 348

38 Table 1 sets out a comparison of the data published in CP 348 and the data used in our summary analysis in this section which incorporates revised data received from some CFD issuers for the First Quarter and data we gathered for the Second Quarter.

Table 1: Comparison of data provided in CP 348

Measure	Updated data (to Sep 2021)		CP 348 data (to Jun 2021)	
	Prior	**Effective Period**	**Prior**	**Effective Period**
Aggregate net losses by retail client accounts (quarterly average)	$371m	$33m	$372m	$22m
Reduction in retail loss-making accounts	-	51%	-	45%
Reduction in retail profit-making accounts	-	21%	-	4%
Percentage of active retail client accounts—loss-making (quarterly average)	64%	54%	64%	50%
Percentage of active wholesale client accounts—loss-making (quarterly average)	62%	65%		63%
Active retail client accounts (quarterly average)	512,011	246,855 (second quarter)	504,905 (quarter prior to Effective Date)	357,841

Measure	Updated data (to Sep 2021)		CP 348 data (to Jun 2021)	
	Prior	**Effective Period**	**Prior**	**Effective Period**
Reduction in active retail clients since Effective Date		51%		29%
Gross notional value of CFDs issued to retail clients (quarterly average)	$4tr	$595.5bn	$4.8tr (30 Sep 2020 quarter)	$659bn
Percentage reduction in gross notional value		85% (against quarterly average of four quarters)		86% (against Sep 2020 quarter)
Margin close-outs (retail client instances)	117,458	15,008	117,445	17,605
Margin close-out reduction (retail clients)	87%	87%	85%	85%
Proportion of active retail clients experiencing a margin close-out	1 in 4	1 in 20	1 in 4	1 in 20
Negative balances (retail clients)	21,727	2,524	–	2,131
Implementation costs (CFD issuers)	$6.2m	–	$4.7m	–
Ongoing costs (CFD issuers)		$5.8m (First Quarter and Second Quarter)		$3.6m (First Quarter only)

C Extending the CFD Order

Key points

This section outlines the feedback on our proposal to extend the CFD Order and our response to those submissions, including feedback about:

- the effectiveness of the CFD Order in reducing the risk of significant detriment to retail clients (see paragraphs 47–80);
- the business impact of the CFD Order (see paragraphs 93–95);
- the impact on competition of the CFD Order (see paragraphs 96–101); and
- the proposed duration of the extension of the CFD Order (see paragraphs 102–103).

Proposed extension of the CFD Order

39 In CP 348, we proposed to extend the CFD Order so that it will remain in force until it is revoked or sunsets on 1 April 2031. Our proposal was subject to our consideration of the feedback to CP 348, our further analysis of the impact of the CFD Order and obtaining the approval of the Minister.

40 Most respondents did not support our proposal to extend the CFD Order, mainly opposing the leverage ratio limits in the CFD Order.

41 However, most respondents were supportive of the other aspects of the CFD Order. One CFD issuer did not agree that the prohibition on inducements should be extended.

42 Four CFD issuers supported extending the CFD Order, three of which indicated it would provide regulatory certainty for the industry and clients.

43 Consumer advocate, CHOICE strongly supported the CFD Order being extended, saying they 'anticipate significant consumer harm would eventuate if the temporary order expires in May 2022' and if the order is not renewed 'consumers would risk potentially losing billions of dollars in CFD losses as seen in 2020'. They also recommend that the sale of CFDs to retail clients be banned. We also received feedback from a stockbroker that the sale of CFDs to retail clients by licensed financial services intermediaries should be prohibited.

Other regulatory measures

44 Some issuers suggested that the regulatory framework has sufficient other requirements to protect vulnerable investors (such as suitability assessments, the design and distribution obligations and anti-hawking provisions) and so the CFD Order was no longer necessary.

45 The Australian CFD and FX Association (ACFDFXA) considered that the product intervention power should only be used in extreme cases and is not intended to prevent monetary losses or eliminate all risk. Further they noted that although there may be a small number of licensed entities not doing the right thing, they believe it is a mistake to use a 'blanket ban' approach.

46 In contrast, a CFD issuer noted that although the design and distribution obligations have gone some way to provide further client protections, there are still weaknesses that prevent them from being relied on as a viable alternative to the CFD Order protections.

ASIC's response

Based on our analysis, summarised in CP 348 and supplemented in Section B, we consider that the CFD Order has been effective in reducing the risk of significant detriment to retail clients resulting from CFDs.

We have considered these benefits from the CFD Order together with feedback on its costs, other impacts on retail clients who trade CFDs, on business and the likely effect on competition in the financial system (each discussed further below).

We do not agree that the CFD Order is no longer necessary because of regulatory changes, such as commencement of the design and distribution obligations. We note that:

- given the nature of the significant detriment to retail clients from investing in CFDs that we seek to address with the CFD Order, we do not consider that compliance with the design and distribution obligations would be sufficient to reduce the risk to retail clients;
- a product may cause significant detriment to retail clients even if it complies with all applicable laws, and ASIC contemplated the combined effect and use of the product intervention power and the design and distribution obligations in Regulatory Guide 272 *Product intervention power* (RG 272); and
- we do not have confidence that all CFD issuers would retain the measures in the CFD Order that are currently applied consistently by CFD issuers, particularly the leverage ratio limits.

On balance, we consider the CFD Order is operating efficiently and effectively and so recommend that it should remain in force.

Reducing risk of significant detriment to retail clients

47 In CP 348, we sought feedback on whether the CFD Order has been effective in reducing the risk of significant detriment to retail clients.

48 We also sought feedback from retail clients on whether the CFD Order had changed their trading, including the frequency of trading, amount of margin committed to trading, whether other investment products have been substituted for CFDs and whether CFDs are used for hedging other investment risks. We asked about the impact of financial losses or profits on retail clients and whether they consider that they would have made higher profits or losses if the CFD Order had not been in effect.

49 Most respondents disagreed about the effectiveness of the CFD Order, mainly questioning the impact of the leverage ratio limits.

50 Many consumers raised concerns in their submissions about the leverage ratio limits, reduced consumer choice, increased hedging costs and the value of their margin at risk. Some also said they had applied to be classified as wholesale investors as a result of the CFD Order.

51 We also received feedback from respondents who were supportive of the CFD Order and were of the view that it had been effective in reducing significant detriment and promoting fairer outcomes for retail clients.

Leverage ratio limits

52 We received feedback from four CFD issuers, CHOICE, a stockbroker and another respondent who supported maintaining the existing leverage restrictions. Some of the four CFD issuers thought the leverage restrictions in the CFD Order could be increased, particularly for some more experienced investors, but nevertheless supported maintaining the current limits in the interests of regulatory certainty for the industry and clients. One issuer noted that they have conducted an analysis demonstrating that higher leverage was not good for retail clients.

53 Other respondents submitted that the leverage ratio limits in the CFD Order were too restrictive. Many suggested they be removed, increased or that experienced retail investors be permitted to trade at higher leverage ratio limits (discussed further below in paragraphs 81–82).

Restriction of consumer choice

54 Some consumers perceived leverage ratio limits as an undue restriction on consumer choice, in particular their ability to gain large CFD exposures. Feedback from three retail CFD investors indicated that they found the limits restricted their choice and that they understood the risks and were happy to accept responsibility for losses incurred.

55 International Capital Markets Pty Ltd (IC Markets) surveyed its clients who actively traded before and after the Effective Date and noted that 67% of the clients who responded to the survey stated that although they would have had higher losses without the CFD Order they believed they had lost flexibility when trading. IC Markets said that a majority of its clients who responded to the survey also stated that financial profits and losses were a part of trading and that their profits and losses from CFD trading had little to no impact on them as they were aware of the risks.

56 ACFDFXA also noted that many issuers provide the option for investors to set their own leverage to the levels they choose and could continue to set them at the levels in the CFD Order if it was not extended. It proposed an alternative leverage ratio limit for experienced clients (discussed further below in paragraphs 81–82).

57 Several submissions argued that the CFD Order was unfair because other financial products and financial services were not subject to the same restrictions.

58 Six respondents were supportive of the CFD Order and were of the view that it had been effective in reducing significant detriment and promoting fairer outcomes for retail clients.

Frequency of trading

59 Of the 32 consumers who responded, 20 indicated that their trading had not changed as a result of the CFD Order and the remaining 12 consumer submissions said they had changed their trading following the CFD Order but did not indicate how it had changed.

60 ACFDFXA and four CFD issuers responded that the CFD Order had fundamentally changed the product into one that traditional CFD traders are unable to use for their high-volume speculative trading.

61 IC Markets surveyed their clients who actively traded before and after the Effective Date and noted that of the clients that responded:

(a) 39% of them stated that the CFD Order has affected their trading frequency (with an increase in the number who trade less frequently); and

(b) 33% of them stated they would have made higher profits if the CFD Order had not been in effect; and

(c) 67% of them stated they would have had higher losses if the CFD Order had not been in effect.

62 IC Markets further explained that its ‘average customer life expectancy is around 3 to 6 months’.

More margin at risk of loss/more capital-intensive hedging

63 Many respondents submitted that the leverage ratio limits do not reduce risks to retail investors but have a negative impact on outcomes as more margin is required to gain the same amount of exposure and this means that a higher percentage of a retail investor's capital is allocated to riskier assets. However, only 10 out of 32 consumer submissions noted that they have deposited more margin since the Effective Date and the other 22 submissions from CFD investors indicated that the amount they have committed to margins is unchanged or less than before the Effective Date.

64 Four of the 32 submissions from investors indicated that they use CFDs for hedging.

65 IC Markets surveyed their clients who actively traded before and after the Effective Date and noted that 43% of the clients who responded stated they have committed more margin since the Effective Date and 22% of its clients who responded use at least 5% or more of their CFD trades for hedging other investment risks.

66 One investor and a CFD issuer submitted that to maintain hedging requirements, more capital has to be drawn by investors from safer asset classes into more risky asset classes and that risk mitigation was easier previously with higher leverage, allowing investors to leave more capital in safer investments.

Lure of unregulated and/or offshore CFD providers

67 One CFD issuer estimated that as many as one in three Australian traders are conducting part or all of their trading activity using offshore CFD platforms. Another CFD issuer submitted that they have had a dramatic reduction in interest from foreign investors and domestic clients, suggesting that clients may be opting for alternative investment products instead.

68 In contrast, one CFD issuer noted that in the last 24 months in particular there has been a definite move away from CFD products to more traditional exchange-traded products (such as equities and exchange-traded funds) by new clients, for reasons other than the CFD Order (e.g. uncertainty of the rapidly changing world, more time to do their own research). They indicated that over 80% of their new clients were requesting to trade exchange-traded products only.

Retail client protections lost by reclassifying as a wholesale client

69 Some CFD issuers claim that the CFD Order has not been effective because experienced investors may be subject to more harm by giving up retail protections to be classified as wholesale investors.

70 Twenty-three of the 32 submissions from investors indicated that they had applied to be classified as wholesale clients.

71 One respondent suggested that there were other advantages to being classified as a wholesale client which may have influenced some clients being reclassified, such as getting allocated to faster broker servers and infrastructure which impacts latency and hence slippage on trade entry and exit.

ASIC's response

We disagree that the leverage ratio limits in the CFD Order are too restrictive.

Leverage ratio limits on CFDs are in place in over 25 jurisdictions. The limits in the CFD Order are consistent with limits applied in the majority of these other jurisdictions and are most closely aligned with limits in force in the United Kingdom and European Union: see Table 2 in Appendix 1. We consider that consistency between the CFD Order and regulatory measures in force in other jurisdictions will promote confident participation in the Australian financial system and contribute to the efficient performance of the CFD Order.

We consider permitting higher leverage ratios would be less effective in reducing retail clients' CFD exposures and the sensitivity of their CFD positions to market volatility, and so less effective in reducing the risk of significant detriment to retail clients.

We acknowledge that there would be consumer impacts from extending the CFD Order. In balancing the impacts of the CFD Order with reducing significant detriment to retail clients we remain of the view that the net benefits to consumers and additional regulatory benefit from improved trust and confidence in the Australian financial system and economy over time outweighed the costs of the CFD Order.

We note that:

- the CFD Order does not ban CFDs or restrict consumer choice. As several CP 348 submissions have indicated, the leverage restrictions do not prevent investors trading with the same exposure, but require them to provide more margin to do so;
- most consumer submissions and most clients surveyed by IC Markets indicated that the CFD Order had not affected the frequency of their CFD trading. The Investment Trends report, *November 2021 Australia Leverage Trading Report: Industry Analysis*, notes that the CFD Order has seen traders make use of risk management tools more frequently (5%), transact less often (-19%), take smaller positions (-18%), and use less leverage (-23%). The report also states that the percentage of traders who stopped trading CFD/FX because of leverage

being too low/margin too high/regulatory restrictions was about the same for 2020 and 2021. Further, the report notes that the average preferred leverage on CFD trades is 70:1 (pp 193, 229 and 246). While trading frequency may have decreased for some clients and very active traders may have adjusted their trading behaviour because of the leverage ratio limits, overall the data shows that the CFD Order is helping to mitigate retail client losses;

- the data outlined in CP 348 and supplemented in Section B indicates there has been a reduction in retail client exposure which was an intention of the leverage ratio limits in the CFD Order and key to reducing harm, even though more margin is at risk for those clients wanting to trade with the same exposures. For instance, comparing quarterly retail client outcomes from the Effective Period and the prior year, we see the average aggregate net loss by retail client accounts fell by 91%, the average quarterly loss per retail loss-making account fell by 50% and the percentage of active retail client accounts experiencing at least one margin close-out reduced significantly;
- the average number of active Australian retail client accounts in each quarter after the CFD Order is higher than the same quarter prior to the Effective Date. While some Australian retail clients may have moved their trading to offshore CFD platforms, our data does not support the claim that there has been a significant exodus of Australian retail clients. In contrast, the average number of active foreign retail client accounts decreased substantially. Investment Trends notes, in *November 2021 Australia Leverage Trading Report: Industry Analysis*, that 10% of investors have moved to offshore over-the-counter (OTC) platforms as a result of the CFD Order. We also observed in our targeted survey of 10 CFD issuers that six CFD issuers had ‘re-papered’ approximately 50,000 foreign retail clients to offshore subsidiaries between 28 February 2021 and 30 April 2021. We caution CFD issuers to take care not to mislead clients about the risks of trading CFDs with affiliated offshore CFD entities; and
- from a low base, there was a significant increase in the number of wholesale accounts during the transition period before the Effective Date and while this trend continued during the First Quarter it appears to have slowed in the Second Quarter. As noted in CP 348, our surveillance work indicates that most of these new active wholesale client accounts were reclassified by CFD issuers from retail client accounts to wholesale client accounts, having the effect that the CFD Order and other consumer protections afforded to retail clients no longer apply to them. While qualifying clients may choose to forgo these protections and to accept higher risk to trade CFDs with higher leverage limits as wholesale clients, we caution CFD issuers against misclassifying any retail clients as wholesale clients.

Whether data analysis shows the CFD Order was effective in reducing risk of significant detriment to retail clients

72 Feedback from a number of CFD issuers queried the data analysis and whether it showed that there had been a reduction in significant detriment to retail clients.

73 ACFDFXA and five CFD issuers were concerned that ASIC had drawn its conclusions based on data from only one quarter.

74 Six respondents expressed concerns with the volatile five-week period in March and April 2020 being included in ASIC's data analysis. They noted that examining impact in extreme market conditions does not appear to be an objective standard that should be used as an indicator of harm to justify a permanent limitation on a product.

75 A number of CFD issuers submitted that they do not believe it is accurate to associate the reduction in client losses or gross notional value of CFDs as evidence of a reduction in harm as it was more likely caused by different market conditions and a significant reduction in the number of active retail clients and active trading after the Effective Date.

76 ACFDFXA and one CFD issuer disagreed that leverage is a principal factor in investor loss as demonstrated by comparing the proportion of loss-making accounts between wholesale and retail and between asset classes with different leverage restrictions.

77 Some CFD issuers noted that international regulatory experiences have shown that the proportion of loss-making accounts were more likely to be associated with market conditions than other factors and have not significantly changed since the leverage restrictions were implemented.

78 ACFDFXA submitted that costs and fees should not be included when calculating loss rate percentages as this is inconsistent with how other products are treated and, in calculating the proportion of loss-making and profit-making accounts, ASIC had used a method that does not account for the quantum of loss (e.g. a client could lose $1 or $1,000 and they are both counted the same) and this may make CFDs look more harmful than they are in reality.

79 Further, ACFDFXA's submission noted that they do not believe that margin close-out is indicative of actual harm. This is because it does not account for trading strategies with multiple accounts, and investors are educated not to commit more funds to their accounts than they can afford to lose and only need to have enough funds to open and maintain their position (not the whole exposure).

80 We also received a number of submissions from CFD issuers querying the methodology used for our regression analysis, including the assumptions and full modelling.

ASIC's response

In assessing our proposal in CP 348 to extend the CFD Order, we consider our analysis of 18 months of data shows significant improvements in a number of key metrics and indicators of retail client detriment from CFD trading in the Effective Period. Our regression analysis controls for market conditions and other factors and gives us a high degree of confidence that the CFD Order was responsible for, and effective in, reducing the risk of significant detriment to retail clients.

We have provided a summary response below to each of the above data queries in turn.

Data analysed—We have gathered and analysed data for the 18-month period representing the four quarters prior to the Effective Date and two quarters after the Effective Date (at the time of publication of CP 348, data for the quarter ending 30 September 2021 was not yet available). We have also compared data relating to retail clients' CFD trading and outcomes with data relating to wholesale clients who are not directly affected by the measures in the CFD Order. If the changes in client outcomes were primarily driven by market factors rather than the CFD Order, we would expect to see similar trends in retail client outcomes and outcomes for wholesale clients, who are not affected by the CFD Order. However, we observed divergence between retail client outcomes and wholesale outcomes. For instance, in the quarter ending 30 September 2021, the proportion of wholesale accounts that were loss making was at its highest over the six quarters analysed (the opposite to retail clients).

Accounting for volatility in March and April 2020—In our view, it is important to consider client outcomes from trading highly leveraged CFDs during volatile periods. In the public notice to the CFD Order, we reported that the retail client accounts of a sample of 13 CFD issuers made net losses of $774 million in aggregate over a volatile five-week period in March and April 2020. We disagree with submissions that varying market conditions undermine our analysis and assessment that the CFD Order is performing effectively. We also analysed the data quarter by quarter (including less volatile periods) to test our observations and consider the impact of the peak volatility in March 2020. Our analysis, therefore, also takes into account less volatile quarters. As explained in CP 348, we conducted two types of regression analysis (a standard linear model and a difference-in-differences approach to identify the causal impact of the CFD Order and mitigate any other factors). The findings provide a strong degree of confidence that the CFD Order was responsible for the reductions in these measures of consumer detriment, rather than external market factors.

Relevance of reductions in client losses and gross notional value of CFDs—When we compared quarterly retail client outcomes from the Effective Period and the prior year, we see the average aggregate net loss by retail client accounts fell by 91%, the average quarterly loss per retail client loss-making account fell by 50% and the proportion of active retail client accounts experiencing at least one margin close-out fell from more than one in four to less than one in 20. Further, our data analysis found that the higher the average gross notional value of CFDs issued per retail client for an individual issuer, the greater the profits of retail profit-making accounts and the greater the losses of retail loss-making accounts. Since higher leverage enables investors to obtain exposure to higher gross notional value, this observation suggests that leverage drives changes in client outcomes.

Effect of leverage on retail client losses—High leverage increases the sensitivity of a CFD position's exposure to market volatility. In addition to the proportion of profit-making and loss-making accounts, among other metrics we have also analysed retail client accounts' net profits/losses, aggregate value of profits/losses, average profits/losses, margin close-outs and negative balances. Our difference-in-differences analysis compared retail client outcomes (where the leverage ratio limits in the CFD Order applied) with wholesale client outcomes (where the CFD Order did not apply) to identify the impact of the order by controlling for changes in broader factors over time that affect both retail and wholesale clients.

International regulatory experience—We acknowledge that the proportion of profit-making and loss-making accounts did not substantially change in the United Kingdom or the European Union following similar product intervention measures. However, other measures of harm were seen to improve (such as reduced total losses, reduced number of automatic margin close-outs and reduced negative account balances) and we have seen similar improvements in Australia (as summarised in CP 348 and supplemented in Section B).

Costs and fees in client outcome analysis—We consider costs and fees are relevant to retail client outcomes from CFD trading and should be included in analysis of profit-making and loss-making accounts. High CFD leverage ratios can also magnify CFD fees and costs, which are generally calculated based on total notional position value. Further, we disagree with the ACFDFXA's submission that ASIC's analysis does not take into account the quantum of a client's profit or loss in a CFD trading account. While ACFDFXA points to one data point—the proportion of profit-making and loss-making accounts—our analysis summarised in CP 348 and supplemented in Section B analyses the value of aggregate net profits/losses of client accounts, aggregate and average profits of profit-making accounts, aggregate and average losses of loss-making accounts, and compares outcomes between retail and wholesale client accounts.

Margin close-outs as indicative of harm—We consider that the margin close-out protection and negative balance protection measures in the CFD Order further constrained retail client detriment resulting from CFDs in the Effective Period. For example, comparing the 12 months before the Effective Date with the Effective Period, margin close-outs were reduced by 87% from a quarterly average of 117,458 to 15,008. Where a margin close-out occurs, it can be inferred from the liquidation level having been reached that the retail client holding the CFD positions lost a significant proportion of their investment. We question ACFDFXA's assertion that investors do not commit more funds to their CFD trading accounts than they can afford to lose. Consumer research conducted by Investment Trends in its *November 2021 Australia Leverage Trading Report: Industry Analysis* showed that more than half of CFD consumers are prepared to lose less than 20% of the funds in the account in the hope of making profits.

Based on our analysis, we consider that the leverage ratio limits and the other measures in the CFD Order have been effective in reducing the risk of significant detriment to retail clients resulting from CFDs and so should remain in force. Accordingly, we maintain the view that extending the CFD Order is appropriate.

Our leverage ratio limits are consistent with a number of other jurisdictions that have imposed similar restrictions (see Appendix 1).

Suggested amendments to the CFD Order

'Experienced' retail client category

81 Four submissions suggested that 'experienced' retail clients should be able to access higher leverage than 'inexperienced' retail clients (with one respondent suggesting a maximum of 200:1 compared to the current limit of 30:1 under the CFD Order for the least volatile assets such as major foreign exchange pairs). ACFDXA is of the view that the leverage limits have increased the cost of trading and changed the risk/reward balance of CFDs so that the products are no longer fit for purpose for 'experienced retail investors', particularly the high-volume, speculative day traders. Further, they argue that allowing an 'experienced' retail client category will allow them to conduct their trading while still maintaining retail protections.

82 One other submission also suggested a form of software developer client category which would allow software developers to access higher leverage to enable them to test their software for wholesale investors.

Banning retail CFD trading

83 CHOICE recommended that the sale of CFDs to retail clients be banned. Bell Potter Securities Limited considers that the sale of CFDs to retail clients by licensed financial services intermediaries should be prohibited.

ASIC's response

Based on our analysis we consider that the leverage ratio limits and the other measures in the CFD Order have been effective in reducing the risk of significant detriment to retail clients resulting from CFDs and we retain our view that the legislated, product-neutral client classifications are sufficient.

We note that:

- there is an existing, product-agnostic regulatory framework in the Corporations Act for clients who have more experience. Provided such clients meet the relevant tests to be classified as wholesale clients (including as sophisticated investors under s761GA) under the existing laws, they will not be affected by the proposal. We note that the Government is planning to review how the wholesale client and sophisticated investor definitions are working;
- we consider the suggested creation of a new class of retail clients (however defined) and whether it should apply in relation to CFDs and/or any other financial products are policy matters for Government;
- the submissions did not indicate what proportion of CFD issuers' retail clients would qualify as 'experienced' retail clients or provide evidence that allowing retail clients with more trading experience a higher leverage ratio would not involve a likelihood of significant detriment for those clients, that would not be reduced by applying a lower leverage ratio; and
- we are aware of one jurisdiction (Poland and only for Polish residents) with modified product intervention measures for 'experienced' retail clients.

Given the current impact of the CFD Order in reducing significant consumer detriment, we do not currently recommend banning CFD trading by retail clients.

Business impact of the CFD Order

84 CP 348 sought feedback from CFD issuers and distributors on whether they would change their business model if the CFD Order was not extended and the costs that would be incurred. We further sought feedback on the impact of the CFD Order and the ongoing impact on their businesses if the CFD Order is extended.

Changes to business model

85 One CFD issuer submitted that they will consider changing their business model to extend their product offering if the CFD Order is extended given the decrease in trading volumes of their clients. They also referred to having difficulties associated with banking relationships due to the higher perceived risk of the CFD industry. Another CFD provider indicated that if the CFD Order is extended, they may consider reducing the scale of their business and shifting focus and efforts to other financial products.

86 While some CFD issuers indicated that their business model would not change if the CFD Order is not extended, some other CFD issuers indicated they would reintroduce higher leverage limits (they said they were already informally providing margin close-out and negative balance protection before the CFD Order commenced).

87 Some CFD issuers were concerned about any potential changes to the classification of wholesale clients under existing laws, in particular the impact of any change to the ability of investors to nominate themselves as 'sophisticated investors': s761GA.

Impact on revenue

88 ACFDFXA submitted that the CFD Order has led to a significant reduction in clients and an even more significant reduction in revenue, particularly as a result of a reduction in trades due to the decrease of high-volume CFD traders. They also noted that the business impact would be greater than the 29% reduction in retail investors (referred to in CP 348) would suggest.

89 ACFDFXA submitted that for the largest CFD issuers, client trading losses contribute on average less than 5% annual trading revenue and the primary source of revenue is earned from spreads, fees and commissions.

90 One CFD provider's submission referred to 'decimated revenues' for CFD issuers as a result of a reduction in spread-generated revenue. Another suggested an 80% reduction in revenue over the seven-month period since the Effective Date. Another indicated the impact on their business was significantly greater than ASIC's findings disclosed in CP 348 and does not think an appropriate balance has been struck between reducing detriment to clients and the financial impact on issuers.

91 In contrast, a CFD provider observed moderate reductions in client activity, in line with what they anticipated. Another CFD provider indicated that there has been no material impact on their business (both as an issuer and distributor) other than a minor impact on revenue, which was offset by an increase in trading volume by wholesale clients and new clients who joined to trade lower risk products, such as exchange-traded funds and equities.

Ongoing regulatory costs

92 Two of the respondents anticipate ongoing increased legal and compliance costs, skilled compliance staff costs, high research and development maintenance costs as well as facing difficulties sourcing adequate professional indemnity insurance because they have been deemed high risk and wholesale clients are not covered by the Australian Financial Complaints Authority (so disputes may require court resolution).

93 One CFD provider anticipates $150,000 in ongoing costs to maintain compliance with the CFD Order, while another anticipated associated costs of between $120,000 and $180,000 per year in staffing and technical requirements.

94 In contrast, three other CFD issuers did not anticipate material ongoing costs, with one noting that staff resourcing is a fixed cost which would have been incurred anyway and one noting no additional ongoing costs.

95 None of the submissions from CFD issuers expected there would be significant costs incurred to 'unwind' the CFD Order if it was not extended.

ASIC's response

We acknowledge that there would be ongoing regulatory costs and other business impacts from extending the CFD Order.

Our review has supported our expectation that the CFD Order would significantly impact CFD issuers' revenue, and that this would be disproportionately more for CFD issuers who had been offering higher leverage ratios. The gross notional value of CFDs issued to retail clients reduced 85% from $4 trillion to $596 billion on average per quarter due to the leverage ratio limits and the decline in active retail client accounts. This would have reduced the amount of spread revenue earned by CFD issuers. While the average number of active Australian retail client accounts moderately increased (4.7% higher on average in the two quarters after the Effective Date compared with the four quarters prior), there was a significant decline in foreign retail client accounts. We anticipated this decline as we had observed a significant increase in foreign retail clients trading with Australian CFD issuers after leverage ratio limits were implemented in other jurisdictions, including the United Kingdom and EU member states. Our targeted survey found that six of the 10 CFD issuers surveyed had re-papered approximately 50,000 foreign retail clients to offshore subsidiaries (typically in jurisdictions where restrictions similar to the CFD Order do not apply).

In balancing the impacts of the CFD Order with the aim of reducing significant detriment to retail investors, we remain of the view that the net benefits to consumers and additional regulatory benefit from improved trust and confidence in the Australian financial system and economy over time outweigh the business impact of the CFD Order.

We consider that the CFD Order is operating effectively and efficiently. The aims of the CFD Order are being achieved in an efficient, least-cost way, evidenced in part by consistency between the measures in the CFD Order and CFD regulations in force in other jurisdictions (see, for example, a comparison of leverage ratio limits in Table 2 in Appendix 1).

Further, we note that the actual implementation costs of the CFD Order are considerably lower than were estimated before it was made and ongoing costs have reduced in the Second Quarter as CFD issuers' arrangements to comply with the measures in the CFD Order are bedded down. We expect this trend in ongoing costs will continue.

Competition impact of extending the CFD Order

96 We sought feedback on whether the CFD Order has had an effect on competition in the financial system and what effects are likely if the CFD Order is extended.

97 One submission stated that the CFD Order has created a situation where a large number of platforms are competing for a smaller number of clients which will likely reduce competition in the longer term resulting in more Australian traders using offshore platforms.

98 Another CFD issuer stated that an inappropriate balance has been struck as the CFD Order has had a significant impact on their business, the industry and competitiveness in the Australian financial system.

99 ACFDFXA's submission states that they are concerned that the industry is being treated differently from other financial services, noting that they are already subject to many regulatory requirements that other industries do not have (such as CFD-specific net tangible assets requirements, enhanced disclosure under Regulatory Guide 227 *Over-the-counter contracts for difference: Improving disclosure for retail investors* (RG 227), retail derivative client money reporting requirements, and CFD-specific provisions for classifying customers as 'wholesale clients'). They are also concerned that there is no similar speculative product available to trade cost-effectively in high volume for retail investors and that issuers would be significantly disadvantaged if the wholesale client test changes.

Note 1: Class Order [CO 12/752] *Financial requirements for retail OTC derivative issuers* contains financial requirements for AFS licensees for OTC issuers of CFDs and margin foreign exchange.

Note 2: For the purpose of classifying a retail client for s761G, reg 7.1.22AA of the *Corporations Regulations 2001* provides that the $500,000 limit does not apply to

> CFDs—otherwise a $1,000 margin deposit on a foreign exchange CFD at 500:1 leverage (prior to the CFD Order) would give a client an exposure of $500,000, and would be enough to classify them as a wholesale client under the value test in s761G(7)(a).

100 Another CFD issuer believes that becoming a CFD broker is less attractive and an extension of the CFD Order may lead to a reduction in existing businesses competing locally as brokers move to expand their businesses offshore.

101 In contrast, a CFD provider submitted that it does not believe the CFD Order has had a material impact on competition within the financial system. Another CFD provider responded that they welcome the opportunity to compete on elements such as the quality of service, platform functionality and product, rather than leverage, which they believe is detrimental to client outcomes.

ASIC's response

Based on the feedback received we consider there is no significant effect on competition in the financial system as a result of the CFD Order.

Further, we did not observe any material effect from the CFD Order on underlying financial markets.

We note that if the CFD Order is extended:

- CFDs would continue to be available for acquisition by retail clients with enhanced consumer protections in place to reduce harm suffered by retail clients. This means that retail clients would continue to have access to these products which they can use for trading, investment or risk management purposes. There has not been a material change to the number of licensed CFD issuers in the Australian market; and
- aligning leverage ratio limits in Australia with restrictions in overseas jurisdictions such as the United Kingdom and the European Union (see Table 2 in Appendix 1) helped to address international competitiveness concerns.

We are further of the view that there is no other significant effect likely if the CFD Order is extended as proposed.

Length of extension

102 We also sought feedback on whether the CFD Order should instead be extended for set periods of three or five years until 1 April 2031 (when the CFD Order sunsets). Most respondents to CP 348 did not express a view on this point in their submissions.

103 We received feedback from seven stakeholders in support of extending the CFD Order until it is revoked or sunsets on 1 April 2031 in the interest of regulatory certainty for the industry.

104 One respondent submitted that a 10-year extension is not warranted because the period the data relates to is too short. Another submission noted that the European Securities and Markets Authority (ESMA)'s equivalent power to introduce product intervention measures is for a period of three months with an extension for a further three months and is of the view that data taken from a period of at least 12 months should be used.

ASIC's response

On balance, having considered the consultation feedback and the significant reduction in retail client detriment we have observed, we consider it is appropriate to extend the CFD Order for a period of five years to the end of 23 May 2027. We consider this period is appropriate because it:

- allows the CFD Order to continue to operate to reduce the risk of significant detriment to retail clients resulting from CFDs;
- provides regulatory certainty for CFD issuers and retail clients;
- provides an adequate timeframe for consideration as to whether the protections should be extended further prior to the expiry of the CFD Order; and
- balances the additional regulatory burden associated with more frequent data gathering and consultation on further extensions.

Other jurisdictions with equivalent restrictions (such as the United Kingdom and the European Union) have demonstrated that these types of restrictions have been effective over a multi-year period. In these jurisdictions, temporary product interventions have been made permanent. We have continued to observe significant improvements in a number of key metrics and indicators of retail client detriment from CFD trading in the Effective Period and we expect this will continue if the CFD Order is extended.

We do not consider that a short-term extension of the CFD Order is necessary or appropriate. It is likely that a shorter extension would create unnecessary regulatory uncertainty and additional regulatory burden on CFD issuers and retail clients relating to ongoing regulatory data capture and consultation each time temporary extensions approach expiry.

Appendix 1: Review of measures in other jurisdictions

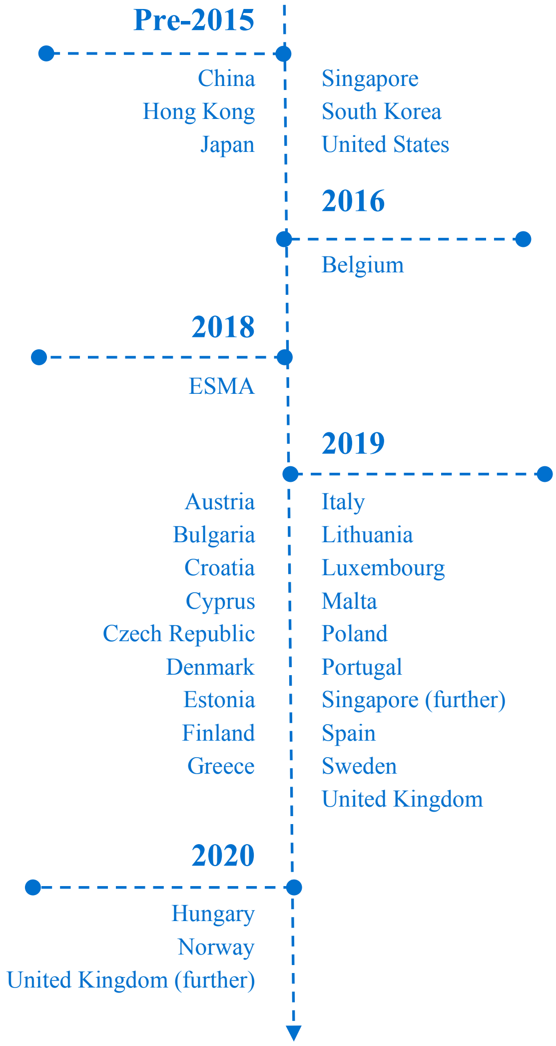
105 Leverage ratio limits and other product intervention measures have been imposed in a number of jurisdictions in recent years.

106 We have reviewed and reconfirm that the leverage ratio limits in the CFD Order are in line with the measures in force in a number of other jurisdictions, as summarised below.

Table 2: Comparison of CFD retail client leverage ratio limits

Asset class	Proposal in CP 322	CFD Order	ESMA & UK	Singapore	Japan	Hong Kong	South Korea	United States
FX (major pairs)	20:1	30:1	30:1	20:1	25:1	20:1	10:1	50:1
FX (minor pairs)	20:1	20:1	20:1	20:1	25:1	20:1	10:1	20:1
Indices (major)	15:1	20:1	20:1	20:1	5:1 to 50:1	Not permitted	Not permitted	Not permitted
Indices (minor)	15:1	10:1	10:1	20:1	5:1 to 50:1	Not permitted	Not permitted	Not permitted
Gold	20:1	20:1	20:1	5:1	5:1 to 50:1	Not permitted	Not permitted	Not permitted
Commodities (excl. gold)	10:1	10:1	10:1	5:1	5:1 to 50:1	Not permitted	Not permitted	Not permitted
Shares	5:1	5:1	5:1	5:1 to 50:1	5:1 to 50:1	Not permitted	Not permitted	Not permitted
Crypto assets	2:1	2:1	2:1 in EU Banned in UK	5:1	5:1 to 50:1	Not permitted	Not permitted	Not permitted

Figure 4: Timeline of CFD product interventions globally



Appendix 2: Accessible versions of figures

107 This appendix is for people with visual or other impairments. It provides the underlying data for the figures in this report.

Table 3: Total profits and losses of retail client accounts

Time period	Value of profits	Value of losses
1 Apr 2020 – 30 Jun 2020	$363m	- $956m
1 Jul 2020 – 30 Sep 2020	$307m	- $869m
1 Oct 2020 – 31 Dec 2020	$506m	- $593m
1 Jan 2021 – 28 Mar 2021	$369m	- $611m
29 Mar 2021 – 30 Jun 2021	$156m	- $177m
1 Jul 2021 – 30 Sep 2021	$141m	- $186m

Note: This table shows the data contained in Figure 1.

Table 4: Changes in number of profit-making and loss-making retail client accounts

Time period	Profit-making accts	Loss-making accts
1 Apr 2020 – 30 Jun 2020	160,802	346,133
1 Jul 2020 – 30 Sep 2020	175,185	342,290
1 Oct 2020 – 31 Dec 2020	221,733	301,888
1 Jan 2021 – 28 Mar 2021	188,541	317,856
29 Mar 2021 – 30 Jun 2021	178,947	179,970
1 Jul 2021 – 30 Sep 2021	115,990	142,200

Note: This table shows the data contained in Figure 2.

Table 5: Retail client accounts experiencing at least one margin close-out

Time period	Retail Australian	Retail foreign
1 Apr 2020 – 30 Jun 2020	40,185	97,390
1 Jul 2020 – 30 Sep 2020	35,296	94,727
1 Oct 2020 – 31 Dec 2020	31,226	78,315
1 Jan 2021 – 28 Mar 2021	35,701	56,990

Time period	Retail Australian	Retail foreign
29 Mar 2021 – 30 Jun 2021	12,103	5,487
1 Jul 2021 – 30 Sep 2021	9,936	2,489

Note: This table shows the data contained in Figure 3.

Appendix 3: List of non-confidential respondents

- Australian CFD and FX Association
- AETOS Capital Group Pty Ltd
- Bell Potter Securities Limited
- CHOICE
- Eightcap Pty Ltd
- FairMarkets Trading Pty Ltd
- IG Australia Pty Ltd
- International Capital Markets Pty Ltd
- Pepperstone Group Limited
- PLUS500AU Pty Ltd
- Saxo Capital Markets (Australia) Limited
- StoneX Financial Pty Ltd
- Abdul Jameel
- Alan Downie
- Colin Elvey
- James Feng
- James Robb
- James Spilsbury
- Khoa Nguyen
- Luciano Damico
- Matt
- Michael Sparks
- Nick Hardie
- Pal Karu
- Peter Blake
- Peter Furner
- Rod Fredericks

Key terms

Term	Meaning in this document
active client account	A CFD trading account with at least one trade or an open position 'marked-to-market' during a relevant quarter
active retail client account	An active client account that is categorised as a retail client
active wholesale client account	An active client account that is categorised as a wholesale client
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act Note: This is a definition contained in s761A.
ASIC	Australian Securities and Investments Commission
ASIC Act	*Australian Securities and Investments Commission Act 2001*, including regulations made for the purposes of that Act
Australian resident	Includes: (a) a body corporate incorporated or carrying on business in Australia; (b) an Australian citizen; or (c) an individual ordinarily resident in Australia
Australian retail client or Australian retail client account	A retail client or client account that is (or is owned by) an Australian Resident
Australian wholesale client or Australian wholesale client account	A wholesale client or client account that is (or is owned by) an Australian Resident
CFD or contract for difference	A leveraged derivative contract that allows a client to speculate on the change in value of an underlying asset
CFD Order	*ASIC Corporations (Product Intervention Order—Contracts for Difference) Instrument 2020/986* A product intervention order imposing conditions on the issue and distribution of CFDs to retail clients

Term	Meaning in this document
CFD trading account	A trading account that a client has with the CFD issuer, through which the client can place orders to acquire and dispose of CFDs
Corporations Act	*Corporations Act 2001*, including regulations made for the purposes of that Act
CP 348 (for example)	An ASIC consultation paper (in this example numbered 348)
Effective Date	29 March 2021, being the date that the measures in the CFD Order took effect
Effective Period	The period from 29 March 2021 to 30 September 2021
First Quarter	The period from 29 March 2021 to 30 June 2021
Foreign Resident	Any person or body corporate who is not an Australian Resident
foreign retail client or foreign retail client account	A retail client or client account that is (or is owned by) a Foreign Resident
foreign wholesale client or foreign wholesale client account	A wholesale client or client account that is (or is owned by) a Foreign Resident
loss-making account	A client CFD trading account where the net equity (plus any sums withdrawn and minus any deposits made) at the end of a quarter is less than the net equity at the beginning of the quarter
OTC	Over the counter
profit-making account	A client CFD trading account where the net equity (plus any sums withdrawn and minus any deposits made) at the end of a quarter is greater than the net equity at the beginning of the quarter
retail client	Has the same meaning as defined in s761A of the Corporations Act
RG 227 (for example)	An ASIC regulatory guide (in this example numbered 227)
Second Quarter	The period from 1 July 2021 to 30 September 2021
wholesale client	Has the same meaning as defined in s761A of the Corporations Act

