



FINSA PTY LTD FEEDBACK TO CONSULTATION  
PAPER 322: Product intervention: OTC binary options  
and CFDs

***Prohibition on the issue and distribution of binary options to retail clients***

***Proposal***

*E1 We propose to exercise our product intervention powers in Pt 7.9 of the Corporations Act to make a market-wide product intervention order, in force for 18 months, which prohibits the issue and distribution of binary options to retail clients and requires that existing retail clients are notified of the terms of the order. We propose that the product intervention would take effect 10 business days after the day on which the legislative instrument is registered.*

**Finsa Pty Ltd (Finsa) does not offer Binary Options nor has it ever thought to do so. Accordingly, it is not best placed to answer the questions on this aspect of the Consultation Paper (CP) although it is aware that the misleading marketing actions of Binary Options providers have led to a substantial number of client complaints across the world. It is unfortunate that the CFD industry is tarred with the same brush as this particular product which seems to be the main source of discontent among clients.**

*E1Q1 Do you agree with our proposal to make a market-wide product intervention order which prohibits the issue and distribution of binary options to retail clients? If not, why not? If you disagree that binary options have resulted in, and are likely in future to result in, significant detriment to retail clients, please provide evidence and data in support of your view.*

**Agree.**

*E1Q2 Do you agree with our proposal that the order would remain in force for a period of 18 months? If not, why not?*

**Agree.**

*E1Q3 Do you agree that our proposed delayed commencement of the order is appropriate, balancing the time it will take to implement the order and the nature, likelihood and extent of the significant consumer detriment? If not, what is an appropriate period?*

**Agree.**

*E1Q4 Do you agree with our identification of the effects that making the proposed product intervention order will have on competition in the financial system? If not, why not?*



**Agree.**

## **Imposing certain conditions on the issue and distribution of CFDs to retail clients**

### **Proposal**

*F1 We propose to exercise our product intervention powers in Pt 7.9 of the Corporations Act to make a market-wide product intervention order, in force for 18 months, which imposes Conditions 1–8 (set out in Table 5) on the issue and distribution of CFDs to retail clients and requires that existing retail clients are notified of the terms of the order. The order and Conditions 1, 3, 4 and 5 (except trading platform risk warnings) will take effect 20 business days after the day on which the legislative instrument is registered. All other conditions will take effect three months after the day on which the legislative instrument is registered.*

**Whilst Finsa broadly agrees with the majority of proposals we are concerned that the leverage limits will not address the poor conduct of CFD issuers towards retail consumers outlined in the CP and in fact may increase the harm to these clients.**

**Our main observation is that the harm to clients generated by the industry is materially caused by unregulated, unlicensed providers and not the regulated population and we feel that capping leverage will merely drive clients to entities operating outside of the regulatory environment where they will be directly exposed to entities which are not subject to ASIC oversight, or potentially no regulatory oversight at all.**

**ASIC's key responsibility must be to protect the retail client. If leverage restrictions drive clients into seeking higher leverage alternatives, as has been the case with European clients since the leverage restrictions were imposed in that jurisdiction in August 2018, it would not be a good outcome for the client, the provider nor ASIC as the retail client would be less protected.**

**ASIC will not be able to nullify the demand for high leverage with the current proposals, the industry is too well established to achieve that, it will just lead to the industry going 'underground' and away from their important oversight. Finsa agrees that changes are needed to address the poor conduct within the industry but, rather than distance itself from the problem and cause Australian clients to find overseas alternatives, it believes ASIC has a good opportunity to strike a sensible medium with the proposed changes.**

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*F1Q1 Do you agree with our proposal to make a market-wide product intervention order which imposes Conditions 1–8 (set out in Table 5) on the issue and distribution of CFDs to retail clients? If not, why not? If you disagree that CFDs have resulted in, and are likely in future to result in, significant detriment to retail clients, please provide evidence and data in support of your view.*

## **1. Leverage ratio limits**

*Minimum initial margin requirements on CFDs issued to retail clients are applied such that leverage ratios offered to retail clients do not exceed the following limits at the time of issue:*

- 20:1 for CFDs over currency pairs or gold;
- 15:1 for CFDs over stock market indices;
- 10:1 for CFDs over commodities (excluding gold);
- 2:1 for CFDs over crypto-assets; and
- 5:1 for CFDs over shares or other underlying assets.

*The leverage ratio limits take into account any leverage inherent in an underlying reference asset (e.g. a CFD on a futures contract, an option contract or a leveraged exchange traded fund).*

**The fundamental goal of the proposals must be to protect the Australian retail client. Finsa believes that the proposed leverage changes will be the ultimate driver for clients to look for higher leverage options overseas. Compromise in this area is an absolute must for ASIC to achieve its main objective.**

**Finsa is not advocating unlimited leverage. Subject to the asset class and associated volatility, restrictions on leverage are welcome but need to be finely balanced to ensure that the client is not driven overseas but is protected from having trades automatically closed out in very short timespans due to limited funds on account.**

**When the ESMA leverage restrictions came into force in August 2018, our Customer Services team in the UK received multiple calls from clients demanding higher leverage levels or requesting information on how they can access higher leverage. When we informed them that we were not able to facilitate requests, it was common for clients to advise us that they will be looking elsewhere to trade. A large number requested to opt-up to be considered as a professional investor even though very few were eligible for such professional client status. Such behaviour illustrates retail clients' desire for high leverage and the same will undoubtedly be the case for Australian clients if ASIC impose the levels proposed in the CP.**

**Furthermore, following the ESMA changes, our Customer Services team in Australia witnessed a material increase in non-solicited approaches from UK and EEA region clients requesting to sign up to our ASIC-licensed entity despite the fact that our Australian**



entity does not provide any direct marketing into the UK and Europe and our UK customer Services team does not direct clients to the Australian business even if they ask for higher leverage.

As it is clients themselves who are insisting on higher leverage levels, we are concerned that capping leverage as proposed in the CP will merely drive clients to entities that are not subject to the regulatory oversight of ASIC and may not be required to have any of the other protections in place to protect clients from losses (such as Client Money held in segregated accounts, holding adequate capital, access to a compensation scheme, etc etc).

In the worst-case scenario, the desire for higher leverage may drive clients to entities that are completely unregulated, exposing them to the very harm that international regulators have said is the primary cause of the largest investor losses. A sensible approach is required to avoid such a scenario.

So, what do we suggest? Finsa is an advocate of the proposed Industry Standard and largely agrees with the leverage proposals made by that body with a few minor alterations. To achieve a fine balance it would suggest the below:

<b>FX, Indices</b>	<b>100:1</b>
<b>Commodities</b>	<b>50:1</b>
<b>Equities</b>	<b>20:1</b>
<b>Cryptos</b>	<b>2:1</b>

Finsa believes the above would prevent Australian clients looking at overseas alternatives to trade and would enable ASIC to monitor the product more closely and subsequently protect the client more effectively.

## ***2. Margin close-out protection***

*The terms of a CFD offered to a retail client must provide that, if a retail client's funds in their CFD trading account fall to less than 50% of the total initial margin required for all of their open CFD positions on that account, a CFD issuer must, as soon as market conditions allow, close out one or more open CFD positions held by the retail client.*

**Finsa agrees with this initiative and has already implemented it across its two Australian brands, TradeDirect365 and Core Spreads Australia.**



### **3. Negative balance protection**

*The terms of a CFD offered to a retail client must limit the retail client's losses on CFD positions to the funds in that retail client's CFD trading account.*

**Finsa agrees with this initiative and has already implemented it across its two Australian brands, TradeDirect365 and Core Spreads Australia.**

### **4. Prohibition on inducements**

*A person must not, in the course of carrying on a business, give or offer a gift, rebate, trading credit or reward to a retail client or a prospective retail client as an inducement to open or fund a CFD trading account or trade CFDs.*

*However, the prohibition would not cover information services or educational or research tools.*

**Finsa agrees that the certain inducements attract clients that are not appropriate for the product and should be outlawed as proposed by the CP such as welcome bonuses that require the client to actively trade to meet the release criteria.**

**However, Finsa believes that a Loyalty scheme which simply rewards a client for continued custom and has no release criteria, similar to schemes offered in many other industries, should be excluded from the changes proposed by ASIC.**

### **5. Risk warnings**

*A CFD issuer must provide a prominent risk warning to retail clients and prospective retail clients on all account opening forms, PDSs, any trading platforms maintained by the CFD issuer and websites relating to CFD trading which, at a minimum:*

- *includes a warning on the complexity, risks and likelihood of losses; and*
- *discloses the percentage of the CFD issuer's retail clients' CFD trading accounts that made a loss over a 12-month period.*

**Finsa agrees with clear and transparent risk warnings to retail and prospective retail clients to ensure they are well informed of risks of the product. It welcomes the proposal.**

### **6. Real-time disclosure of total position size**

*A CFD issuer must provide real-time disclosure to a retail client, in any trading platforms maintained by the CFD issuer, of the retail client's total position size in monetary terms for all open CFD positions for the retail client's CFD trading account.*

**Finsa has no objection to the proposed, it is an advocate of transparency and welcomes changes that can benefit the client's trading experience.**



### 7. Real-time disclosure of overnight funding costs

*If a CFD issuer charges a retail client funding costs for holding open CFD positions overnight, the CFD issuer must clearly and prominently disclose, in any trading platforms maintained by the CFD issuer, applicable overnight funding costs to the retail client, both as an annualised rate of interest and as an estimated cost expressed in the currency denomination of the CFD.*

**As above, Finsa has no objection to the proposed, it is an advocate of transparency and welcomes changes that can benefit the client's trading experience.**

### 8. Transparent pricing and execution

*A CFD issuer must maintain and make available on its website a CFD pricing methodology and a CFD execution policy.*

*The CFD pricing methodology must explain how the CFD issuer determines its CFD prices, including:*

- *how it uses independent and externally verifiable price sources;*
- *how it applies any spread or mark-up; and*
- *any circumstances under which its CFD prices will vary from the methodology.*

*The CFD execution policy must explain how the CFD issuer deals with clients' offers to trade CFDs and effects CFD trades.*

**As above, Finsa has no objection to the proposed, it is an advocate of transparency and welcomes changes that can benefit the client's trading experience.**

*F1Q2 Condition 2 would require the terms of a CFD to provide that a CFD issuer must close out **one or more** of a retail client's open CFD positions, if the retail client's funds in their CFD trading account fall to less than 50% of their total initial margin required for all of their open CFD positions on that account. Do you agree with this condition or would it be better for clients (and operationally easier) if the CFD issuer is required to close **all** of the retail client's open CFD positions?*

**Finsa agrees with the Condition as proposed. By stating a CFD issuer must close out 'one or more' of a retail client's open CFD positions, the option lies with the provider as to whether a select few positions are closed or whether all the positions (that can be closed at the time) are closed. This will reduce the technical impact in complying with a specified exact process without impacting the outcome.**

**In response to the closure of 'all' open CFD positions, there would be problem. Where underlying markets for open CFD positions are not open, as may be the case for equity CFDs when the underlying exchange is not open, closure of such positions would require an out of hours closing price to be derived which would be open to interpretation and would inevitably lead to client complaints.**

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*F1Q3 Condition 5 would require a CFD issuer to provide a prominent risk warning on account opening forms, trading platforms maintained by the CFD issuer, websites and the front page of PDSs. Do you agree with this condition? Do you think a risk warning should also be required on all advertising and marketing material?*

**As mentioned above, Finsa agrees with this condition although common sense should prevail when considering the extent to which risk warnings need to be included in advertising and marketing material, particularly when there is limited marketing real estate to work with such as in website banner advertising.**

*F1Q4 Do you agree with our proposal that the order would remain in force for a period of 18 months? If not, why not?*

**Finsa believes the timeframe to be quite lengthy, especially if ASIC discover that some of proposals have the opposite effect than intended, as alluded to with the potential for clients to engage with overseas providers. Finsa believes a rolling 6-month timeframe would be more appropriate for ASIC to assess impact and act accordingly.**

*F1Q5 Do you agree that our proposed delayed commencement of the order is appropriate, balancing the time it will take to implement the order and the nature, likelihood and extent of the significant consumer detriment? If not, what is an appropriate period?*

**No, Finsa does not believe the proposed timeframes are appropriate. The CP proposes substantial changes to leverage which, if implemented, need to be properly communicated, reinforced and digested by clients. Such changes in leverage will inevitably lead to clients having positions auto-closed when the proposals get implemented due to the clients not having sufficient funds on account to meet the new requirements. This in itself will be a detriment to clients and needs to be properly managed with an informative communication plan to clients over time.**

**It is only fair to give clients more warning of the changes as the European regulators provided their operators in giving them 6 months' notice before imposing similar changes. Finsa would consider 3 months to be a more appropriate timeframe than the proposed 20 days, a timeframe which is surely unfair to the client.**

*F1Q6 Do you agree with our identification of the effects that making the proposed product intervention order will have on competition in the financial system? If not, why not?*

**Finsa believes retail clients will be enticed to go offshore if they are not satisfied with ASIC's proposed leverage caps. As a result, any Australian retail client that decides to trade offshore will enjoy**

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**either less or no protection; and therefore ASIC will not have fulfilled its primary objective of protecting the Australian retail client and Australian CFD providers will be worse-off through loss of clientele, which will negatively impact the Australian economy by drastically reducing employment and tax revenue, the latter to the tune of 100s of millions of dollars per year. ASIC can easily avoid this by taking a common sense approach to the proposed leverage changes whilst enforcing all the other proposed protective measures.**