FXCM has provided CFD's to retail clients for over 20 years.

We target marketing minimum wealth restrictions and appropriateness testing to ensure we only take on clients for whom CFD's are appropriate. Our clients undertake the risk of CFD's, have a realistic view of the difficulty of trading CFD's profitability and report a high level of satisfaction with the services we provide.

We share ASIC's desire to improve the standard of behaviour in the CFD industry. We therefore support aspects of ASIC's proposals. Namely standardised risk warnings, a ban on financial incentives, the introduction of proportionate evidence based leverage limits and measures to place an absolute limit on client's losses that are consistent with existing industry and regulatory practices.

We do not, however, agree, that the temporary intervention powers are an appropriate mechanism for the introduction of such measures.

In the narrative that follows we answer the specific questions raised. However in advance of this we feel it is particularly important to make 4 distinct points

1. The proposed Leverage Restrictions are disproportionate

   We support the introduction of leverage restrictions. However the proposed restrictions have been selected with the primary objective of indiscriminately inhibiting the use of CFD's, rather than to exercise any special protection function connected with the impact of CFD transactions fees or of realistic expectations of market volatility in underlying assets However your approach has not appropriately accounted for (i) the potential unintended and counterproductive side effects for CFD's for restrictions (ii) the impact of such restrictions on well informed clients for whom CFD's are a perfectly appropriate trading and hedging tool

2. The proposed protections concerning aggregate margin close-outs and negative balances are overly sophisticated.

   In their proposed format, these measures would be complicated and expensive for firms to implement and difficult for clients to manage or understand. Simple, efficient and compatible solutions to client protection have already been designed and implemented through the provision of previous ASIC regulatory guides and the Corporations Act. .

   FXCM and a number of other responsible CFD firms in Australia have already been providing negative balance protections to retail clients for some time. Similarly, our clients are highly engaged with financial markets and gain a positive utility from the challenge of trading CFDs. Thus, the proposals for aggregate margin-close outs may unduly restrict and hinder their trading experience.

3. The proposed Intervention is opposed by a large number of clients who correctly trade CFD's with responsible firms.

A number of CFD firms contacted clients with an email that objectively described the impact of ASIC proposals and informed them of ASIC's Consultation Process.

These are not the response of naïve or misinformed individuals. There are a minimal number of complaints relating to our firm, and independent surveys on the knowledge and belief of our clients jointly demonstrate that we at FXCM have long known that our client base has a high awareness of the risks of CFD's and of the likelihood of trading CFD's profitably. We urge ASIC to reflect on the wisdom of using sweeping intervention powers in order to address malpractice by certain firms.

4. The Proposed intervention would have a counterproductive consequence.

   A significant number of clients use CFD's to hedge the risk of other investments. ASIC unnecessarily restricts leverage and per position margining preventing these clients from doing so in the future.

   In addition to this the proposed intervention would create a significant opportunity for regulatory arbitrage that is likely to lead to widespread impact. The message from clients that ASIC has received, we assume, have left ASIC in no doubt as to the unpopularity and perceived disproportionality of the proposed measures.

ASIC's proposals represent a huge commercial opportunity for irresponsible firms based outside of AU and Europe. These firms would not impose the contemplated measures and could be expected to invest significantly in marketing in order to alert AU customers of this fact. There is no practical mechanism for National Regulators in other jurisdictions to monitor and prevent non AU firms from directing on line marketing messages at AU clients though ASIC might feel forced to direct significant time and resources in an attempt to do so.

The net result of ASIC's contemplated action, in particular the introduction of leverage restrictions, at the current proposed levels would be that customers would be exposed to the irresponsible marketing, sales and execution practices of firms based beyond the reach of ASIC.

Furthermore, driving a significant proportion of ASIC's consumers towards unregulated non AU firms would undermine the reach and effectiveness of the regulatory measures that ASIC advocates and with which FXCM agree, namely standardised risk warnings, a ban on financial incentives, leverage limits that are proportional and evidenced based measures to place an absolute limit on client losses that are consistent with existing industry and regulatory practices.

ASIC has rightly identified increased minimum margin as a key tool for reducing the risk of CFD's. However, ASIC has overestimated the positive impact and underestimated the potential counterproductive impact of the excessively restrictive approach on informed customers who do not need this level of protection. ASIC is right in general principles: we feel strongly that it needs to act in a more proportionate manner if it is to be proven right in practice.

We urge ASIC to carefully consider these points before deciding to take a future course of action.

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