



**Interactive Brokers Australia Pty Ltd**

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OTC Intermediary Compliance  
Market Supervision  
Australian Securities and Investments Commission  
Level 7, 120 Collins Street, Melbourne, VIC 3000

By email: [Market.Supervision.OTC@asic.gov.au](mailto:Market.Supervision.OTC@asic.gov.au)

Dear Sir, Madam

**Re: CP 322 Product Intervention: OTC binary options and CFDs**

Thank you for the opportunity to provide submissions in respect of ASIC consultation paper 322 (“CP322”) and Attachment 2 to CP322: Draft Instrument (the “Draft Instrument”). In general, we wish to offer our unequivocal support for the exercise of ASIC’s product intervention power to prohibit the issue and distribution of OTC binary options as proposed in CP322. We are also supportive of many of the proposed restrictions on the issue and distribution of Contracts for Difference (“CFDs”), though we have outlined below a small number of items for your consideration, as well as various matters where we would appreciate your clarification on the proposals. For the avoidance of doubt, we have not given any material commentary respecting the proposals related to binary options, as we do not offer these products and we firmly support ASIC’s proposals to reduce the harm caused to retail clients resulting from the use of binary options.

**1. Introduction**

First, by way of background, Interactive Brokers Australia Pty Ltd (“IBA”) and its affiliates (together, “IBKR”) is an online broker that provides trade execution, clearing and custody services to public clients around the world. IBKR does not employ any human “brokers” or “advisors”. All trading in an IBKR customer account is self-directed by the client. Trades are entered by the client or by a person nominated by the client on a computer or mobile device and transmitted over the Internet to IBKR for execution on various exchanges and market centres around the world.

In addition to the trade execution, clearing and custody services in relation to products that are listed on Australian exchanges, IBA also issues and distributes CFD’s over global stock, indices and FX over-the-counter. As such, when an Australian person opens a brokerage account with IBA, they effectively open a single universal account through which it is possible to trade CFDs, as well as other products such as shares, futures and foreign exchange (subject to IBA’s eligibility criteria).

For the convenience of our clients, IBKR's real time credit management system calculates and displays each client's trading risk, available equity and margin requirements across their entire portfolio in their universal brokerage account on a real time basis.

IBA's CFD's operate on an Open Trade Equity model which is a representation of the unrealised profit or loss on the CFD position relative to movements in the current price of the reference underlying, e.g. the real-time price of the stock or futures contract from which the price of the CFD is derived. IBA uses a direct market access approach when a client places a CFD order, in which our systems immediately place a corresponding hedge order (in a manner designed in accordance with best execution obligations) either with an IBKR affiliate, or with our counterparty who in turn places a corresponding hedge trade. If the hedge trade has been filled, our systems confirm the CFD trade with the client - at the exact price that we obtained for the hedge. We do not widen the spread.

We believe that our CFDs, as they are offered today, may readily be used by our clients to make financial investments and/ or manage financial risks, and are already generally in alignment with the proposed product intervention order conditions contained within the Draft Instrument. We welcome the proposals in CP322, as such.

## **2. Our submissions in response to the proposals in section F of CP322:**

### **2.1. 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.**

We agree with the proposal to make the product intervention order imposing conditions 1-8 in the Draft Instrument, subject to the resolution of our comments in this paper.

### **2.2. 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?**

We agree with the proposal to require CFD issuers to close out one or more of a retail client's open CFD positions, in the event that the retail client's *net equity*, as defined in the Draft Instrument, in their account fell to *at least* 50% of the margin required to initially open all of the open CFD positions in the account.

We note that our real time credit management system already generally applies a more conservative policy, such that this 50% threshold is not likely

to be approached in an IBA account in typical market conditions. IBA establishes a maintenance margin requirement based on several factors, particularly the level of risk of each underlying asset as well as the degree of diversification present in the portfolio in the client's account. In the event that there is insufficient *net equity* in a client's account to cover the maintenance margin requirements, we are authorised under the agreement with our clients to liquidate all, or part of, the assets held in the account, or otherwise to close open positions, in order to eliminate the margin violation. Our observation of the impact of this policy in Australia and overseas has demonstrated that it is an effective way to mitigate the risk of a single client suffering large losses in their account and consequently being left with a debit balance, and in mitigating the counterparty risk that might otherwise be faced by our other clients.

Notwithstanding the foregoing, we consider that it may potentially be punitive to clients should a CFD issuer be required to close all of the open CFD positions in a retail client's account in the event that merely one of several open CFD positions caused 50% of the aggregate initial margin to be consumed.

Instead, we think that it is preferable to permit the CFD issuer and/or the client to retain some discretion as to which of the open CFD positions ought to be closed, and in which order, given that some of the open CFD positions maintained by a client might be profitable investments or else might still serve a valid risk management purpose, notwithstanding that one or more no longer do so.

**2.3. 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?**

Whilst we agree with this condition in principle, we note that compliance with this condition in respect of *trading interfaces* would take a considerable amount of programming effort and would contribute more "noise" to a screen that already contains many other pieces of important information (not just those related to CFDs), especially in the case of client's that trade using a mobile device. Consequently, we believe risk warnings placed on trading interfaces each time a client places an order may potentially cause undue confusion and frustration for the client. It may be more appropriate to allow the client to opt out of the applicable risk warning(s) after the client's initial review of the applicable warning as such.

We do think that it is appropriate for risk warnings to be required to be placed on all advertising and marketing materials, including web pages, *which include subject matter related to CFDs*. Accordingly, in the case that a CFD Issuer is advertising its other products or services, but the relevant materials do not mention its CFDs, then it would not seem sensible to include a risk

warning related to CFDs therein. However, advertisements or marketing materials that refer to CFDs ought to include appropriate risk warnings.

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

We would be supportive of the Draft Instrument being crystalized into law without any limiting period / without a sunset clause, on the basis that we consider the proposals to meet an important consumer protection and market integrity objective.

**2.5. 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?**

In general, we agree with the proposed time delays until commencement of each condition, subject to some clarification or guidance from ASIC in respect of the matters that we have raised herein, in order that it is clear to CFD issuers precisely what needs to be done prior to commencement.

**2.6. 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?**

We agree with ASIC's identification of the effects that making the proposed product intervention order will have on competition in the financial system.

IBA believes that imposing the conditions contained within the Draft Instrument – particularly the proposed leverage ratio limits – would facilitate a level playing field across the Australian market and, importantly, align the practices of Australian CFD providers with the recently enhanced international standards noted in CP322. As discussed above, we consider that IBAU's CFD offering is already in line with the substantive conditions proposed by ASIC in the Draft Instrument, as our CFD offering and the IBKR model generally emphasises client protection, stability and security.

**3. We request that ASIC formally clarify its position on the below item related to the Draft Instrument:**

**3.1. How should CFD Issuers comply with the requirement to disclose the overnight funding rate in the case that the rate is not known in advance?**

In respect of condition 7, while we have no objection to the principle of improving disclosure of the applicable funding costs, we believe that it would not always be logistically possible to provide a complete disclosure of the applicable funding costs for holding a CFD position open overnight, in the case that the CFD issuer is not aware of the applicable benchmark rate(s) until the following day. For example, in the case of our Stock CFD's, we do

not offer fixed rate funding; rather, the contract interest payable on a certain open CFD position is determined by a balance-tiered pricing structure which is variable by currency (although not all available currencies have tiered structures). Accordingly, in practice, interest is calculated daily on all open CFD positions in a client's account as at the close of the previous trading session and is applied as a blended rate based on notional balances. In respect of our Index CFDs, the overnight financing rate is the benchmark +/- 1.5% and, in respect of our Forex CFDs, the overnight funding rate is calculated based on the benchmark rate differential plus a spread. In these circumstances, where it is not possible to express the overnight funding costs as an annualised rate of interest up front (due to the rate being tiered and/ or the fact that the benchmark rate is not known until the following day), we instead currently disclose the methodology used to determine the applicable funding rates in our PDS and on our website<sup>1</sup>, and publish a complete and prominent listing of the resultant rates on our website.

We believe that this is compliant with the overarching aim of providing retail clients with as much available information as possible with regard to the applicable funding costs for holding a CFD position open overnight.

Alternatively, if ASIC was of the opinion that this would be insufficient to attain compliance with the Draft Instrument, we respectfully request that ASIC confirm that disclosure of the prior day's rate – as a reference rate - would be a permissible substitute, given that this would appear to be the only other solution available to us

We welcome the opportunity to discuss these matters with your further, and we look forward to your response on the matters to which we have sought confirmation or clarification.

Yours sincerely,

**Darren Halse**  
Managing Director  
Interactive Brokers Australia Pty Ltd.

**Matthew Kuenzle**  
Head of Legal and Compliance  
Interactive Brokers Australia Pty Ltd.

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<sup>1</sup> Specific details regarding the interest and financing methodology applying to the various CFDs are available on our website at this link:

<https://www.interactivebrokers.com.au/en/index.php?f=39726&p=cfds1>