



26 August 2019

OTC intermediary Compliance
Market Supervision
Australian Securities and Investments Commission
Level 7 120 Collins Street
Melbourne VIC 3000
(Market.Supervision.OTC@asic.gov.au)

Dear Sir/ Madam,

Thank you for the opportunity to provide feedback to inform your decision making in relation to the proposed product intervention: OTC binary options and CFD's. We welcome the proposal in relation to these products as it addresses concerns raised by clients of our services.

About us

Connect Health & Community (formerly known as Bentleigh Bayside Community Health).

Connect Health & Community is a not for profit community health organisation that provides a comprehensive range of services. These services include Dental, Physiotherapy, Dietetics, Podiatry, Hydrotherapy, Speech Pathology, Gambler's Help, Community Transport and Activity Programs to name but a few.

Connect Health & Community has a strong tradition of commitment to community participation via volunteering, with an increasing emphasis on consumer representation at all levels across the organisation. It has been in operation for 42 years.

We receive funding from Federal, State and Local Government and work in partnership with other community agencies.

Gambler's Help Southern (GHS) is program of Connect Health & Community and has maintained continuous funding since 1995. GHS is the largest problem gambling service provider in Australia. It encompasses 25% of the Victorian population, operating from 13 geographically, demand led sites across the Southern Metropolitan Region of Melbourne and managed centrally from its corporate office at 2A Gardeners Road, Bentleigh East Vic. 3165.

Gambler's Help Southern provides the following specialist program streams:

- Therapeutic Counselling
- Financial Counselling
- Community Engagement

- Venue Support
- Specialist Integrated Services Activities

The information provided in this submission speaks to the professional learnings of our staff and their observations from working with a very broad cross section of our community for over 4 decades. .

We invite you to contact Brian Kirk, Service and Business Development Manager, Gambler's Help Southern [REDACTED] [REDACTED] to discuss any aspect of this submission and our recommendations.

Brian Kirk
Service and Business Development Manager
Connect Health & Community

Submission

Our gambling therapeutic and financial counsellors are increasingly seeing clients who are impacted by gambling harm due to the use of these investment products.

We have over the last 6 years seen several clients impacted by losses on this form of speculative investment predominantly CFDs.

Client A

Commenced using a CFD investment platform to invest having been self excluded from traditional gambling venues and products. He was entering in to trades which were broadly equal and opposite where by gains were often offset by losses as a result his costs were arising due to the fees and charges associated with purchasing the CFD's and the management of trading market movements. The volume of trading saw a redundancy package whittled away. This caused significant financial stress to his household as ordinary living costs were unable to be met. When the client presented to the gambling service at the insistence of his wife this was explained to the client. He was reluctant to believe he wasn't making money as the marketing hype was constantly encouraging more trading and accentuating small profits made, this is similar to what we see when people try to reduce gambling on sports betting sites. The requirement of holding a minimum cash balance of \$100 made it difficult for the client to choose to walk away as there was always money available to trade. Unfortunately there is no self exclusion regime where a client can opt to no longer be involved which requires an end to marketing materials designed to lure the client back in.

Client B

After accessing all available mainstream and second tier finance options the client began to access his Mother's funds for which he was joint Guardian with his brother under a financial power of attorney. His mother suffered from senile dementia with the client living with her as primary carer. The other power of attorney trusted his brother, the client, to act appropriately to care for their mother's funds and did not realise the situation until more than \$360,000 had been squandered on CFD speculation. The thing the client and his brother were most fearful of initially was that the wife of the brother would find out that her husband had failed her mother-in-law and not protected her from the client's gambling behaviour. The client saw no harm in his behaviour as he stated – "I am just accessing my inheritance early"

Client C

Joined an investment company to engage in CFD trading, having been introduced by a third party. After losing some funds, not a large amount, he ceased trading only to be lured back into gambling through a series of grooming exercises by the investment company resulting in huge losses and the voluntary sale of the family home and ultimate collapse of his marriage.

Client D

Operates a small business employing contractors to undertake some of the tasks of the business. The client began gambling in CFDs and states he was initially successful. Further discussion brought to light he was only at break even and when

taking into account operating costs of the trades lost money. He closed this account and then moved to a “more reputable company who took me to lunches and dinners to discuss my trades”. An escalation in his trading saw the client using operating funds for the business resulting in the need to increase his business borrowings from first tier business lenders to stay afloat. Further trading resulted in the client needing to access borrowings outside the mainstream. Arrears on this borrowing resulted in a Magistrates Court summons. At this stage the client has still not told his wife of their financial difficulties as he feels this information would result in the collapse of the marriage.

Client E

Brought into the service by his wife in an almost catatonic state having been sacked from his high level employment with one of the large banks due to his CFD trading while at work. The client had sought borrowings in joint names while working with the bank without disclosing to his wife the debt to which she was exposed. The couple were separated under the one roof both now receiving Centrelink benefits with Department of Human Services Child Protection unit having a watching brief over the safety of the children. The client had escalated the family debt to \$250,000 unsecured and on top of an existing mortgage of \$500,000 against the family home, which was tenanted in an attempt to service the mortgage. It took many hours of intensive counselling intervention both as individuals and jointly as a couple to establish a path forward. While the option was available to the client's wife to have the debts in her name expunged and held solely by her husband it was decided to seek family support to clear the unsecured debts at a reduced full and final amount.

The range of economic violence, elder abuse occasionally physical violence these products have led to being perpetrated by unsophisticated and occasionally almost delusional gamblers on their families is not sustainable. The purveyors of CFDs operate in a similar context to the large gambling firms through offering inducements to continue or return to, “trading”. The only people making money are the firms selling the products.

As indicated in the stories above those impacted by gambling harm include affected others who have seen their retirement savings dwindle as attempts to recover losses result in self managed superannuation fund assets other savings being exposed to increasingly risky products. The challenge this poses for regulators is limiting harms to those without the skills and experience to use these investments while enabling them to continue to be used by those with a genuine need to hedge against currency and market movements. Legislators and regulators have tackled similar issues in the past through the use of sophisticated investor definitions requiring those with limited access to financial resources and knowledge to access these via licenced advisors.

Below is our feedback on the specific matters raised.

[Prohibition on the issue and distribution of binary options to retail clients](#)

E1Q1 - Agree

Given that the market explanatory information uses the terms “bet” and “gambling” in an attempt to give people who seek information via the money smart website a plain English explanation of the product we cannot see the rationale of this product in either the retail or wholesale markets.

The gambling harm of exposure to high risk gambling products is often hidden under the guise of investing. This can put in place a barrier to help seeking as it is often hidden from loved ones who are not aware of losses being incurred until year end reporting is done. People who have exposed their superannuation savings to these investments often have failed to meet reporting obligations in a timely manner in order to disguise the loss.

As this product is akin to gambling we fail to see how it can be used in an wholesale investment context in relation to managing a retail investment pool. E.g. if a person is invested in a retail superannuation fund which is in a high risk investment pool would they expect to have a portion of their money invested in a product which the regulator describes as a “bet”. Most investors would expect this to be expressly disclosed and for there to be stringent governance processes and controls to minimise the risk. There is a risk that people attracted to managing these investment classes are at risk of experiencing gambling related harm. This is inappropriate when investing on behalf of superannuants who are relying on savings for retirement.

Recommendation

We encourage the removal of this product from the Australian investment landscape.

Where there are perceived to be valid reasons for this investment type to be made available to wholesale investors it is recommended that express disclosure of its use in investment pools used to invest retail monies such as superannuation and managed funds expressly disclose this when meeting disclosure obligations.

We would also recommend that these products be regulated as a gambling product and subject to the requirements of a gambling product. This would include:

- *Referrals to gambling harm treatment and prevention*
- *Minimum return pools*
- *Contributions to gambling harm treatment and prevention*
- *Taxation*

E1Q2 - Disagree

The 18 month time frame will see a temporary disruption in the market. Given the nature of the product – this and similar products should be removed from the market place.

Recommendation

It is recommended that the product intervention order be used as a temporary measure while legislators consider the appropriateness of this product in the investment landscape.

E1Q3 - Agree

E1Q4 - Agree

Imposing certain conditions on the issue and distribution of CFD's

F1Q1 - Agree

We have seen a number of clients who were not aware of the credit exposure associated with the trades they were entering into. This left them significantly exposed to market movements.

Recommendation

It is recommended that retail clients undergo a credit check process to determine the level of exposure they can afford. This will then limit access to those with an ability to pay for the losses they incur or effecting a hedge to protect against market movements for currency and commodities. By limiting trades to those which fall within approved exposure limits the risk of a family losing a significant asset which they can ill afford is reduced.

The increased disclosures and checks involved with determining credit exposure will acts as a deterrent for those with limited access to capital and credit and highlight the risks being undertaken. Where the assets are jointly held all parties exposed to risk will be informed.

F1Q2 - No opinion given

F1Q3 – Agree

Clear disclosures in a readable font should outline the risks to product users.

F1Q4 – Disagree

The 18 month time frame will see a temporary disruption in the market. During this time it is necessary that the regulator have the opportunity to gain an understanding of the impact of the change on investor behaviour.

Recommendation

It is recommended further time be provided to enable the regulator to obtain sufficient market data and understanding to make an informed decision and propose a legislatively supported measure.

F1Q5 – Agree

F1Q6 – Agree

Further comments

It is advised there is a risk that the negative balance protection may be undermined by product rules requiring account top ups rather than a closing of positions.

Recommendation

It is recommended ASIC undertake surveillance activity to ensure this is not undermined by contrary product terms.