29 November 2021

By Email: Market.Supervision.OTC@asic.gov.au

Retail Complex Products and Investor Protection
Market Supervision
Australian Securities and Investments Commission

GPO Box 9827
Brisbane QLD 4001

Level 7, 120 Collins Street,
Melbourne, VIC 3000

Dear Sir/Madam,

RE: CP 348 Extension of the CFD Product Intervention Order

AETOS Capital Group Pty Ltd ("AETOS", "we", "us", "our") welcomes the opportunity to comment on the Australian Securities and Investments Commission's ("ASIC") proposal regarding the extension of the CFD Product Intervention Order detailed in its Consultation Paper 348 Extension of the CFD product intervention order. The purpose of this document is to provide the ASIC with our response to the proposal and questions listed out in CP 348.

About AETOS Capital Group

AETOS, an issuer of OTC Contract for Difference ("CFD") and margin forex exchange contracts based in Sydney, provides online CFD trading and relevant services to Australian investors under the authorization of the Australian Financial Services licence (AFSL 313016). The company culture of Fairness, Efficiency and Intelligence has continuously driven AETOS to provide quality financial services to its customers for more than 14 years.

Executive Summary

While we are supportive of ASIC's goal of improving the business behaviour standards across the Australian CFD industry, we do feel concerned on the extension of the CFD order would risk losing the Australian CFD industry due to some strict restrictions imposed by the CFD order, such as the leverage ratio cap to retail clients have fundamentally changed the feature of the CFD product. This change will ultimately force the industry's primary clients, experienced speculative investors, to navigate into other markets elsewhere, such as Non-fungible Tokens (commonly known as NFT), since the altered CFD instrument with low leverage cannot serve for the speculative investment purpose anymore. While the CFD industry is into its mature stage after decades of development, most of the newly emerging markets are currently operating under a vague regulation or have yet to develop a sound regulatory system in place. Retail investors are switching from a well-regulated CFD market to an even higher risk investing area. As an industry stakeholder, we reasonably believe that instead of extending the CFD order in its full range, it's recommended to ease some conditions imposed on retail clients offering while continue to maintain other protection measures, such as negative account balance protection and standardized margin close-out in-place for retail clients.

Please note that AETOS has not elected to respond to every area in which ASIC is seeking a response in CP 348, the feedback provided in this document has been limited to the areas where we believe is meaningful and necessary.

AETOS' Response to CP 348

D1Q1 Do you agree with our proposal to extend the CFD Order so that it would remain in force until revoked? If not, why not? Should the CFD Order instead be extended for a set period of three or five years until 1 April 2031 (when the Product Intervention Order sunsets)?

We share the vision of building a healthy, fair, and efficient financial services industry for Australians, therefore, we acknowledge the appropriate regulatory protections granted for retail investors in respect of negative balance protection and margin close-out protection. We do not, however, agree with the proposed extension of the CFD order in its full form, and recommend ASIC to consider dropping some condition, namely the leverage limits imposed on retail offering, to strike an appropriate balance between reducing the risk of significant detriment to retail clients, versus the impact from the CFD order to the Australian CFD industry and the competition in the Australian financial system.

(i) The leverage ratio limit should be increased.

The leverage cap condition from the CFD order has fundamentally changed the CFD products trading mechanism and makes it unable to meet the speculative needs of its targeted customers anymore. The targeted customers of CFD products are informed speculative investors, who look to invest with an expanded and diversified portfolio. Additionally, they utilize the feature of margin trading, which allows investors to take advantage of a wider range of market movements through a small outlay, to reasonably allocate their investment funds with only using a small portion to trade speculatively. However, with the reduced leverage ratio, the CFD products have lost this unique feature and its competitiveness. Retail investors, who fail to meet the wholesale investor criteria but are still in the need of speculative trading, have gradually switched to other even higher risk markets such as cryptos and NFT as there is no other cost-effective alternative available. Besides the ultra-volatile nature, those markets are yet to develop a sound regulation system. All those facts shadow the investment journeys ahead of those retail clients, whom the regulatory authority is meant to protect now are facing even more risk factors.

(ii) The reduction in the business revenue is unavoidable in the context of the CFD order and the Australian financial system risks losing the whole CFD industry.

Like many other businesses, the mainstream of the CFD industry business revenue is realized from the slight mark-up on the wholesale pricing obtained from liquidity providers. The reduction in leverage ratio has hugely scaled down the notional volume of issued contracts to our customers (we have seen a more than 60% downtrend of issued notional volume contract in our 2021 Q2 and Q3 business compared to 2021 Q1, the last business quarter before the CFD order taking effect), which significantly impact revenue generation during the CFD order period. With a continuously shrinking client base, we anticipate a steady decline of the business in the future. Australia has long been boasted about the diversity, leadership, and competitiveness of its financial industry and the once successful CFD industry was part of that prosperity. Due to strict restrictions imposed by the CFD orders, the industry is now stuck in a dire position where its products are no longer attractive to its targeted investor group anymore due to the loss of its most prominent feature. To lose the whole CFD industry could trigger a ripple effect to the Australian financial system considering total employment opportunities with currently 60 licensed CFD brokers and their third-party partners, including the payment channels, depository institutions and platform technology providers. These jobs are part of the key drivers of the Australian economic recovery in the post-Pandemic era.

(iii) An over-regulation status quo surrounding the Australian CFD industry

Retail investors now are under a stronger protection from other regulatory changes recently imposed on the CFD industry this year. Those newly rolled out regulatory requirements include:

a. Design and distribution obligation, which requests all CFD products issuers and distributors to only distribute the product to the suitable investors, who are normally defined as experienced speculative traders.

b. A much broader definition of financial complaint calls for more efficient and effective remediation taken by the licensee to protect retail investors.

c. Robust anti-hawking restrictions aimed to protect retail investors from unsolicited sales activities across different communication channels.

We are of the view that all of these stronger regulatory protections have essentially kept the CFD products out of the reach of vulnerable investors and made the CFD order no longer necessary.

(iv) Prohibition on inappropriate inducement

We understand ASIC' consideration and acknowledge your authority's efforts to address the inappropriate inducement issue by employing the CFD order. We also agree that inducement is not an appropriate marketing strategy in attracting the most suitable investors as defined in our target market determination.

(v) Standardized margin close-out amount

We are of no objection to the condition and further have already deployed atomization and standardized policy to implement the condition by following the CFD order.

D1Q2 In your view, has the CFD Order been effective to date in reducing the risk of significant detriment to retail clients? Please provide evidence and data in support of your view where possible.

We highly doubt the CFD order is an effective and right way to prevent the retail investors from significant investment detriments. When referring to the outcome from the similar restrictions mandated by ASIC' European counterparties, FCA and ESMA, we found little improvement in retail investors profits ratio. On the contrary, according to the publicly available information posted by our European peers, the loss ratio of retail clients has been fluctuating between a small range between 65%-75% over the last three years, hovering at the same level in comparison to the pre-intervention time. Considering Australia shares very similar social factors with its European countries such as the U.K., we don't believe the intervention measures would lead to a different long-term outcome.

D1Q3 For CFD issuers and distributors, if the CFD Order is not extended, would you change your business model and what costs would that incur?

We do not foresee a great additional cost would be incurred from the suspension of the CFD order. Retail protections such as negative balance forgiveness has long been provided to our clients (both retail and wholesale clients) before the CFD order came into effect. On the contrary, retail investors could have more flexibility to adjust their leverage instrument in accordance with their practical needs should the CFD order not be extended. The major expense relating to maintaining multiple leverage ratio offerings is about the technical server setup, automatization development and policy standardization. Those costs are already budgeted into our existing company expenses to reach full compliance with the CFD orders.

D1Q4 For CFD issuers and distributors, what impact has the CFD Order had on your business? What ongoing impact to your business would you expect if the CFD Order is extended?

As above mentioned in D1Q1, the over-regulation of the CFD order has negatively impacted business performance. The parent group of the company is now of a very conservative proposition to continuously invest further resources to support the business development in Australia.

D1Q5 If the CFD Order is extended, what annual ongoing costs do you anticipate you would incur?

An extra cost is estimated no less than AU dollar 150K would be spent in order to maintain our business in full compliance with the CFD order.

D1Q6 For retail clients of CFD issuers, has the CFD Order changed your trading? If so, please explain how. For example:

The feedback to D1Q6 (a-c) is provided based on our business performance within the relevant timeframe. As we didn't perform a large-scale customer survey to the existing client base, the response to D1Q6 (d-f) were elected not to provide at the current stage.

(a) has the frequency of your CFD trading changed?
The average trading frequency per account has declined 12.5% by quarter after the CFD order came in place.

(b) have you committed more or less margin to CFD trading?
The average amount of deposits in our Australian retail clients trading accounts showed a 25% quarterly growth in the two consecutive quarters following the CFD order taking effect in March this year. Retail investors adapted themselves by funding more investing deposits into their trading accounts to meet the raised margin requirement under the CFD order. However, that uptrend of retail clients' deposits was not observed anymore in 2021 Q3 performance with the stagnation of our business.

(c) have you substituted other investment products for CFDs?
The quarterly growth of funded retail trading account has been observed sliding from 20% before the CFD order period to an average of 5.5% after 29 Mach 2021.

(d) do you use CFDs for hedging other investment risks? If so, what proportion of your CFD trades?
N/A

(e) what impact have financial losses or profits from CFD trading had on you?
N/A

(f) do you consider you would have made higher profits or higher losses if the CFD Order had not been in effect?
N/A

D1Q7 What effects (if any) do you consider the CFD Order has had on competition in the financial system? What effects are likely if the CFD Order is extended?

Please refer to the response to D1Q1.

AETOS is committed to improving the industry standards and we remain open to provide further clarification in regard to assist in this process going forward.

If any further questions regarding this submission, please do not hesitate to contact April Yuan at [redacted].

Yours Sincerely,
April Yuan

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