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Saxo Capital Markets (Australia) Limited - Submission on ASIC CP 348 - Extension of the CFD product intervention order

The purpose of this document is to provide the Australian Securities and Investments Commission ("ASIC") with Saxo Capital Markets (Australia) Limited's response to the proposed extension of the product intervention order on CFDs. This order came into effect on 29 March 2021 of which we have previously expressed our full support on these changes.

Background

Saxo Capital Markets (Australia) Limited (**Saxo**) is part of the Saxo Bank Group. The Saxo Bank Group is a leading trading, investment and technology company, supporting an international client base from our headquarters in Copenhagen and offices in financial centres around the world including London, Singapore, Paris, Zurich, Dubai, Sydney, Hong Kong and Tokyo. Established in 1992, Saxo Bank A/S was one of the first financial institutions to develop an online trading platform for the private investor. Saxo's vision has always been to democratise investment and trading and to facilitate multi-asset trading by providing access to global financial markets, cutting-edge technologies, and industry-leading expertise. We enable clients to trade FX, CFDs, ETFs, stocks, bonds, futures and options.

Saxo's Response to CP348

In line with the requested responses in CP 348, we have outlined our responses below.

ASIC Question	Saxo Response
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)?**	Saxo agreed with ASIC's proposal to extend the CFD Order. We believe it should remain in force until revoked. To extend the order for a set period, such as 5 years, would serve no purpose apart from a degree of uncertainty. The industry has changed since the order was introduced and if an extension was granted, the industry would continue to evolve away from the past over this time, only to have the restrictions lifted at some time in the future. Clients and industry need certainty, then we can all build our businesses around what we know, instead of laying out possible alternatives at some point in the future.
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.**	It is difficult for Saxo to provide evidence of how the Order has reduced client detriment as Saxo had already appreciated that client detriment correlated to higher leverage some years prior, and already adopted a lower leverage risk approach. Saxo's view is that clients should have the opportunity to trade such products without the fear of excessive losses. The primary difference between Saxo's approach prior to the Order, and a condition of the CFD Order, is the negative balance protection. In extreme market conditions, it was possible for a client to make a loss in excess of the balance of their account. Saxo previously took the approach of closing out client positions well before any material losses could be incurred, which frustrated more sophisticated clients who understood the risks and wanted the opportunity to 'ride out' the

ASIC Question	Saxo Response
	volatility.
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?**	The CFD Order is almost identical to the approach used in Saxo's European counterparts, so moving to the Order's leverage levels and negative balance protections was a simple case of replicating the approach in Saxo's European counterparts. As Saxo already had very similar leverage levels imposed by the Order prior to the Order being in place, we would likely keep these levels as they are now. The negative balance protections and other elements of the Order are considered for the benefit of retail clients and consistent with other jurisdictions of the Saxo Group, so it is unlikely we would make any changes.
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?**	There has been no material impact on our business, both as an issuer and distributor of CFD products. We did note, however, a minor impact on revenue, which was offset by an increase in trading volume by wholesale clients and the advantage which Saxo has in its diverse product offering.
D1Q5 **If the CFD Order is extended, what annual ongoing costs do you anticipate you would incur? What other costs do you anticipate you would incur?**	We would not expect any additional ongoing costs. The CFD Order and changes required to comply with the Order have already been implemented into the Saxo business and operating costs.
D1Q6	

ASIC Question	Saxo Response
For retail clients of CFD issuers, has the CFD Order changed your trading? If so, please explain how. For example: **(a) has the frequency of your CFD trading changed?**	(a) Overall there has been a shift away from over-the-counter (OTC) products to exchange-traded products (ETPs), such as Exchange-Traded Funds (ETFs) and Equities. Over the past 24 months in particular, we have seen a gradual move away from CFD-type products, with now over 80% of our new clients requesting to trade ETPs only.
(b) have you committed more or less margin to CFD trading?	(b) We made a change that is consistent with the approach of Saxo's European counterpart, which is to maintain two margin requirements. One is the initial margin, to open the position and the second is the maintenance margin, which enables the client to keep the position open while the margin is being utilised. Once the client reaches 100% utilisation on the maintenance margin, the position is closed and the client make no loss. So in answer to this question, yes Saxo does require additional margin. The maintenance margin gives an approximate level of exposure that Saxo would have allowed previously, which was up to 150%, so this margin structure gives the client a degree of certainty and provides certain protections for Saxo. To further assist the client in managing their margin exposure, Saxo also issues warnings when clients reach 80% and 90% of the maintenance margin utilisation.
(c) have you substituted other investment products for CFDs?	(c) No, there have been no changes

ASIC Question	Saxo Response
(d) do you use CFDs for hedging other investment risks? If so, what proportion of your CFD trades? **(e) what impact have financial losses or profits from CFD trading had on you?** **(f) do you consider you would have made higher profits or higher losses if the CFD Order had not been in effect?**	to other products. (d) No, Saxo does not use CFD for our own hedging. (e) There has been minor impact on our revenue as our clients have rarely made losses in excess of the balance of their trading account; although we consider that the two structured margin requirements would mitigate risks for both Saxo and its clients. (f) If the market had not changed, with an increased movement away from CFD products to ETPs, then Saxo would have seen a small reduction in revenue. As most of our new clients have joined us to trade lower risk products such as ETFs and equities, we have seen an increase in revenue overall.
<u>D1Q7</u> **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?**	Saxo had been pushing for a level playing field across the industry for some time. As Saxo still makes a significant percentage of overall revenue from CFD-type products, consistency across the industry has been good for Saxo. We continue to welcome the opportunity to compete on elements such as the quality of service, platform functionality and product, rather than leverage, which as we know has been proven to be detrimental to client outcomes.

Summary

In Saxo’s submission to CP 322 we provided analysis that proved higher leverage was not good for the retail client, but if the CFD broker was to ‘bet against their clients’ this was a very profitable business model for the broker. Saxo stands by this analysis, as it has been provided to many different regulators, who have also adopted such controls over high risk products such as CFDs.

Previously, Saxo did not differentiate between retail and wholesale clients, as all clients were treated the same. Following the CFD Order, Saxo initiated a structure of allowing a wholesale client to have access to trade these sophisticate products without Saxo imposing the same restrictions placed upon a retail client. Although Saxo does not have a significant number of wholesale clients compared with the total clients who trade CFD products, we have confidence that those who are wholesale and expose themselves to the associated risks, appear to be fully aware of these risks and how best to use these sophisticated products.

Although Design & Distribution (**DDO**) has also gone some way to provide further client protections, there are still weaknesses that prevent DDO from being relied upon as a viable alternative to the CFD Order client protections. For example, in the application of DDO, in the absence of a consistent approach to ensure that a client is in the target market, there is a high reliance placed on complaints data, and as yet the degree of industry compliance with DDO is not fully understood. Industry analysis and commentary would seem to indicate that there is still a lack of compliance with DDO, at least in its entirety.

Given the move away from CFD-type products and the move to more exchange traded products, a submission made on CP 348 from a broker that only deals with such products could give a misleading representation that their reduction in revenue was due to the CFD Order, when in fact it was the general public that were moving away from these products to more traditional financial products. Whether this is the uncertainty of the rapidly changing world we live in or that the public have found the time to do their own research, there has been a definite move away from CFD products for new clients. CFDs have their place, but it is generally in the hands of the more sophisticated and more experiences clients.

With this last point it would be worthwhile for ASIC to consider making changes to the definition of a wholesale client, which as we all know has been in place for over 20 years and is complex in its execution.

Yours faithfully,

Saxo Capital Markets (Australia) Limited

Mark Mansfield
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