



**ASIC**  
Australian Securities &  
Investments Commission

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Dear CEO/Director

**Classification of clients and ASIC Corporations (Product Intervention Order—  
Contracts for Difference) Instrument 2020/986**

With the *ASIC Corporations (Product Intervention Order—Contracts for Difference) Instrument 2020/986 (CFD PIO)* coming into effect on 29 March 2021, the Australian Securities and Investments Commission (ASIC) wishes to reiterate the importance of classification of retail clients and wholesale clients in accordance with ss 761G and 761GA of the *Corporations Act 2001 (the Act)*.

As you know, retail clients are afforded important rights and consumer protections under financial services laws in Australia, including:

- access to the licensee's internal dispute resolution system;
- access to external dispute resolution through the Australian Financial Complaints Authority;
- arrangements to compensate retail clients for loss or damage suffered because of breaches of the licensee's obligations;
- general advice warnings and statements of advice where personal advice is given;
- product disclosure statements and financial services guides;
- rights and protections related to a product intervention order, such as the CFD PIO; and
- from 5 October 2021, the design and distribution obligations will assist retail clients to obtain appropriate financial products by requiring issuers and distributors to have a customer-centric approach to designing, marketing and distributing financial products.

Mis-classification of a retail client as a wholesale client would risk denying the client these important rights and protections. Underscoring their importance, substantial criminal or civil penalties may apply where a person fails to comply with obligations in relation to retail clients.

For example, the maximum penalty for a contravention of a product intervention order is five years imprisonment for individuals and significant

pecuniary penalties of up to \$555 million for corporations (see ss1311, 1311C and 1317G of the Act). In addition, if a court finds that a person has contravened a product intervention order, a retail client may recover the amount of loss or damage suffered because of the contravention. If necessary, the court may also make an order declaring void a contract relating to the financial product entered into by the retail client.

**Upcoming review and ASIC's expectations**

In the coming days, ASIC will commence a review of a sample of licensed CFD issuers' classification of retail and wholesale clients.

We ask you to ensure that your client classification and onboarding procedures accord with the law and that you keep appropriate records to evidence your assessment and classification of any clients as wholesale clients.

We also expect your communications with clients and prospective clients regarding wholesale client classification or wholesale client accounts to fairly balance the consequences of classification as a wholesale client. For example, a client may be misled by a communication that promotes benefits of wholesale client classification but does not caution that certain consumer rights and protections would not apply to the client as a wholesale client.

Finally, if you become aware that you have mis-classified a retail client as a wholesale client and as a result have breached your obligations relating to the retail client, you should consider whether you must lodge a breach report under s912D of the Act. [Regulatory Guide 78 Breach reporting by AFS licensees](#) gives guidance on your obligations to report to ASIC certain breaches of the law and explains how ASIC deals with breach notifications.

If you have any questions in relation to this letter, please contact [market.supervision.OTC@asic.gov.au](mailto:market.supervision.OTC@asic.gov.au).

Yours sincerely



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