



ASIC
Australian Securities &
Investments Commission

CONSULTATION PAPER 362

Extension of the binary options product intervention order

May 2022

About this paper

This paper summarises ASIC's analysis of the impact of our product intervention order banning the issue and distribution of binary options to retail clients.

The paper also sets out our proposal to extend the order so that it will remain in force until it is revoked or sunsets. The proposal is subject to consultation and Ministerial approval.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This paper was issued on 26 May 2022 and is based on the legislation as at the date of issue.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information. We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy and report to the Minister on whether the product intervention order relating to binary options should be extended. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see Section E, 'Regulatory and financial impact'.

Making a submission

You may choose to remain anonymous or use an alias when making a submission. However, if you do remain anonymous we will not be able to contact you to discuss your submission should we need to.

Please note we will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any personal or financial information) as confidential.

Please refer to our [privacy policy](#) for more information on how we handle personal information, your rights to seek access to and correct personal information, and your right to complain about breaches of privacy by ASIC.

Comments should be sent by 20 June 2022 to:

Retail Complex Products and Investor Protection
Market Supervision
Australian Securities and Investments Commission
GPO Box 9827
Brisbane QLD 4001
email: Market.Supervision.OTC@asic.gov.au

What will happen next?

Stage 1	26 May 2022	ASIC consultation paper released
Stage 2	20 June 2022	Comments due on the consultation paper
Stage 3	June – October 2022	<p>Consider all feedback to our consultation paper</p> <p>Prepare a report to the Minister on whether the product intervention order should be extended</p> <p>After considering the report, the Minister may give approval in writing for ASIC to extend the product intervention order</p> <p>If ASIC decides to extend the product intervention order, publish on our website, with the product intervention order, a notice of any decision to extend the product intervention order</p>

A Overview

Key points

In April 2021, we made a product intervention order (Binary Options Order) prohibiting the issue and distribution of binary options to retail clients after finding that binary options have resulted in, and are likely to result in, significant detriment to retail clients.

The Binary Options Order will lapse on 7 October 2022 unless extended.

Based on our analysis, we consider that the Binary Options Order has been effective in reducing the risk of significant detriment to retail clients.

Subject to this consultation, and obtaining the approval of the Minister, we propose to extend the Binary Options Order so that it will remain in force until it is revoked or sunsets.

Binary Options Order

- 1 Binary options are OTC derivatives that allow clients to speculate on the occurrence or non-occurrence of a specified event in a defined timeframe, such as an increase in the price of an underlying asset. The term ‘binary’ illustrates the typical ‘all-or-nothing’ payout structure of binary options.
- 2 On 1 April 2021, we made a product intervention order prohibiting the issue and distribution of binary options to retail clients (see [ASIC Corporations \(Product Intervention Order—Binary Options\) Instrument 2021/240](#)). The prohibition took effect on 3 May 2021.
- 3 We made the Binary Options Order after being satisfied that binary options have resulted in, and are likely to result in, significant detriment to retail clients. The significant detriment to retail clients is described in [Public notice—Product intervention order in relation to binary options](#) (Public Notice) (PDF 141 KB), and summarised as follows:
 - (a) Our reviews in 2017 and 2019 found that approximately 80% of retail clients lost money trading binary options. ASIC found that binary options are likely to result in cumulative losses to retail clients over time because of their product characteristics:
 - (i) the ‘all-or-nothing’ payoff structure, where one of the two possible outcomes for a binary options contract is that the retail client will lose their entire investment amount;

- (ii) short contract duration (the average contract duration of binary options traded with one provider was less than six minutes); and
 - (iii) negative expected returns—that is, the present value of the expected payoff for a binary options contract is lower than the initial investment).
- (b) We estimated that retail clients' net losses from trading binary options were around \$490 million in 2018. The size of the market in Australia subsequently reduced significantly after ASIC issued a warning in April 2019 against providing unlicensed or unauthorised services to clients located in several foreign jurisdictions. We estimated Australian retail clients made net losses of more than \$6.7 million in 2019.
- 4 The Binary Options Order brought Australian practice into line with protections in force in comparable overseas markets. Wholesale clients are not affected by the Binary Options Order.
- 5 The Binary Options Order will lapse on 7 October 2022 unless it is extended. We can extend the Binary Options Order for a period of time, or until it is revoked, by declaration in a legislative instrument with the approval of the Minister.

Assessing the impact of the Binary Options Order

Our approach to analysis

- 6 We have analysed data obtained from five licensed binary options issuers for a 24-month period spanning approximately 13 months before and 11 months after the measures in the Binary Options Order took effect on 3 May 2021 (Effective Date). One of the licensees did not issue any binary options during this period.
- 7 The data we gathered included details of the number of clients, the number of binary options traded, the total consideration paid, and metrics relating to client outcomes such as profit-making and loss-making accounts.

Summary of analysis

- 8 We consider the Binary Options Order is operating efficiently and effectively to reduce the risk of significant detriment to retail clients resulting from binary options.

Significant losses prior to the Binary Options Order

- 9 Prior to the Effective Date, we observed that retail clients incurred significant aggregate net losses trading binary options. In total:
- (a) between 74% and 77% of active retail clients lost money trading binary options in each quarter between April 2020 and the Effective Date (Prior Period);
 - (b) in aggregate, retail client accounts made net losses of \$14 million in the Prior Period; and
 - (c) loss-making retail client accounts made net losses totalling \$15.7 million in the Prior Period, compared with \$1.74 million total net profits of profit-making retail client accounts.

No retail trading of binary options after the Effective Date

- 10 One issuer informed us that in error it issued eight binary options to one retail client on 3 May 2021. These contracts were voided and the consideration was returned to the client. We have excluded these transactions from our analysis.
- 11 Otherwise, no issuer reported the issuance of any binary options to retail clients in the period after the Effective Date until 31 December 2021 (Effective Period).
- 12 As a result of the prohibition, there were no losses (or profits) for any retail client from trading binary options after the Effective Date.

Wholesale client losses

- 13 The Binary Options Order does not apply to wholesale clients.
- 14 A small number of wholesale clients made significant losses in the Prior Period, with more wholesale clients making a loss than profit. This continued after the Effective Date where, on average, 68% of wholesale client accounts made a loss in each of the two full quarters after the Effective Date.
- 15 Very few retail clients were reclassified by licensees as wholesale clients. The quarterly average of active wholesale clients in the full four quarters prior to the Effective Date was 45, compared with a quarterly average of 114 active wholesale clients in the two full quarters after the Effective Date. The quarterly average number of active wholesale clients over the full two quarters after the Effective Date remains 95% smaller than the quarterly average number of active retail clients over the full four quarters prior to the Effective Date.

Proposal summary

- 16 We propose to extend the Binary Options Order so that it will remain in force until it is revoked or sunsets on 1 October 2031. Our proposal is subject to consideration of the feedback to this consultation and obtaining approval from the Minister.
- 17 We remain concerned that binary options do not provide meaningful investment or risk management utility for retail clients because the characteristics of binary options are incompatible with those uses and result in a high likelihood of cumulative financial losses over time.
- 18 Based on our analysis, we consider that the Binary Options Order has been effective in reducing the risk of significant detriment to retail clients resulting from binary options and so should remain in force.
- 19 Further, our analysis of the impact of the Binary Options Order aligns with the experiences of similar regulatory measures in other jurisdictions, including the United Kingdom and the European Union.
- 20 The product intervention power complements the design and distribution obligations. While the design and distribution obligations are intended to improve consumer outcomes, it would not remove the inherent risks of trading binary options due to the particular characteristics of these products. Where ASIC is satisfied that there is risk of significant consumer detriment, the product intervention power can be exercised, as is the case with the Binary Options Order.
- 21 We do not consider that any other alternative policy options (such as imposing disclosure-based conditions on the issue and distribution of binary options of the kind proposed for CFDs in [Consultation Paper 322](#) *Product intervention: OTC binary options and CFDs* (CP 322) but not implemented) would be effective as they would leave the inherent risks associated with trading binary options largely unchanged. As such, we consider any such alternative policy options would likely be ineffective in reducing the risk of significant detriment to retail clients.
- 22 Given our concerns about binary options and our view that the prohibition is operating effectively and efficiently, we consider that extending the Binary Options Order so that it remains in force until it is revoked is preferable to a shorter extension, such as three or five years.

B Binary Options Order

Key points

Binary options are OTC derivatives that allow clients to bet on the occurrence or non-occurrence of a specified event in a defined timeframe.

We found that binary options resulted in, and are likely to result in, significant detriment to retail clients.

From 3 May 2021, our product intervention order prohibited the issue and distribution of binary options to retail clients.

Binary options in Australia

- 23 Binary options are OTC derivatives that allow clients to speculate on the occurrence or non-occurrence of a specified event in a defined timeframe. This can include an event related to movements in the price of a financial product, a market index or an economic event (such as central bank interest rate decisions).
- 24 ‘Over-the-counter’ or ‘OTC’ means that the derivatives are transacted between two counterparties (being the issuer of the derivative and the client), not on an exchange.
- 25 The term ‘binary’ illustrates the typical ‘all-or-nothing’ payout structure of binary options. If the event specified in the binary option occurs, the client ‘wins’ (i.e. the client receives a predetermined cash payout, less any fees and costs). If the event specified in the binary option does not occur, the client ‘loses’ (i.e. the client loses their investment amount, plus any fees and costs).
- 26 Binary options typically have a short-term contract duration. For example, some issuers offered binary options to retail clients with a contract duration of 30 seconds.
- 27 The minimum investment amount to enter into a binary options contract can be minimal—as small as \$10. Binary options issuers may also charge additional fees and costs, such as commission.
- 28 Binary options were often marketed by providers under different names or descriptions. Examples included ‘all-or-nothing options’, ‘fixed return options’, ‘digital options’ and ‘countdowns’. Our reference to ‘binary options’ is intended to capture all derivatives that fall within the definition of binary options in the Binary Options Order, however named or described.

29 As bans were imposed in overseas jurisdictions from 2016, as shown in Appendix 1, the size of the Australian market for binary options grew considerably from an estimated 35 million transactions in 2016–17 to more than 140 million transactions and 280,000 retail clients in 2018. This growth was also represented by an increase in binary options issuers' turnover.

Note: Figure 1 from [Report 626](#) *Consumer harm from OTC binary options and CFDs* (REP 626) illustrates the growth in the sector between our 2017 and 2019 review. Of the 675 million retail OTC derivative transactions reported in our 2019 review, approximately 21% were in binary options. This compares to approximately 15% in our 2017 review.

30 Following an ASIC warning to OTC derivatives issuers against providing unlicensed or unauthorised services to clients located in jurisdictions where regulators had imposed restrictions (including in Europe, Japan, North America and China), between April 2019 and May 2021, licensed binary options providers advised us of a material decline in the number of their retail clients—from over 280,000 to under 12,000. Some binary options providers' subsequent actions to cease trading binary options with retail clients in such jurisdictions impacted transaction volumes, revenues and profits of binary options providers.

Product intervention order

31 On 22 August 2019, we released [Consultation Paper 322](#) *Product intervention: OTC binary options and CFDs* (CP 322) seeking feedback on proposals to use our product intervention power to address significant detriment to retail clients resulting from OTC binary options and CFDs. CP 322 attracted over 400 responses from consumers, consumer groups, product issuers, industry bodies and other stakeholders.

Note: The [submissions to CP 322](#) are publicly available on our website, excluding confidential submissions. The [Public Notice](#) (PDF 141 KB) includes a summary of respondents' views.

32 On 1 April 2021, we made the Binary Options Order prohibiting the issue and distribution of binary options to retail clients.

33 Professional, sophisticated and other wholesale clients are not affected by the Binary Options Order.

34 A transition period, until 3 May 2021, allowed issuers to adjust their systems and practices to comply with the Binary Options Order. The transition period set an appropriate balance between the objective of reducing consumer harm and the requirement for an orderly transition period for issuers. The transition period also allowed for retail clients to be notified before the prohibition took effect.

- 35 The Binary Options Order will lapse on 7 October 2022, unless it is extended. We can extend the Binary Options Order for a period of time or until it is revoked or sunsets by declaration in a legislative instrument with the approval of the Minister. In seeking approval from the Minister, we must provide a report to the Minister on whether the extension should be made. We must, before making a declaration, undertake the consultation that we consider to be appropriate and reasonably practicable to undertake. If we make a declaration to extend the Binary Options Order, we must publish the declaration on our website, together with the Binary Options Order.

Note: [Regulatory Guide 272](#) *Product intervention power* (RG 272) provides an overview of our product intervention power, when and how we may exercise the power, and how a product intervention order is made.

Significant detriment to retail clients resulting from binary options

- 36 We made the Binary Options Order after we found that binary options have resulted in, and are likely to result in, significant detriment to retail clients.
- 37 We described detriment to retail clients resulting from binary options in the [Public Notice](#) (PDF 141 KB):
- (a) Binary options issuers reported that approximately 80% of their clients lost their money trading binary options.
 - (b) Confidential [submissions to CP 322](#) supported the conclusion that a significant majority of retail clients lose money trading binary options, showing individual client losses ranging from less than \$500 to more than \$100,000 in and around 2019.
 - (c) In [CP 322](#), we estimated that retail clients' (including retail clients located in Australia and offshore) net financial losses in 2018 from trading binary options with the five licensed providers in Australia were approximately \$490 million. The providers' gross trading revenue can largely be attributed to a combination of net client trading losses and spreads, fees and commissions charged to retail clients. Based on confidential submissions to CP 322, we estimated that the net financial losses incurred by Australian retail clients from trading binary options in 2019 exceeded \$6.7 million. This data did not capture all licensed binary options providers and so likely underestimated net losses to Australian retail clients from trading binary options in that period.
 - (d) We conducted analysis which shows that binary options are likely to result in significant detriment to retail clients over time due to the following product characteristics:
 - (i) 'all-or-nothing' payoff structure, where one of the two possible outcomes for a binary options contract is that the retail client will lose their entire investment amount;

- (ii) short contract duration (e.g. for one provider, the average duration of binary options traded in 2018 was less than six minutes); and
 - (iii) negative expected returns (i.e. the present value of the expected payoff for a binary options contract is lower than the initial investment).
- (e) We replicated a simulation run by ESMA as part of its quantitative analysis of the return distribution for retail clients in Europe making repeated \$100 trades in fifty-fifty or up-down binary options with a fixed payout of 180% of the investment amount and a 50% probability of exercise.
- (i) The modelling showed that the more binary options trades a retail client makes, the greater the likelihood they will lose money overall, and the larger their expected loss.
 - (ii) Our analysis of binary options trades with licensed providers in Australia in 2018 showed that the percentage of clients that lost money trading fifty-fifty binary options increased the more they traded. Confidential submissions to CP 322 provided further support for the findings from the simulation, showing for a group of retail clients that the average proportion suffering an overall loss increased with longer periods of observed trading in and around 2019.

38 In the [Public Notice](#) (PDF 141 KB), we described why the Binary Options Order is an appropriate way of reducing the detriment to retail clients from binary options. In summary:

- (a) we expected the order to reduce the risk of significant detriment to retail clients comprehensively and systemically by prohibiting the issue and distribution of binary options to retail clients;
- (b) maintaining the status quo would not achieve the objective of reducing the risk of significant detriment to retail clients resulting from binary options;
- (c) the alternative measures suggested in the consultation (conditions requiring client assessment, disclosure of risk warnings and a pricing methodology and restriction of inducements) would leave the inherent risks associated with trading binary options largely unchanged and would probably not be effective in reducing the risk of significant detriment to retail clients;
- (d) the expected benefits to retail clients from the Binary Options Order outweigh the expected disadvantages to retail clients (including reduced consumer choice of high-risk, speculative financial products);
- (e) various substitute financial products may be used by retail clients desiring high-risk, short-term speculation or risk management;

- (f) professional, sophisticated and other wholesale clients are not affected by the Binary Options Order because of s1023C(2) of the Corporations Act;
- (g) the Binary Options Order is consistent with regulatory measures in force in peer jurisdictions, which will promote trust and confidence in the Australian financial system more broadly;
- (h) the expected net benefits to retail clients from the Binary Options Order, and additional regulatory benefit from improved trust and confidence in the Australian financial system over time, were expected to outweigh the expected impact to binary options providers and other businesses dealing in binary options, including to their revenue and their costs of compliance with the Binary Options Order;
- (i) compliance costs to binary options providers from the suggested alternative measures would be substantially higher than the modest compliance costs of the Binary Options Order;
- (j) the Binary Options Order was not expected to have any material effect on competition in the financial system; and
- (k) the Binary Options Order was not expected to have any material effect on underlying financial markets.

International measures

39 Many foreign regulators have implemented measures to prohibit or restrict the offer of binary options to retail clients to address investor protection concerns caused by the characteristics of the product. We are aware of regulatory interventions in place in 29 countries. Appendix 1 lists those 29 foreign jurisdictions that have implemented measures which prohibit or restrict the issue of OTC binary options to retail clients.

40 The International Organization of Securities Commissions (IOSCO) has developed a toolkit to give guidance on measures that could be used by regulators to reduce harm to retail investors. Regulators can use these measures if they consider other measures are insufficient in mitigating the investor protection risks arising from a product in its jurisdiction. IOSCO gives the example that:

... because of their inherent complexity and the lack of transparency in their pricing, IOSCO members may consider that there are inherent flaws in binary options as products that render them unsuitable for sale to retail clients by intermediaries. In addition, the product features of binary options may mean that some of the measures presented in this toolkit have little impact on addressing the risks arising from binary options. Therefore, IOSCO members may choose to adopt the measure restricting intermediaries from selling these products as a proportionate measure to help ensure a sufficient level of protection for retail clients.

Note: See IOSCO, [Report on retail OTC leveraged products](#) (PDF 988 KB), final report, September 2018, p. 21.

C Assessing the impact of the Binary Options Order

Key points

We have analysed data obtained from licensed binary options issuers for a 24-month period that spans the period before and after the Binary Options Order took effect.

Based on our analysis, we consider the Binary Options Order is operating efficiently and effectively to reduce the risk of significant detriment to retail clients resulting from binary options.

After the Effective Date, there was no retail trading of binary options offered by Australian financial services (AFS) licensees, significantly reducing the detriment to retail clients.

By comparison, the small group of wholesale clients (unaffected by the Binary Options Order) incurred significant net losses from trading binary options after the Effective Date.

Our assessment approach

Data collection

- 41 We obtained data from five AFS licensees who had issued binary options to retail clients for the periods covering:
- (a) the four full quarters prior to the Effective Date (the period 1 April 2020 to 31 March 2021);
 - (b) the quarter in which the Effective Date occurred, with data also split between 1 April to 2 May 2021 and 3 May to 30 June 2021; and
 - (c) the two quarters after the Effective Date (1 July 2021 to 31 December 2021).
- 42 In our analysis, we refer to the period 1 April 2020 – 2 May 2021 as the Prior Period and period from 3 May 2021 – 31 December 2021 as the Effective Period.
- 43 We therefore have gathered 21 months of data from all AFS licensees who issued binary options to retail clients on or after 1 April 2020.
- 44 The information that binary options issuers were required to provide included details of the number of their clients, the number of binary options issued, consideration paid and metrics on client outcomes such as the number of profit-making and loss-making accounts.

- 45 Responses to specific items about client populations and client outcomes were typically required to be broken down across four categories:
- (a) clients categorised by the licensee as retail clients resident, incorporated or carrying on business in Australia (Australian retail clients);
 - (b) clients categorised as retail clients that are not Australian retail clients (foreign retail clients);
 - (c) clients categorised as wholesale clients resident, incorporated or carrying on business in Australia (Australian wholesale clients); and
 - (d) clients categorised as wholesale clients who are not wholesale Australian clients (foreign wholesale clients).
- 46 One binary options issuer informed us that in error it issued eight binary options to one retail client on 3 May 2021. These contracts were voided and the consideration was returned to the client. We have excluded these transactions from our analysis.

Compliance with the Binary Options Order

- 47 We have not identified any material breaches of the Binary Options Order. Our surveillance work in May 2021 confirmed that, other than the eight binary options issued in error on 3 May 2021, the licensed binary options issuers ceased offering binary options to retail clients after the Effective Date.
- 48 We continue to monitor for scams and unlicensed offers of binary options in this jurisdiction and take disruptive action as appropriate. For example, in May 2021 we identified and arranged for the removal of six binary options trading apps offered by unlicensed entities that were available for download from app stores in Australia.

Summary of analysis

Changes in client demographics and actions

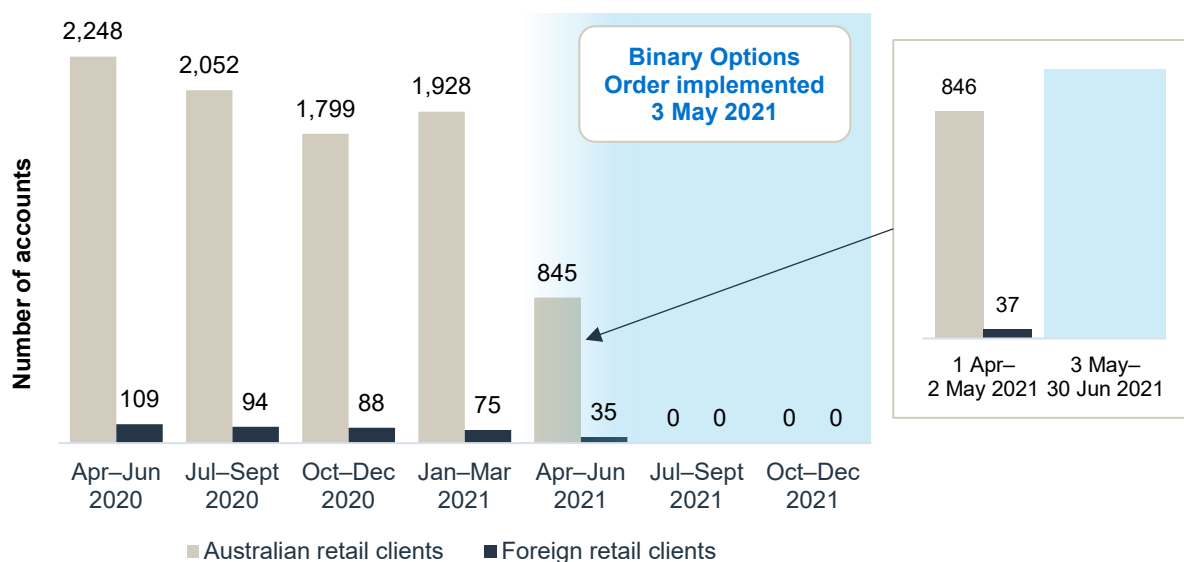
Active retail client accounts

- 49 The number of active retail client accounts, accounts with at least one binary option trade or open position during a quarter, fell to zero after the Effective Date from a quarterly average of 2,098 in the four full quarters prior to the Effective Date.
- 50 There was a drop in active retail client accounts in the quarter ending 30 June 2021, reflecting the prohibition on the issue of binary options to

retail clients in the Binary Options Order being in force for nearly two of the three months in that quarter.

Note: Some issuers reclassified a small number of retail clients to wholesale clients after the Effective Date and during the period 3 May 2021 to 30 June 2021. As such, the reported figures in the full quarter from 1 April 2021 to 30 June 2021 differ slightly to figures in the period 1 April 2021 to 2 May 2021.

Figure 1: Total number of active retail client accounts

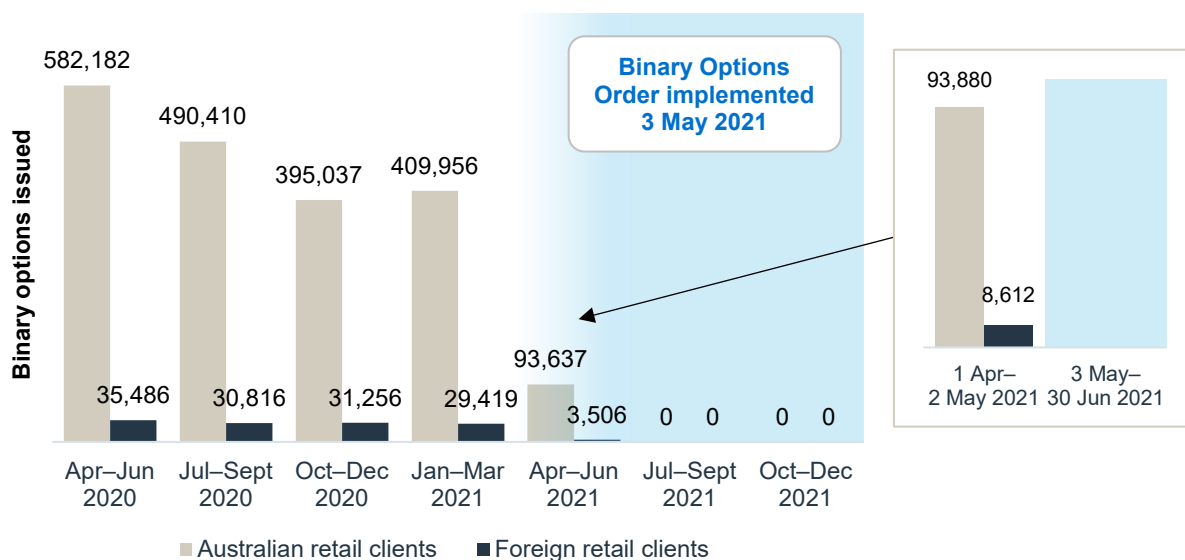


Note: See Table 2 in Appendix 2 for the data in this figure (accessible version).

Reduction in binary options issued to retail clients

51 In line with the fall in active clients, the number of binary options issued after the Effective Date also reduced to zero.

Figure 2: Total number of binary options issued to retail clients

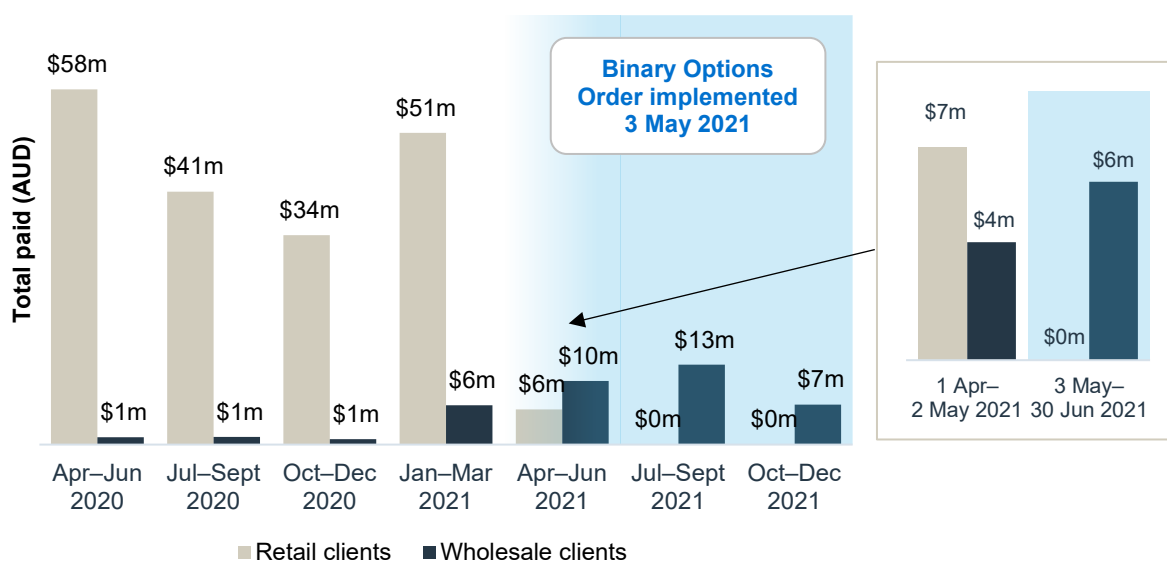


Note: See Table 3 in Appendix 2 for the data in this figure (accessible version).

Consideration

52 We also saw the amount of consideration paid for the issuance of binary options to retail clients reduce to zero after the Effective Date. In contrast, consideration paid for the issuance of binary options to wholesale clients increased after the Effective Date, from a quarterly average of \$2.4 million over the full four quarters prior to the Effective Date to a quarterly average of \$9.8 million over the full two quarters after the Effective Date. Further details on trading by wholesale clients are set out in paragraphs 60–64.

Figure 3: Consideration paid for issuance of binary options



Note: See Table 4 in Appendix 2 for the data in this figure (accessible version).

Reduction in retail client losses

53 The [Public Notice](#) (PDF 141 KB) described that the nature of the detriment to retail clients resulting from binary options was primarily in the form of financial losses. The extent of the detriment to retail clients resulting from binary options was evidenced by the proportion of retail clients' trading accounts that lost money trading binary options and the quantum of financial losses to retail clients.

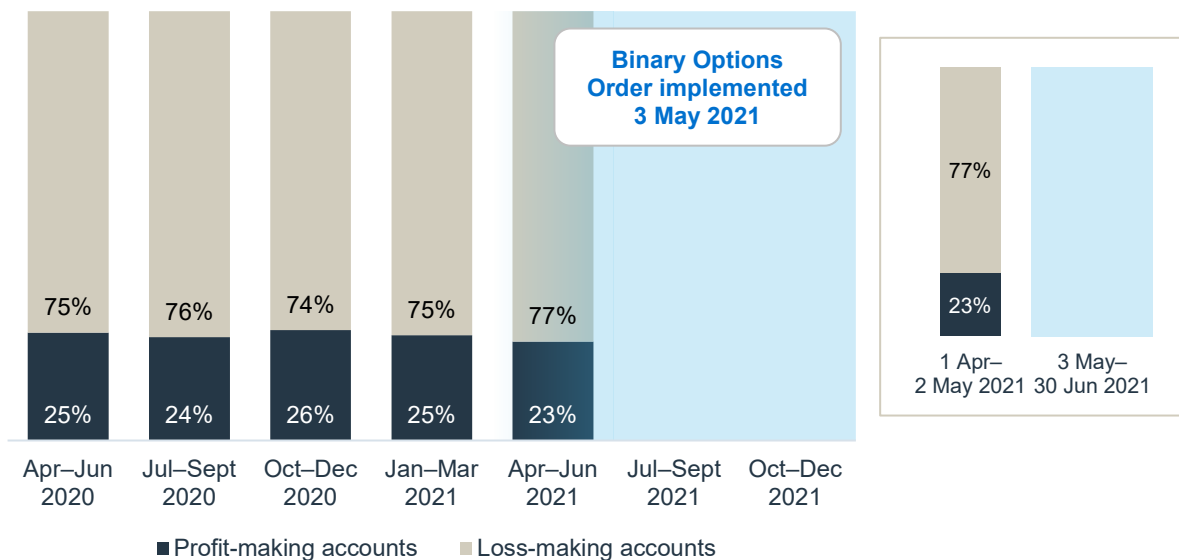
54 Prior to the Effective Date the proportion of loss-making retail clients was very consistent. Between 74% and 77% of active retail investors were retail loss-making clients in each quarter prior to the Effective Date.

55 In our 2017 review, around 80% of binary options clients lost money trading binary options.

56 When trading binary options, the retail client faces a negative expected return and the likelihood of cumulative losses over time because the present value of the expected payoff for a binary options contract is lower than the initial investment. Because of the negative expected return, as a retail client trades more binary options contracts over time, there is a greater probability of suffering a loss on a cumulative basis.

57 In the Effective Period, we observed retail clients’ aggregate net losses reduced to zero. As no binary options were issued by licensees after the Effective Date, there were no loss-making retail client accounts (or profit-making retail client accounts) in the Effective Period. Therefore, there was a significant reduction in consumer detriment.

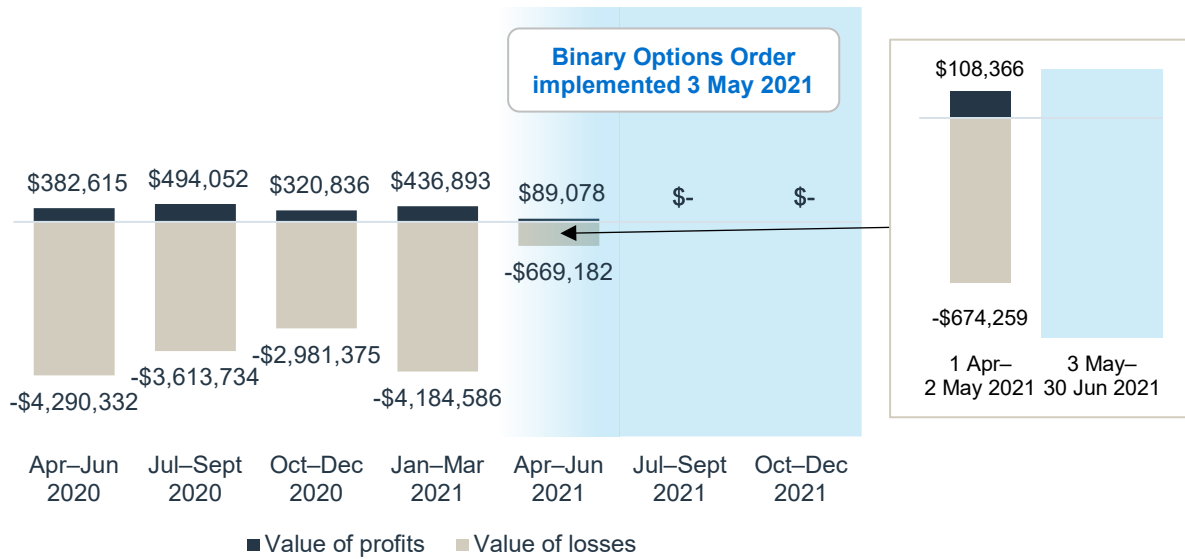
Figure 4: Proportion of profit-making and loss-making retail client accounts



Note: See Table 5 in Appendix 2 for the data in this figure (accessible version).

58 Total net profits for profit-making retail client accounts during the Prior Period were \$1.7 million and the total net losses of loss-making retail client accounts were \$15.7 million. For every dollar in net profits for profit-making retail client accounts there were almost nine dollars in net losses for loss-making retail client accounts. In every quarter during the Prior Period, retail clients made substantial net losses in aggregate.

Figure 5: Total profits and losses of retail client accounts



Note: See Table 6 in Appendix 2 for the data in this figure (accessible version).

Average profits and losses

59 In addition to the significant proportion of retail client accounts that lost money trading binary options during the full four quarters prior to the Effective Date, loss-making retail client accounts made larger average losses than average profits made by profit-making retail client accounts during the same period. Over the full four quarters prior to the Effective Date, the average loss of loss-making retail client accounts was \$2,418 per quarter. The average profit of profit-making retail client accounts was \$797 per quarter.

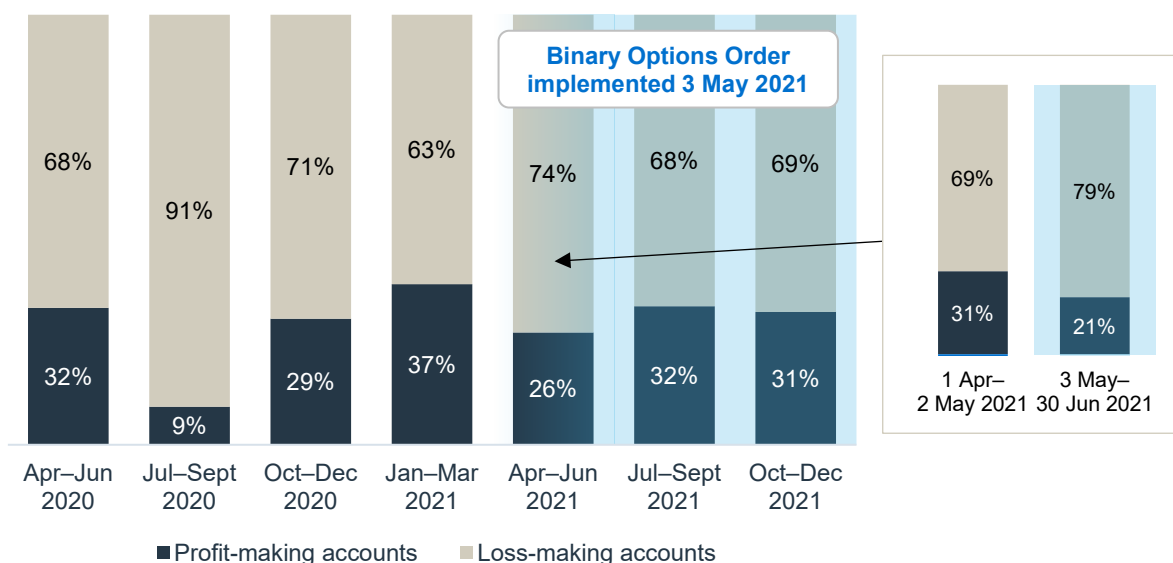
Wholesale clients

60 Issuers were asked to provide the number of active wholesale clients in each quarter.

61 The quarterly average of active wholesale clients in the full four quarters prior to the Effective Date was 45, compared with a quarterly average of 114 active wholesale clients in the two full quarters after the Effective Date. The quarterly average number of active wholesale clients over the full two quarters after the Effective Date remains 95% smaller than the quarterly average number of active retail clients over the full four quarters prior to the Effective Date.

62 Given the consistent level of losses of wholesale clients before and after the Effective Date we consider that other factors, such as economic volatility or underlying market fundamentals, were not the cause of losses.

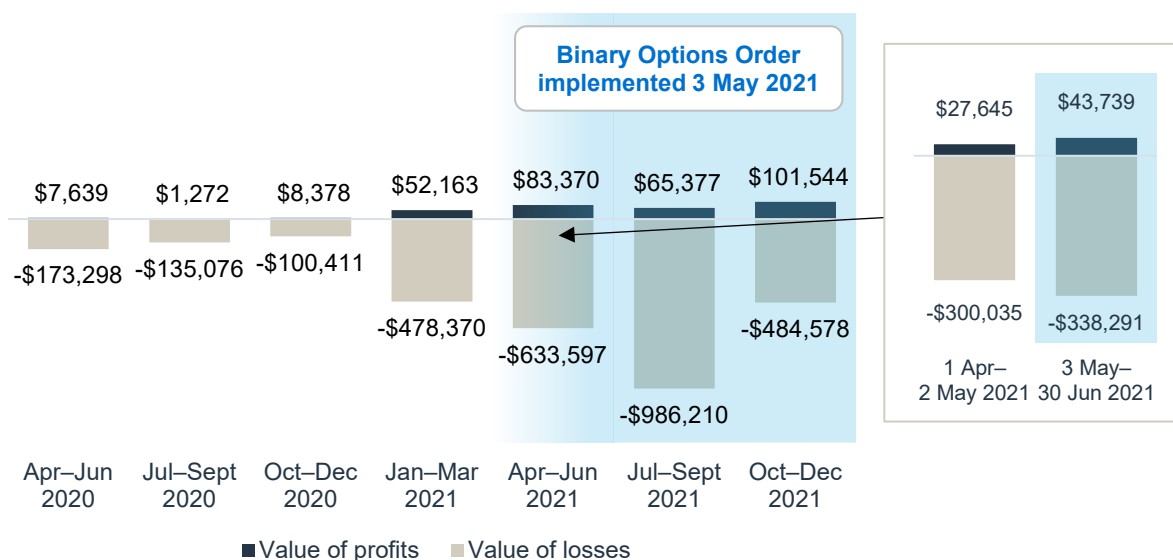
Figure 6: Proportion of profit-making and loss-making wholesale accounts



Note: See Table 7 in Appendix 2 for the data in this figure (accessible version).

63 Wholesale client accounts had a cumulative net loss totalling \$1.2 million over the Prior Period. In many of the quarters observed, the proportion of loss-making wholesale client accounts was higher than loss-making retail client accounts.

Figure 7: Total profits and losses of wholesale client accounts



Note: See Table 8 in Appendix 2 for the data in this figure (accessible version).

64 As is the case with active retail clients, on average over the full four quarters prior to the Effective Date, 97% of all active wholesale clients were Australian residents. The number of active foreign wholesale client accounts rarely reached double figures in any quarter before or after the Effective Date.

Impact on binary options issuers

Regulatory compliance burden

- 65 Licensed binary options issuers provided estimates of their costs to implement the Binary Options Order and their ongoing costs of compliance with the Binary Options Order. Issuers noted the difficulty in assessing their costs. Together, the total implementation costs were approximately \$64,250 for binary options issuers who continued to issue other financial products after the Effective Date. Prior to the implementation of the Binary Options Order, we estimated \$100,000 in implementation costs. One issuer ceased business and had the substantial cost of winding down its business.
- 66 Ongoing costs of compliance with the Binary Options Order were minimal, with only three binary options issuers noting any costs, totalling \$6,000.
- 67 We expect that one-off and compliance costs incurred immediately after the Effective Date will not be repeated given that the products are not offered to retail clients.

Other costs

- 68 The main cost to business of the Binary Options Order is the loss of opportunity to derive profit from issuing and distributing binary options to retail clients who lose money.

D Proposal

Key points

Subject to this consultation, and obtaining the approval of the Minister, we propose to extend the Binary Options Order so that it remains in force until it is revoked or sunsets.

We consider that the Binary Options Order is operating efficiently and effectively to reduce the risk of significant detriment to retail clients resulting from binary options.

Our proposed extension of the Binary Options Order is consistent with measures in force in many other jurisdictions.

Extension of the Binary Options Order

Proposal

- D1 We propose to extend the Binary Options Order by declaring that the Binary Options Order remains in force until it is revoked. Our proposal is subject to the feedback to this consultation and obtaining the approval of the Minister.

Your feedback

- D1Q1 Do you agree with our proposal to extend the Binary Options Order until it is revoked or sunsets? If not, why not? Should the Binary Options Order instead be extended for a shorter period?
- D1Q2 In your view has the Binary Options Order been effective in reducing the risk of significant detriment to retail clients? Please provide evidence and data in support of your view where possible.
- D1Q3 For binary options issuers, if the Binary Options Order is not extended would you change your business model and what benefits and costs would you incur?
- D1Q4 For binary options issuers and distributors, what impact has the Binary Options Order had on your financial services business?
- D1Q5 For retail clients of binary options issuers, has the Binary Options Order changed your trading? If so, please explain how. For example:
- (a) have you substituted other investment products for binary options?
 - (b) did you move your binary options trading to an overseas binary options issuer that permitted retail trading?

- (c) did you apply to be classified as a wholesale investor to continue trading binary options with an AFS-licensed binary options issuer?
- (d) do you agree there is a high likelihood of cumulative financial losses from trading binary options over time due to the product's characteristics?
- (e) how have your profits or losses from trading binary options affected you?

D1Q6 What effects (if any) do you consider the Binary Options Order has had on competition in the financial system? What effects are likely if the Binary Options Order is extended?

Rationale

Extension of the Binary Options Order

- 69 In Section B we explained the background to the Binary Options Order and our finding that binary options have resulted in, and are likely to result in, significant detriment to retail clients. Our data analysis in Section C shows that retail clients continued to suffer significant harm from binary options up until the Effective Date.
- 70 We consider the Binary Options Order should be extended because it is operating effectively and efficiently to prevent retail clients from incurring significant financial losses from binary options, as outlined in Section C. We believe, on the basis of our analysis, that the reduction in retail client detriment is primarily driven by the Binary Options Order, rather than any other changes such as changes to the client base or different trading conditions.
- 71 Further, the prohibition on offering binary options to retail clients should be extended because we are concerned that binary options do not provide meaningful investment or risk management utility for retail clients because the characteristics of binary options are incompatible with those uses and result in a high likelihood of cumulative financial losses over time. Binary options are likely to result in cumulative individual and market-wide financial losses to retail clients over time due to the 'all-or-nothing' payoff structure, short contract duration and negative expected returns.
- 72 Given the nature of the significant detriment identified and that we seek to address with the Binary Options Order, we do not consider that compliance with the design and distribution obligations would be sufficient to reduce the risk to retail clients.

- 73 In [RG 272](#) at RG 272.4 we noted that even where there is compliance with design and distribution obligations, a product intervention order may be required if we are satisfied there is a risk of significant consumer detriment. The design and distribution obligations require an issuer to assess the suitability of products and ensure they must be consistent with the likely objectives, financial situation and needs of the class of consumers to whom the products will be distributed. We are concerned that some binary options issuers may assess that binary options are suitable for retail clients even though we have found that the inherent characteristics of binary options mean they are likely to result in cumulative individual and market-wide financial losses to retail clients over time.
- 74 We will continue to monitor for illegal offering of binary options to retail clients and misclassification of retail clients as wholesale clients.
- 75 We have not identified any need to amend the Binary Options Order to strengthen the consumer protections by imposing additional restrictions, replace the prohibition with conditions on the issue and distribution of binary options to retail clients (e.g. conditions requiring client assessment, disclosure of risk warnings and a pricing methodology and restriction of inducements) or to carve out any type of binary options. The measures in the Binary Options Order remain consistent with the regulatory approaches taken by overseas regulators, including the UK Financial Conduct Authority and national competent authorities in the European Union. Further, our proposal to continue to prohibit binary options is consistent with Measure 9 in the [IOSCO toolkit](#) (988 KB) which refers to a ‘ban or restriction on the sale and/or distribution of the relevant products by intermediaries’.
- 76 Any extension of the Binary Options Order does not prevent further amendment being made in the future if warranted—for example, to respond to changes in industry practices or to international regulatory settings. If extended, ministerial approval would be required before the Binary Options Order could be amended or revoked.

Length of extension

- 77 We consider that extending the Binary Options Order so that it remains in force until it is revoked is preferable to a shorter extension, such as three or five years, because:
- (a) we are concerned that binary options do not provide meaningful investment or risk management utility for retail clients because the characteristics of binary options are incompatible with those uses and result in a high likelihood of cumulative financial losses over time;
 - (b) we consider the Binary Options Order is operating effectively and efficiently. Our analysis in Section C shows that there has been an immediate and significant reduction in retail client detriment in the

Effective Period. This reduction in retail client detriment was expected and is consistent with the effect of similar interventions that remain in force abroad. We expect to see these effects continue; and

- (c) a shorter extension of the Binary Options Order would necessitate a further process to consider whether it should be extended again and would come at additional cost and effort to ASIC and industry, require additional consultation and create uncertainty when innovating and developing new products. Due to the ban, there will be no retail client trading data after the Effective Date available for analysis.

E Regulatory and financial impact

- 78 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they:
- (a) will be appropriate in ensuring consistency with:
 - (i) the main object of Ch 7 of the Corporations Act, including the promotion of confident and informed decision-making by consumers of financial products and services while facilitating efficiency, flexibility and innovation in the provision of those products and services (s760A(a) of the Corporations Act); and
 - (ii) ASIC's regulatory objectives set out in s1(2) of the *Australian Securities and Investments Commission Act 2001*, particularly ASIC's obligations to strive to:
 - (A) maintain, facilitate and improve the performance of the financial system and the entities within that system in the interests of commercial certainty, reducing business costs, and the efficiency and development of the economy; and
 - (B) promote the confident and informed participation of investors and consumers in the financial system; and
 - (b) will strike an appropriate balance between:
 - (i) reducing the risk of the significant detriment to retail clients resulting from binary options;
 - (ii) the financial and other impact of the proposed orders on issuers and consumers of binary options; and
 - (iii) any effects on competition in the Australian financial system.
- 79 In settling on a final policy, we will comply with the Australian Government's regulatory impact analysis requirements by:
- (a) reviewing and assessing whether the Binary Options Order is achieving its objectives efficiently and effectively; and
 - (b) if our assessment of the performance of the Binary Options Order indicates that it is either not effective or not efficient, performing further regulatory impact analysis in accordance with the Australian Government Guide to Regulatory Impact Analysis.
- 80 Before making any final decision, we will comply with the regulatory impact assessment framework administered by the Office of Best Practice Regulation.

- 81 To ensure we are in a position to properly complete any required regulatory impact analysis and to prepare a report for the Minister on whether the Binary Options Order should be extended, please give us as much information as you can about our proposals or any alternative approaches, including:
- (a) the likely compliance costs;
 - (b) the likely effect on competition; and
 - (c) other impacts, costs and benefits.
- 82 See ‘The consultation process’, p. 4.

Appendix 1: List of jurisdictions with prohibitions

Table 1: List of countries implementing bans on binary options

Jurisdiction	Date
Israel	March 2016
Canada (CSA)	September 2017
Netherlands	April 2019
United Kingdom	April 2019
Austria	May 2019
Poland	July 2019
Finland	July 2019
Lithuania	July 2019
Spain	July 2019
Slovakia	July 2019
Estonia	July 2019
Czech Republic	July 2019
Luxembourg	July 2019
Ireland	July 2019
Portugal	July 2019
Italy	July 2019
Greece	July 2019
Denmark	July 2019
Bulgaria	July 2019
Germany	July 2019
Cyprus	July 2019
France	July 2019
Malta	July 2019
Sweden	July 2019

Jurisdiction	Date
Latvia	August 2019
Croatia	August 2019
Slovenia	October 2019
Norway	February 2020
Hungary	April 2020

Appendix 2: Accessible versions of figures

83 This appendix is for people with visual or other impairments. It provides the underlying data for the figures in this report.

Table 2: Total number of active retail client accounts

Time period	Australian retail clients	Foreign retail clients
1 Apr 2020 – 30 Jun 2020	2,248	109
1 Jul 2020 – 30 Sep 2020	2,052	94
1 Oct 2020 – 31 Dec 2020	1,799	88
1 Jan 2021 – 31 Mar 2021	1,928	75
1 Apr 2021 – 30 Jun 2021	845	35
1 Jul 2021 – 30 Sep 2021	0	0
1 Oct 2021 – 31 Dec 2021	0	0

Note: This is the data shown in Figure 1.

Table 3: Total number of binary options issued to retail clients

Time period	Australian retail clients	Foreign retail clients
1 Apr 2020 – 30 Jun 2020	582,182	35,486
1 Jul 2020 – 30 Sep 2020	490,410	30,816
1 Oct 2020 – 31 Dec 2020	395,037	31,256
1 Jan 2021 – 31 Mar 2021	409,956	29,419
1 Apr 2021 – 30 Jun 2021	93,637	3,506
1 Jul 2021 – 30 Sep 2021	0	0
1 Oct 2021 – 31 Dec 2021	0	0

Note: This is the data shown in Figure 2.

Table 4: Consideration paid for issuance of binary options

Time period	Retail clients	Wholesale clients
1 Apr 2020 – 30 Jun 2020	\$57,890,403	\$1,202,053
1 Jul 2020 – 30 Sep 2020	\$41,223,717	\$1,258,843

Time period	Retail clients	Wholesale clients
1 Oct 2020 – 31 Dec 2020	\$34,134,212	\$899,897
1 Jan 2021 – 31 Mar 2021	\$50,805,113	\$6,433,763
1 Apr 2021 – 30 Jun 2021	\$5,727,124	\$10,345,199
1 Jul 2021 – 30 Sep 2021	\$0	\$13,006,056
1 Oct 2021 – 31 Dec 2021	\$0	\$6,521,055

Note: This is the data shown in Figure 3.

Table 5: Proportion of profit-making and loss-making retail client accounts

Time period	Profit-making	Loss-making
1 Apr 2020 – 30 Jun 2020	25%	75%
1 Jul 2020 – 30 Sep 2020	24%	76%
1 Oct 2020 – 31 Dec 2020	26%	74%
1 Jan 2021 – 31 Mar 2021	25%	75%
1 Apr 2021 – 30 Jun 2021	23%	77%
1 Jul 2021 – 30 Sep 2021	0%	0%
1 Oct 2021 – 31 Dec 2021	0%	0%

Note: This is the data shown in Figure 4.

Table 6: Total profits and losses of retail client accounts

Time period	Profits	Losses
1 Apr 2020 – 30 Jun 2020	\$382,615	\$4,290,332
1 Jul 2020 – 30 Sep 2020	\$494,052	\$3,613,734
1 Oct 2020 – 31 Dec 2020	\$320,836	\$2,981,375
1 Jan 2021 – 31 Mar 2021	\$436,893	\$4,184,586
1 Apr 2021 – 30 Jun 2021	\$89,078	\$669,182
1 Jul 2021 – 30 Sep 2021	\$0	\$0
1 October 2021 – 31 December 2021	\$0	\$0

Note: This is the data shown in Figure 5.

Table 7: Proportion of profit-making and loss-making wholesale accounts

Time period	Profit-making	Loss-making
1 Apr 2020 – 30 Jun 2020	32%	68%
1 Jul 2020 – 30 Sep 2020	9%	91%
1 Oct 2020 – 31 Dec 2020	29%	71%
1 Jan 2021 – 31 Mar 2021	37%	63%
1 Apr 2021 – 30 Jun 2021	26%	74%
1 Jul 2021 – 30 Sep 2021	32%	68%
1 Oct 2021 – 31 Dec 2021	31%	69%

Note: This is the data shown in Figure 6.

Table 8: Total profits and losses of wholesale client accounts

Time period	Profits	Losses
1 Apr 2020 – 30 Jun 2020	\$7,639	\$173,298
1 Jul 2020 – 30 Sep 2020	\$1,272	\$135,076
1 Oct 2020 – 31 Dec 2020	\$8,378	\$100,411
1 Jan 2021 – 31 Mar 2021	\$52,163	\$478,370
1 Apr 2021 – 30 Jun 2021	\$83,370	\$633,597
1 Jul 2021 – 30 Sep 2021	\$65,377	\$986,210
1 Oct 2021 – 31 Dec 2021	\$101,544	\$484,578

Note: This is the data shown in Figure 7.

Key terms

Term	Meaning in this document
active client account	A trading account with at least one binary option trade or open position during a relevant quarter
active retail client account	An active client account that is categorised as a retail client
active wholesale client account	An active client account that is categorised as a wholesale client
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act Note: This is a definition contained in s761A.
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i> , including regulations made for the purposes of that Act
Australian resident	Includes: (a) a body corporate incorporated or carrying on business in Australia; (b) an Australian citizen; or (c) an individual ordinarily resident in Australia
Australian retail client or Australian retail client account	A retail client or client account that is (or is owned by) an Australian resident
Australian wholesale client or Australian wholesale client account	A wholesale client or client account that is (or is owned by) an Australian resident
binary option	OTC derivatives that allow clients to enter 'all-or-nothing' contracts to speculate on the occurrence or non-occurrence of a specified event in a defined timeframe
Binary Options Order	<i>ASIC Corporations (Product Intervention Order—Binary Options) Instrument 2021/240</i>
CFD	Contract for difference
CFD Order	<i>ASIC Corporations (Product Intervention Order—Contracts for Difference) Instrument 2020/986</i>
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Effective Date	3 May 2021
Effective Period	3 May 2021 – 31 December 2021

Term	Meaning in this document
loss-making account	An account that made a net loss as a result of trading binary options (ignoring trading in other assets) in a specified period
profit-making account	An account that made a net profit as a result of trading binary options (ignoring trading in other assets) in a specified period
Prior Period	1 April 2020 – 2 May 2021
retail client	Has the same meaning as defined in s761A of the Corporations Act
wholesale client	Has the same meaning as defined in s761A of the Corporations Act

List of proposals and questions

Proposal	Your feedback
<p>D1 We propose to extend the Binary Options Order by declaring that the Binary Options Order remains in force until it is revoked. Our proposal is subject to the feedback to this consultation and obtaining the approval of the Minister.</p>	<p>D1Q1 Do you agree with our proposal to extend the Binary Options Order until it is revoked or sunsets? If not, why not? Should the Binary Options Order instead be extended for a shorter period?</p> <p>D1Q2 In your view has the Binary Options Order been effective in reducing the risk of significant detriment to retail clients? Please provide evidence and data in support of your view where possible.</p> <p>D1Q3 For binary options issuers, if the Binary Options Order is not extended would you change your business model and what benefits and costs would you incur?</p> <p>D1Q4 For binary options issuers and distributors, what impact has the Binary Options Order had on your financial services business?</p> <p>D1Q5 For retail clients of binary options issuers, has the Binary Options Order changed your trading? If so, please explain how. For example:</p> <ul style="list-style-type: none"> (a) have you substituted other investment products for binary options? (b) did you move your binary options trading to an overseas binary options issuer that permitted retail trading? (c) did you apply to be classified as a wholesale investor to continue trading binary options with an AFS-licensed binary options issuer? (d) do you agree there is a high likelihood of cumulative financial losses from trading binary options over time due to the product's characteristics? (e) how have your profits or losses from trading binary options affected you? <p>D1Q6 What effects (if any) do you consider the Binary Options Order has had on competition in the financial system? What effects are likely if the Binary Options Order is extended?</p>