

## NOTICE OF FILING

### Details of Filing

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File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v ETORO AUS CAPITAL LIMITED ACN 612 791 803
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Registrar

### Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



## Concise Statement

No. NSD

of 2023

Federal Court of Australia

District Registry: New South Wales

Division: Commercial and Corporations

### Australian Securities and Investments Commissions

Plaintiff

### eToro Aus Capital Limited (ACN 612 791 803)

Defendant

## A. IMPORTANT FACTS GIVING RISE TO THE CLAIM

### Introduction

1. In these proceedings, the plaintiff (**ASIC**) alleges that the defendant (**eToro**), being the holder of Australian Financial Services Licence No. 491139 (**AFSL**), has contravened the design and distribution obligations (**DDO**) in Part 7.8A of the *Corporations Act 2001* (Cth) (the **Act**) as well as s 912A(1)(a) of the Act.
2. The alleged contraventions relate to a financial product known as a “contract for difference” (**CFD**) offered by eToro to retail clients in the period from 5 October 2021 to 29 July 2023 (**Relevant Period**).
3. A CFD is a contract to exchange, at the closing of the contract, the difference between the actual agreed initial price and the closing price of an underlying asset or currency, multiplied by the number of units of that asset or currency specified in the contract. Under a CFD, an investor speculates upon (and is exposed to) movements in the value of the underlying asset or currency without having to purchase an interest in it.
4. Typically, CFDs (i) are entered into between an investor and a broker (as principal) (ii) are short-term contracts (measured in days, weeks or months rather than years), (iii) are not traded on any exchange, and (iv) attract fees and charges which the investor must pay.
5. CFDs are often “leveraged”, meaning that the investor can open a position by paying only a fraction of the price of the underlying asset or currency. The investor, however, is

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exposed to the full amount of any movement in the price of the underlying asset or currency over the term of the contract. Typically, where a position moves sufficiently against the investor, they will be required to add funds to their account to restore a specified margin, and if they fail to do so, their position will be closed out.

### **eToro's CFD Product**

6. eToro is a neobroker, which has been operating in Australia since at least 2018, and advertises itself to retail clients through broad mass marketing, including sports advertising, social media and online banner style advertising. In the period from 5 October 2021 to 14 June 2023, eToro had approximately 29,965 CFD clients.
7. The CFD product offered by eToro to retail clients over the Relevant Period (**CFD Product**) is a sophisticated over-the-counter derivative financial product, able to be traded online or through an app. The assets underlying the CFD Product include foreign currencies, commodities, indices, crypto-assets and equities.
8. As with CFDs generally, there is a high risk of a retail client losing money rapidly after acquiring the CFD Product. This high level of risk is further increased if the underlying asset is itself volatile or high risk (which applies especially in the case of crypto-assets and can also apply to foreign currencies and commodities).

### **The purported “target market determinations” for the CFD Product**

9. Under the DDO, which commenced on 5 October 2021, eToro was required to make a “target market determination” (**TMD**) prior to engaging in any retail product distribution conduct in relation to the CFD Product. A TMD must, *inter alia*, (i) describe the class of retail clients that comprises the “target market” for the product [s 994B(5)(b)], (ii) specify any conditions and restrictions on retail product distribution conduct in relation to the product (**Distribution Conditions**) [s 994B(5)(c)], (iii) be such that, if the product were to be issued, or sold in a regulated sale, to a retail client in accordance with the distribution conditions – it would be likely that the retail client is in the target market [s 994B(8)(a)]; and (iv) be such that, if the CFD Product were to be issued, or sold in a regulated sale, to a retail client in the target market – it would likely be consistent with the likely objectives, financial situation and needs of the retail client [s 994B(8)(b)].
10. eToro made three purported TMDs for the CFD Product during the Relevant Period, copies of which are annexed hereto marked “**A**”, “**B**” and “**C**” respectively.
11. The first purported TMD was in place from 5 October 2021 to 29 March 2022 (**First TMD**). It described the “target market” for the CFD Product as being retail clients falling within one (or more) of the following categories:

- a. “Medium to High Risk Tolerance Traders – Clients seeking to make a profit via speculation”;
  - b. “Risk Mitigation Investors – Clients seeking to hedge potential risks from other investments in or exposures to instruments”;
  - c. “Experienced Investors – Clients who understand the risks of CFDs and the underlying investments upon which they are derived”;
  - d. “Clients with prior trading experience – Clients with prior experience in financial markets and experience in trading leveraged financial products and who pass eToro’s Trading Knowledge Assessment”;
  - e. “Appropriateness test – Clients who pass the eToro Appropriateness test”.
12. The second purported TMD was in place from 30 March 2022 to 5 February 2023 (**Second TMD**). It described the target market in identical terms to the First TMD, except that the “Risk Mitigation Investors” category was removed.
  13. Under each of the First TMD and Second TMD, a retail client fell within eToro’s target market for the CFD Product even if they satisfied only one (or more) of the listed categories. For instance, if a retail client had a medium risk tolerance but was not an experienced investor, had no understanding of the risks of CFDs, had no prior trading experience in financial markets or leveraged products and had failed eToro’s “Appropriateness test”, then that retail client nevertheless fell within eToro’s target market.
  14. Neither the First TMD nor the Second TMD described the elements, content, criteria or scoring requirements for successful completion of the “Trading Knowledge Assessment” or the “Appropriateness test” referred to in the TMD.
  15. The third purported TMD applied from 6 February 2023 to 29 July 2023 (**Third TMD**). It described the target market for the CFD Product as “including” clients who:
    - a. “understand the risks and benefits of trading in CFDs”;
    - b. “invest only a proportion of their available funds in CFDs”;
    - c. “have prior trading experience”;
    - d. “have a medium to high risk tolerance”;
    - e. “have a diversified portfolio”;
    - f. “have a suitable level of income or wealth”;

- g. “can afford to lose all their investment in CFDs without a significant detrimental effect on their standard of living”.
16. The target market so described was understood and applied by eToro as including retail clients who satisfied any one or more of the above categories. The Third TMD also recorded that eToro’s “assessment of appropriateness [was] based on a number of different tests”, and that clients who failed the “eToro negative market test” were not appropriate for CFD trading. Neither the precise nature or elements of the tests nor the scoring requirements of them were set out in the TMD.

### **eToro’s Screening Test**

17. At all material times, eToro required retail clients to take a screening test prior to them acquiring the CFD Product (in the case of the First and Second TMD, referred to as the “Appropriateness Test” and the “Trading Knowledge Assessment”, and in the case of the Third TMD, the tests referred to in paragraph 16 above) (**Screening Test**). The Screening Test was the means by which eToro purported to assess whether a retail client fell within the target market for the CFD Product as set out in the First, Second or Third TMD (as applicable). Further or alternatively, passing the Screening Test was a purported Distribution Condition in relation to the CFD Product within the meaning of s 994B(5)(c) of the Act.
18. During the period from 5 October 2021 to 25 January 2022, the Screening Test was described as “RM-1”. This test was a progenitor of the “Experience Test” and the “Trading Knowledge Assessment” referred to in paragraph 25 below. If a retail client scored 5 or more out of a total possible score of 41, the client was permitted to trade in the CFD Product (although if they scored from 5 to 20, they were required to view a risk disclaimer before commencing such trading).
19. During the period from 26 January 2022 to date, the Screening Test comprised four tests, two of which were a “Trading Test” (also referred to as Test A) and a “Risk Test” (also referred to as Test B). eToro would only exclude retail clients from trading the CFD Product if they failed either the Trading Test or the Risk Test.
20. At all material times, a retail client would only fail the Trading Test if they provided the following combination of answers:
- a. had never traded in equities; *and*
  - b. had never traded in crypto assets; *and*
  - c. had no leveraged investing experience; *and*

- d. had no financial knowledge; *and*
  - e. failed to identify a “correct statement” about trading in CFDs – for example, for part of the Relevant Period, it was necessary to identify that the following statement was correct: “Opening a trade with \$100 and 20x leverage will equate to a \$2000 investment”.
21. If the retail client did not provide *every* response outlined above, they passed the Trading Test. For instance, a retail client who indicated they had never traded in equities, never traded in crypto assets, never had experience in leveraged investments and had no financial knowledge, nevertheless passed the Trading Test if they selected the “correct statement” described above.
22. At all material times, a retail client would only fail the Risk Test if they provided the following combination of answers:
- a. their trading strategy purpose was “future planning” or “saving for home”; *and*
  - b. their attitude to risk was “+5% / -3%” (being the lowest of 5 risk options available for selection); *and*
  - c. their net annual income was less than \$200,000; *and*
  - d. their total cash and liquid assets were less than \$200,000.
23. If the retail client did not provide *every* response outlined above, they passed the Risk Test. For instance, a retail client who indicated they were planning to save for a home, had a low risk attitude and had a net income of less than \$200,000, nevertheless passed the Risk Test if they indicated they had \$200,000 in cash or liquid assets.
24. If a client passed the Trading Test and the Risk Test, they could trade the CFD Product. If the client passed the Trading Test but not the Risk Test, the client was not permitted to trade CFDs with leverage unless and until they changed their answers such that they passed the Risk Test. If they passed the Risk Test but not the Trading Test, they could trade the CFD Product with leverage once they had completed 5 non-CFD trades and 30 days had passed. Retail clients were permitted unlimited attempts at passing eToro’s Screening Test.
25. From 26 January 2022 to 29 July 2023, eToro’s Screening Test also included an “Experience Test” (also referred to as Test C) and a “Trading Knowledge Assessment” (also referred to as Test D), although these tests were not used to exclude retail clients from trading the CFD Product. The Experience Test (which assigned the retail client a score based on their answers to the Trading Test) determined whether the retail client

would be given a “risk warning alert” before trading the CFD Product. The Trading Knowledge Assessment was merely a subset of the Trading Test.

## **B. THE RELIEF SOUGHT FROM THE COURT**

26. ASIC seeks the relief set out in the Originating Process.

## **C. PRIMARY LEGAL GROUNDS FOR THE RELIEF SOUGHT**

### Contravention of s 994B(2) – no complying target market determination

27. None of the purported TMDs issued by eToro met the requirements of ss 994B(5) and (8) of the Act, in that:

- a. the First and Second TMD purported to define the target market by reference to undisclosed or inadequately disclosed criteria (being, the “Appropriateness test” and the “Trading Knowledge Assessment”), and thus did not describe the class of retail clients that comprises the target market for the CFD Product as required by **s 994B(5)(b)**;
- b. it would not be reasonable to conclude that, if the CFD Product were to be issued to a retail client in the target market, the product would likely be consistent with the likely objectives, financial situation and needs of the retail client as required by **s 994B(8)(b)**.

This is because:

- i. *firstly*, the fact that the First and Second TMD sought to define the target market by reference to undisclosed or inadequately disclosed criteria (see para 27(a) above) meant that it was not possible to reasonably or rationally conclude from the purported TMD whether the CFD Product would likely be consistent with the likely objectives, financial situation and needs of retail clients in the target market;
- ii. *secondly*, the definition of the target market (in particular in the respects set out in paragraphs 13 and 16 above), and by purporting to include retail clients who passed the Screening Test, was so broad as to inevitably capture retail investors for whom the CFD Product would not likely be consistent with their likely objectives, financial situation and needs, in particular given the complexity and high risks of the CFD Product as described at paragraphs 3 to 8 above;
- c. further or in the alternative to (a) above, and to the extent the Screening Test referred to in each purported TMD was a purported Distribution Condition, the condition was of unstated and uncertain application, such that each purported TMD did not specify or

properly specify conditions and restrictions on retail product distribution conduct in relation to the CFD Product as required by **s 994B(5)(c)**;

- d. further or in the alternative to (a) and (b) above, and to the extent the Screening Test referred to in each purported TMD was a purported Distribution Condition, it would not be reasonable to conclude that, if the CFD Product were to be issued to a retail client in accordance with the Distribution Condition, it would be likely that the retail client is in the target market as required by **s 994B(8)(a)**. This is because:
- i. the fact that the purported Distribution Condition was of unstated and uncertain application (see para 27(c) above) meant that it was not possible to reasonably or rationally conclude from the purported TMD whether, if the CFD Product were to be issued to a retail client in accordance with the Distribution Condition, it would be likely that the retail client is in the target market;
  - ii. the Screening Test, having the features set out in paragraphs 18 to 25 above:
    - A. was wholly inadequate to assess whether the retail client fitted within individual categories set out in the target market as described in the purported TMDs; and
    - B. was very difficult to fail and was therefore of little or no real utility as a Distribution Condition.

28. It follows that there was no “target market determination” by eToro for the purposes of s 994A of the Act, and eToro has engaged in retail product distribution conduct without having made a TMD in contravention of **s 994B(2)** of the Act.

Contravention of s 912A(1)(a) – failure to act efficiently, honestly, and fairly

29. Further or in the alternative, over the Relevant Period, eToro by its conduct with respect to the TMDs as set out in paragraph 27 above, and by applying the Screening Test to screen retail clients from trading in the CFD Product, failed to do all things necessary to ensure that the financial services covered by its AFSL were provided efficiently, honestly and fairly, in contravention of **s 912A(1)(a)** of the Act. That is in circumstances where:
- a. At all material times, eToro adopted a broad marketing strategy, including entering into sponsorship agreements with sporting teams and celebrities, and advertising via social media, television, print, cinema and on public transport.
  - b. eToro made no genuine or proper attempt to make an appropriate target market determination for the CFDs by reference to the likely objectives, financial situation and needs of retail clients.



- c. The Screening Test did not exclude a high proportion of retail clients (over the period 5 October 2021 to 25 January 2022 only 8% were excluded, and from 26 January 2022 onwards, only 6% were excluded), and was inapt to exclude investors for whom the CFD Product would not likely be consistent with their likely objectives, financial situation and needs. As a result, many retail clients were able to trade the CFD Product where that product was unsuitable for them.
- d. Once clients passed the Screening Test and acquired the CFD Product, there was a high likelihood that the client would suffer significant financial harm. The nature of the CFD Product was such that it was highly complex and exposed retail clients to significant risk, including the risk of losing much more money than their initial investment through leverage and the obligation to meet margin calls. The risks associated with the CFD Product were heightened where the underlying assets themselves had their own risks, and included extremely high risk and volatile products such as crypto-assets.
- e. The majority of consumers who acquired the CFD Product lost money when trading CFDs.
- f. An ineffective Screening Test was in eToro's commercial interests because it increased the number of retail clients (including unsuitable retail clients) who were able to trade the CFD Product, which meant higher revenues for eToro including through fees and costs. These higher revenues were at the expense of retail clients for whom the CFD Product was not appropriate.
- g. A prospective client who passed the Screening Test would (or might reasonably) form the view that there had been a proper assessment of whether the CFD Product was likely to be consistent with their objectives, financial situation and needs, when there had not been such an assessment.
- h. eToro was aware that that many retail clients for whom the CFD Product was unsuitable (for example, retail clients whose trading strategy purpose was "future planning" or "saving for home") had passed the Screening Test and were trading the CFD Product.

#### **D. THE ALLEGED HARM SUFFERED**

- 30. The conduct by eToro is likely to have resulted in a significant number of retail clients being exposed to a complex, high risk CFD Product, which is unlikely to be consistent with their objectives, financial situation and needs; and where the process for screening those clients as part of the distribution of the product was manifestly deficient. Many such clients may still be trading in the CFD Product and incurring ongoing losses, fees and charges.

31. In the period from 5 October 2021 to 14 June 2023, 29,965 retail clients opened accounts with eToro that were used to trade the CFD Product. Of these clients:
- a. 1,388 indicated they had a low risk tolerance;
  - b. 3,179 stated that their primary purpose for trading was to save for a home;
  - c. 9,864 stated they had no financial knowledge;
  - d. 6,217 failed the trading knowledge assessment;
  - e. 11,241 stated they had never traded with leverage;
  - f. 5,623 stated they had net annual income of less than \$10,000; and
  - g. 11,376 stated they had cash and liquid assets of less than \$10,000.
32. In the period from 5 October 2021 to 14 June 2023, 29,965 retail clients opened accounts with eToro that were used to trade the CFD Product. Of those accounts, 19,601 retail clients suffered realised losses, which totalled AUD\$26,248,787.58.

### **Certificate of lawyer**

I, Stephen Johnson, certify to the Court that, in relation to the Concise Statement filed on behalf of the Plaintiff, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 2 August 2023



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Signed by Stephen Johnson

Lawyer for the Plaintiff



# Target Market Determination

## Contracts for Difference

Issuer:	eToro AUS Capital Limited ACN 612 791 803, AFSL 491139
Product:	Contracts for Difference ("CFD")
Date of TMD:	5 October 2021

### 1. About this document

This document is a target market determination ("**TMD**") for the purposes of section 994B of the Corporations Act 2001 (Cth) ("**Corporations Act**") in respect of CFDs issued by eToro Aus Capital Ltd ACN 612 791 803 AFSL 491139 ("**eToro**"). This document applies to retail clients only ("**Clients**"). This document is not a product disclosure statement ("**PDS**") and Clients should read the relevant PDS to ensure they fully understand the risks involved, and consider seeking independent advice before deciding to invest in this Product.

This TMD is to assist staff of eToro and distributors in understanding the class of Clients for which this product i.e. CFDs have been designed, having regard to the objectives, financial situation and needs of the target market. This document is not a client disclosure document and is not intended to provide financial product advice.

### 2. About CFDs

CFDs are leveraged derivative products which enable Clients to indirectly benefit from the price movement of a range of underlying financial assets such as foreign exchange currency pairs, indices, cryptocurrencies, shares and commodities ("**Underlying Instruments**").

A CFD is an agreement to exchange the difference in the value of an Underlying Instrument from the time the contract is opened until the time at which it is closed.

CFDs enable Clients to take a trading position with an exposure to a particular Underlying Instrument without needing to buy or sell the actual full value of the Underlying Instrument. CFDs involve the significant risks, including the risk of loss as well as a potential for profit.

CFD trading is typically only suitable for investors who have sufficient experience and understanding of the product.

### 3. Target market for CFDs

Given the diverse nature of CFDs, we consider that the target market for CFDs is a Client that falls within one (or more) of the below categories, noting there may also be some overlap between categories:

- **Medium to High Risk Tolerance Traders** – Clients seeking to make a profit via speculation.
- **Risk Mitigation Investors** – Clients seeking to hedge potential risks from other investments in or exposures to Instruments.

- **Experienced Investors** – Clients who understand the risks of CFDs and the underlying investments upon which they are derived.
- **Clients with prior trading experience** - Clients with prior experience in financial markets and experience in trading leveraged financial products and who pass eToro's Trading Knowledge Assessment.
- **Appropriateness test** - Clients who pass the eToro Appropriateness test.

#### 4. Likely objectives, financial situation and needs of Clients in target market

Overall, CFD trading suits clients with a medium to high risk tolerance, or those seeking to mitigate risks (by employing hedging via CFD trading):

##### Objectives:

- Clients seeking to use their assets to support leverage in order to seek higher returns with corresponding higher risk.
- Clients seeking to hedge potential future losses from investments in other financial products.
- Clients seeking to grow capital over the short to medium term, whilst accepting the risks associated with short term trading.

##### Financial situation:

- Clients that can afford to lose some or all of their capital when trading CFDs in isolation or when copying (or following) others.
- Clients must be able to withstand losses from trading without causing distress or material impact to their living standards.

##### Needs:

- Clients who require or desire a higher return than that available from risk-free investments while accepting the returns are not guaranteed.

#### 5. Why Trading CFDs is likely to be consistent with the likely objectives, financial situation and needs of the target market

eToro expects that trading in CFDs will likely be consistent with the likely objectives, financial situation and needs of **Medium to High Risk Tolerance Investors** because, through trading on leverage, CFDs offer the potential for enhanced returns, and this class of Clients should be able to bear any potential losses without material hardship.

eToro also expects that trading in CFDs will likely be consistent with the likely objectives, financial situation and needs of **Risk Mitigation Investors** because these products offer the ability to economically protect any previous profits from exposure to an Instrument and/or protect against future losses. For example, by taking a short position in CFDs over an Instrument, a Client can attempt to make a profit from any downtrend to offset any loss from a Client's existing long exposure to the same Instrument.

## 5.1 Excluded classes of Clients

Many categories of Clients will be outside the target market for CFDs. Likely categories of such Clients may include certain of the following criteria:

1. any person under 18 years of age;
2. Clients who didn't pass the eToro Appropriateness test;
3. Clients who do not have sufficient relevant experience in trading;
4. Clients whose purpose for investing is to save for a home residence or for future planning;
5. Clients who have a low risk tolerance;
6. Clients who cannot afford to lose the amount of money deposited without a material impact on their standard of living;
7. Clients who do not understand the risks of trading in CFDs; or
8. Clients who require capital preservation.

## 5.2 Clients for which CFD trading may not be suitable

The eToro trading platform is known for its social trading network, which allows users to interact, access financial education materials and make the financial markets more accessible. eToro provides Clients with the ability to interact with, follow and copy other traders. This includes CFDs.

eToro recognises that trading CFDs is **not suitable for everyone**. CFDs are considered risky financial products, whether traded as part of eToro's social trading network or in isolation. eToro does not want to preclude Clients from trading CFDs where they fit into its target market (as set out above).

The categories of Clients that eToro considers CFDs may not be suitable for includes:

1. Clients who cannot afford to lose the amount of money deposited without a material impact on their standard of living;
2. Clients who have borrowed money to transact;
3. Clients who do not understand the risks of trading in CFDs;
4. Clients who require capital preservation;
5. Clients that have indicated to eToro that they may not be of sound mind or judgement, or are suffering from an addiction or impairment that could prevent their clear comprehension of the risks associated with trading.

This list is not exhaustive and may change from time to time. Even though eToro is currently unable to detect if a Client falls into one (or more) of these categories, CFDs are likely unsuitable for that type of person and they should seek independent financial advice before transacting in CFDs.

## 6. How this product is to be distributed

eToro generally both issues and distributes the financial products and services it offers.

Any distribution of CFDs by eToro directly to Clients will be in accordance with procedures eToro determines are reasonably likely to ensure that CFDs are only issued to Clients who are reasonably likely to be within the target market.

Third party distribution of CFDs issued by eToro must only occur in accordance with the client suitability and understanding procedures specified by eToro. No third party distributor is permitted to distribute CFDs issued by eToro to Clients unless eToro considers on reasonable grounds that each relevant Client is likely to be within the target market.

eToro selects its distribution criteria depending on the medium used. The criteria selected for each medium allows eToro to demonstrate that the audience targeted has, or is highly likely to have, an interest in and/or prior experience trading on financial markets

### 6.1 Promotion and distribution channels

This product is designed to be promoted or distributed through the following means:

**1. Intermediaries**

Including introducing brokers and referrers who have engaged with eToro and are promoting our products and services.

**2. Online Sales**

Products promoted through websites, online financial channels and appropriate social media;

**3. Print Media**

Products promoted through print media such as magazines, newspapers, radio, television, various kinds of software and the Internet;

**4. Public Relations**

Products or services promoted via PR channel providing content or running targeted events; and

### 6.2 Distribution conditions

Distribution and promotion of CFDs can only take place where the distribution criteria have been overlaid to be reasonably likely to only reach Clients in the target market.

In any event, CFDs should only be distributed to a Client where they meet the eligibility requirements determined by eToro and the Client is reasonably likely to fall within the target market.

### 6.3 Adequacy of distribution conditions and restrictions

eToro has internal processes in place to assess the eligibility criteria of clients from different distribution channels. The distribution criteria ensure that only clients who fall within the target market of this TMD can access the financial products and services offered. Distribution conditions are reviewed regularly to ensure their adequacy.

## 7. Reviewing this target market determination

We will review this target market determination in accordance with the below:

<b>Initial review</b>	Within the 12 months of the effective date.
<b>Periodic reviews</b>	At least each year from the initial review.
<b>Review triggers or events</b>	<p>The review triggers that may suggest that the TMD is no longer appropriate, such that a review of the TMD should be undertaken, include:</p> <ul style="list-style-type: none"> <li>● eToro becomes aware of a significant issuance of CFDs to Clients outside the target market;</li> <li>● Material changes to the CFD product as a result of new or amended functionality, whereby the key attributes of CFDs are no longer consistent with the likely objectives, financial situation and needs of Clients in the target market;</li> <li>● material changes to the business of eToro;</li> <li>● material changes to law or regulation affecting CFDs;</li> <li>● eToro becomes aware of a significant volume of complaints from Clients using CFDs;</li> <li>● eToro becomes aware of significant losses by Clients trading CFDs where it has caused a distress or material impact to their standards of living;</li> <li>● eToro becomes aware of an occurrence of a significant dealing outside the target market; or</li> <li>● any other event or circumstance that would materially change a factor taken into account in making this TMD for CFDs.</li> </ul>

Where a review trigger has occurred, this target market determination will be reviewed within 10 business days.

## 8. Reporting and monitoring this target market determination

The following information must be provided to eToro by distributors who engage in retail product distribution conduct in relation to CFDs

<b>Complaints</b>	Distributors will report all complaints in relation to the product(s) covered by this TMD on a <i>quarterly</i> basis. This includes the number and substance of complaints, including all details about the complaint, excluding personally identifiable information.
<b>Significant dealings</b>	Distributors will report if they become aware of a significant dealing in relation to this TMD within 10 business days. This includes the date or date range of the significant dealing(s) and a description of the significant dealing (e.g. why it is not consistent with the TMD). Whether or not a dealing is significant is a matter to be determined in the circumstances of each case.





# Target Market Determination

## Contracts for Difference

Issuer:	eToro AUS Capital Limited ACN 612 791 803, AFSL 491139
Product:	Contracts for Difference ("CFD")
Date of TMD:	30 March 2022

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CFDs are leveraged derivative products which enable Clients to indirectly benefit from the price movement of a range of underlying financial assets such as foreign exchange currency pairs, indices, cryptocurrencies, shares and commodities ("**Underlying Instruments**").

A CFD is an agreement to exchange the difference in the value of an Underlying Instrument from the time the contract is opened until the time at which it is closed.

CFDs enable Clients to take a trading position with an exposure to a particular Underlying Instrument without needing to buy or sell the actual full value of the Underlying Instrument. CFDs involve the significant risks, including the risk of loss as well as a potential for profit.

CFD trading is typically only suitable for investors who have sufficient experience and understanding of the product.

### 3. Target market for CFDs

Given the diverse nature of CFDs, we consider that the target market for CFDs is a Client that falls within one (or more) of the below categories, noting there may also be some overlap between categories:

- **Medium to High Risk Tolerance Traders** – Clients seeking to make a profit via speculation.
- **Experienced Investors** – Clients who understand the risks of CFDs and the underlying investments upon which they are derived.

- **Clients with prior trading experience** - Clients with prior experience in financial markets and experience in trading leveraged financial products and who pass eToro's Trading Knowledge Assessment.
- **Appropriateness test** - Clients who pass the eToro Appropriateness test.

#### 4. Likely objectives, financial situation and needs of Clients in target market

Overall, CFD trading suits clients with a medium to high risk tolerance, or those seeking to mitigate risks (by employing hedging via CFD trading):

##### Objectives:

- Clients seeking to use their assets to support leverage in order to seek higher returns with corresponding higher risk.
- Clients seeking to grow capital over the short to medium term, whilst accepting the risks associated with trading.

##### Financial situation:

- Clients that can afford to lose some or all of their capital when trading CFDs in isolation or when copying (or following) others.

##### Needs:

- Clients who want a sophisticated and proprietary trading platform with the ability to trade multi assets on the one platform, a trading platform that is easy to use, gives access to fair market rates and immediate execution of trades and gives Clients the ability to trade at their convenience and at their own discretion, giving them the ability to generate profits from both rising and falling markets, with user-friendly reports provided in a timely manner.

#### 5. Why Trading CFDs is likely to be consistent with the likely objectives, financial situation and needs of the target market

eToro expects that trading in CFDs will likely be consistent with the likely objectives, financial situation and needs of **Medium to High Risk Tolerance Investors** because, through trading on leverage, CFDs offer the potential for enhanced returns, and this class of Clients should be able to bear any potential losses without material hardship.

##### 5.1 Excluded classes of Clients

Many categories of Clients will be outside the target market for CFDs. Likely categories of such Clients may include certain of the following criteria:

1. any person under 18 years of age;
2. Clients who didn't pass the eToro Appropriateness test;
3. Clients who do not have sufficient relevant experience in trading;
4. Clients whose purpose for investing is to save for a home residence or for future planning;

5. Clients who have a low risk tolerance;
6. Clients who cannot afford to lose the amount of money deposited without a material impact on their standard of living; or
7. Clients who do not understand the risks of trading in CFDs.

\* We note that our determination to assess whether you fall into our negative market is based upon a combination of your answers to our Appropriateness test and not an assessment of each category listed above in isolation.

## 5.2 Clients for which CFD trading may not be suitable

The eToro trading platform is known for its social trading network, which allows users to interact, access financial education materials and make the financial markets more accessible. eToro provides Clients with the ability to interact with, follow and copy other traders. This includes CFDs.

eToro recognises that trading CFDs is **not suitable for everyone**. CFDs are considered risky financial products, whether traded as part of eToro's social trading network or in isolation. eToro does not want to preclude Clients from trading CFDs where they fit into its target market (as set out above).

The categories of Clients that eToro considers CFDs may not be suitable for includes:

1. Clients who cannot afford to lose the amount of money deposited without a material impact on their standard of living;
2. Clients who have borrowed money to transact;
3. Clients who do not understand the risks of trading in CFDs;
4. Clients who require capital preservation;
5. Clients that have indicated to eToro that they may not be of sound mind or judgement, or are suffering from an addiction or impairment that could prevent their clear comprehension of the risks associated with trading.

This list is not exhaustive and may change from time to time. Even though eToro is currently unable to detect if a Client falls into one (or more) of these categories, CFDs are likely unsuitable for that type of person and they should seek independent financial advice before transacting in CFDs.

## 6. How this product is to be distributed

eToro generally both issues and distributes the financial products and services it offers.

Any distribution of CFDs by eToro directly to Clients will be in accordance with procedures eToro determines are reasonably likely to ensure that CFDs are only issued to Clients who are reasonably likely to be within the target market.

Third party distribution of CFDs issued by eToro must only occur in accordance with the client suitability and understanding procedures specified by eToro. No third party distributor is permitted to distribute CFDs issued by eToro to Clients unless eToro considers on reasonable grounds that each relevant Client is likely to be within the target market.

eToro selects its distribution criteria depending on the medium used. The criteria selected for each medium allows eToro to demonstrate that the audience targeted has, or is highly likely to have, an interest in and/or prior experience trading on financial markets

## **6.1 Promotion and distribution channels**

This product is designed to be promoted or distributed through the following means:

### **1. Intermediaries**

Including introducing brokers and referrers who have engaged with eToro and are promoting our products and services.

### **2. Online Sales**

Products promoted through websites, online financial channels and appropriate social media.

### **3. Print Media**

Products promoted through print media such as magazines, newspapers, radio, television, various kinds of software and the Internet.

### **4. Public Relations**

Products or services promoted via PR channel providing content or running targeted events.

## **6.2 Distribution conditions**

Distribution and promotion of CFDs can only take place where the distribution criteria have been overlaid to be reasonably likely to only reach Clients in the target market.

In any event, CFDs should only be distributed to a Client where they meet the eligibility requirements determined by eToro and the Client is reasonably likely to fall within the target market.

## **6.3 Adequacy of distribution conditions and restrictions**

eToro has internal processes in place to assess the eligibility criteria of clients from different distribution channels. The distribution criteria ensure that only clients who fall within the target market of this TMD can access the financial products and services offered. Distribution conditions are reviewed regularly to ensure their adequacy.

## 7. Reviewing this target market determination

We will review this target market determination in accordance with the below:

<b>Initial review</b>	Within the 12 months of the effective date.
<b>Periodic reviews</b>	At least each year from the initial review.
<b>Review triggers or events</b>	<p>The review triggers that may suggest that the TMD is no longer appropriate, such that a review of the TMD should be undertaken, include:</p> <ul style="list-style-type: none"> <li>● eToro becomes aware of a significant issuance of CFDs to Clients outside the target market;</li> <li>● Material changes to the CFD product as a result of new or amended functionality, whereby the key attributes of CFDs are no longer consistent with the likely objectives, financial situation and needs of Clients in the target market;</li> <li>● material changes to the business of eToro;</li> <li>● material changes to law or regulation affecting CFDs;</li> <li>● eToro becomes aware of a significant volume of complaints from Clients using CFDs;</li> <li>● eToro becomes aware of significant losses by Clients trading CFDs where it has caused a distress or material impact to their standards of living;</li> <li>● eToro becomes aware of an occurrence of a significant dealing outside the target market; or</li> <li>● any other event or circumstance that would materially change a factor taken into account in making this TMD for CFDs.</li> </ul>

Where a review trigger has occurred, this target market determination will be reviewed within 10 business days.

## 8. Reporting and monitoring this target market determination

The following information must be provided to eToro by distributors who engage in retail product distribution conduct in relation to CFDs

<b>Complaints</b>	Distributors will report all complaints in relation to the product(s) covered by this TMD on a <i>quarterly</i> basis. This includes the number and substance of complaints, including all details about the complaint, excluding personally identifiable information.
<b>Significant dealings</b>	Distributors will report if they become aware of a significant dealing in relation to this TMD within 10 business days. This includes the date or date range of the significant dealing(s) and a description of the significant dealing (e.g. why it is not consistent with the TMD). Whether or not a dealing is significant is a matter to be determined in the circumstances of each case.



## Target Market Determination Contracts for Difference

Issuer:	eToro AUS Capital Limited ACN 612 791 803, AFSL 491139
Product:	Contracts for Difference (" <b>CFD</b> ")
Date of TMD:	6 February 2023

### About this document

This document is a target market determination ("TMD") for the purposes of section 994B of the Corporations Act 2001 (Cth) ("Corporations Act") in respect of CFDs issued by eToro Aus Capital Ltd ACN 612 791 803 AFSL 491139 ("eToro").

This document applies to retail clients only ("Clients"). This document is not a product disclosure statement ("PDS") and Clients should read the relevant PDS and Terms and Conditions to ensure they fully understand the risks involved, and consider seeking independent advice before deciding to invest in this Product.

This TMD is designed to assist staff of eToro and any distributors to understand how eToro CFDs have been designed, having regard to the objectives, financial situation and needs of the target market. This document is not a client disclosure document and is not intended to provide financial product advice.

### About eToro's CFDs

A Contract for Difference (CFD) is an agreement between two parties to exchange the difference in value of a particular asset between the date a contract was opened and the date the contract is closed. They allow traders to participate in the performance of an asset or class of asset without owning the underlying asset.

CFD trading is typically only suitable for investors who have sufficient experience and understanding of their risks and benefits. CFDs are leveraged products that offer the potential to make greater returns, but also increase the risk of higher losses. They can be an effective instrument in a diversified portfolio due to their relatively low margins and trading costs compared to owning the underlying asset.

eToro issues CFDs for the following underlying assets: Currency Pairs; Commodities; Indices; Crypto assets; Shares; and ETFs. This TMD has been prepared in relation to all CFD offerings because CFDs have unique features, risk and benefits compared with our other product offerings.



## eToro's Target Market for CFDs

eToro offers a multi asset platform to retail clients. Clients can enter the market with low cost and minimum outlay while learning about investing by using the social aspects of our platform.

Trading in CFDs will not be suitable for everyone. Generally we expect that traders and investors with the following characteristics may enter into CFDs.

The target market for CFDs includes clients who<sup>1</sup>:

- understand the risks and benefits of trading in CFDs
- invest only a proportion of their available funds in CFDs
- have prior trading experience
- have a medium to high risk tolerance<sup>2</sup>
- have a diversified portfolio
- have a suitable level of income or wealth
- can afford to lose all their investment in CFDs without a significant detrimental effect on their standard of living

Our assessment of appropriateness is based on a number of different tests, one of which includes an overall score, determined from a client's response to our onboarding questions together with knowledge and experience tests. These tests may be reperformed during the client's lifetime of trading with eToro in accordance with our Terms and Conditions.

Likely objectives, financial situation and needs

### Likely Objectives

CFDs are generally best suited to clients wishing to speculate over the direction of the market, and those seeking to hedge other exposures. Due to the leveraged nature of CFDs, they may be more suitable for clients with a very short/short time horizon in a diversified portfolio. Clients are likely to have a medium to high risk profile, a good understanding of CFDs and prior trading experience.

A full explanation of risks is detailed in the PDS and our Terms and Conditions.

### Likely Situation

Clients investing in CFDs are likely to:

- have a suitable level of income
- have a suitable level of wealth

<sup>1</sup> If a client does not fit this profile, they may wish to consider our other products including real assets and our Copy Trade Service.

<sup>2</sup> Crypto assets are considered higher risk assets.



	<ul style="list-style-type: none"> <li>• be able to afford to lose all their investment in CFDs without a significant detrimental effect on their standard of living</li> <li>• invest only a proportion of their available funds in CFDs</li> </ul> <p>We assess a client's likely situation during onboarding by asking questions about their income, net wealth and cash equivalent assets.</p> <p><b>Likely Needs</b> Clients investing in CFDs are likely:</p> <ul style="list-style-type: none"> <li>• to trade on markets heading in both directions</li> <li>• to use leverage to increase exposure</li> <li>• to diversify their portfolio</li> <li>• to hedge other exposures</li> <li>• to speculate on market movements</li> </ul> <p>We assess a client's likely needs during onboarding by asking questions in relation to their planned investments and time horizon.</p>	
Knowledge and experience	<p>Clients must demonstrate an understanding of CFDs and demonstrate general trading experience before trading in CFDs. To assess a clients' knowledge and experience we will ask a range of questions during the onboarding procedure, monitor clients' activity in the platform and seek to regularly update client profile information. A client must also be aware of and accept the risks of trading in CFDs.</p>	
Excluded classes of client	<p>The following clients will not be appropriate for CFD trading:</p> <ul style="list-style-type: none"> <li>• any person under 18 years of age</li> <li>• clients who fail the eToro negative market test which may identify: <ul style="list-style-type: none"> <li>○ clients who do not have sufficient relevant experience in trading</li> <li>○ clients whose purpose for investing is to save for a home residence or for future planning</li> <li>○ clients who have a low risk tolerance</li> <li>○ clients who cannot afford to lose the money invested without a material detrimental impact on their standard of living</li> <li>○ clients who do not understand the risks of trading in CFDs.</li> </ul> </li> </ul>	
Key attributes of the CFD product	Risk level	This is a medium to high risk product. CFDs are complex products and clients should educate themselves before investing.





	Underlying asset	A CFD is priced based on the value of the underlying asset and changes in real time when the markets are open.
	Leverage	eToro's proprietary trading platform allows a client to select their desired leverage. This means that a client can trade anywhere from X1 leverage to the maximum of X30 depending on the CFD's underlying asset.
	Term	There is no defined term for a CFD contract, and a client's duration in a position will depend on the purpose of trading, market movements and other factors.
	Possible negative outcomes	There is a high risk that a client may lose all of their investment.
	Other attributes	eToro has implemented the following automated features in the platform: <ul style="list-style-type: none"> <li>• Stop loss is set at least 50%</li> <li>• Margin close out alert at 20% of available equity</li> <li>• Negative balance protection</li> </ul>
Distribution	eToro has a range of distribution channels, including direct and indirect (any third party distribution is subject to tight controls). We operate an execution only model which means we don't give personal advice or take into account a client's specific objectives, financial situation and needs. Instead, we design and offer products that meet the objectives, financial situation and needs of particular groups of clients. When our representatives speak with clients, it is on a general advice basis only. This means we can speak about the features of our products, but not provide any personalised advice.	
Promotion	<p>eToro's marketing strategy is one of brand awareness. We do not promote specific CFDs or trading strategies. We create content for existing clients, for search engine optimisation and affiliate advertisers. We also hold events from time to time.</p> <p>Distribution and promotion of CFDs can only take place where the distribution criteria have been overlaid to be reasonably likely to only reach Clients in the target market. The negative market test will assist in preventing unsuitable clients from accessing CFDs.</p>	



Review Triggers	<ul style="list-style-type: none"> <li>• Within the 6 months of the effective date, and at least bi-annually thereafter.</li> <li>• eToro becomes aware of an occurrence of a significant dealing outside the target market;</li> <li>• eToro becomes aware of a significant increase in the number of complaints from Clients using CFDs;</li> <li>• Material changes to the CFD product as a result of new or amended functionality;</li> <li>• material changes to the business of eToro;</li> <li>• material changes to law or regulation affecting CFDs;</li> <li>• any other event or circumstance that would materially change a factor taken into account in making this TMD for CFDs</li> <li>• any other significant matter is identified during a regular review performed in accordance with the Design and Distribution Policy.</li> </ul> <p>Where a review trigger has occurred, this target market determination will be reviewed within 10 business days.</p>
Reporting and monitoring	<p>While our systems have been designed to prevent a significant dealing, we continuously monitor complaints and expressions of vulnerability and analyse these on at least a quarterly basis. We perform a detailed analysis of client outcomes in accordance with the Design and Distribution Policy and procedures at least bi-annually.</p>