

Attachment to CS 64: Draft instrument



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (Product Intervention Order Amendment—Contracts for Difference) Instrument 2026/XX

I, <insert name>, delegate of the Australian Securities and Investments Commission, acting in accordance with the approval of the Minister under subsection 1023J(2) of the *Corporations Act 2001*, make the following legislative instrument.

Date 2026

[DRAFT ONLY – NOT FOR SIGNATURE]

<signature>

<insert name>

Contents

Part 1—Preliminary	3
1 Name of legislative instrument.....	3
2 Commencement	3
3 Authority	3
4 Schedules	3
Schedule 1—Amendments	4
<i>ASIC Corporations (Product Intervention Order—Contracts for Difference)</i> <i>Instrument 2020/986</i>	4

Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Product Intervention Order Amendment— Contracts for Difference) Instrument 2026/XX*.

2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

Note: The register may be accessed at www.legislation.gov.au.

3 Authority

This instrument is made under subsection 1023J(1) of the *Corporations Act 2001*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

ASIC Corporations (Product Intervention Order—Contracts for Difference) Instrument 2020/986

1 Subsection 4(1) (paragraph (a) of the definition of *contract for difference*)

Repeal the paragraph (not including the notes), substitute:

- (a) the value of the derivative, or the amount of consideration that must, or may be required to, be provided under the derivative, is ultimately determined, derived from or varies by reference to (wholly or in part) the change, between the acquisition and termination of the derivative, in the amount or value of a thing (***underlying***) (of any nature whatsoever and whether or not deliverable) that is specified under the terms of the derivative, including, for example, one or more of the following:
 - (i) an asset;
 - (ii) a rate (including an interest rate or exchange rate);
 - (iii) an index;
 - (iv) a commodity;

2 Subsection 4(1) (paragraph (e) of the definition of *contract for difference*)

Repeal the paragraph (not including the note), substitute:

- (e) on termination, the obligations of the parties are settled:
 - (i) in cash; or
 - (ii) by transfer of digital assets; or
 - (iii) by set-off between the parties.

3 Subsection 4(1) (definition of *cryptoasset*)

Repeal the definition.

4 Subsection 4(1)

Insert:

digital asset means a digital representation of value or rights (including rights to property), the ownership of which is evidenced cryptographically and that is held and transferred electronically by:

- (a) a type of distributed ledger technology; or
- (b) another distributed cryptographically verifiable data structure.

5 Subsection 4(1) (definition of *underlying*)

Repeal the definition, substitute:

***underlying*:**

- (a) in relation to a CFD: see the definition of ***contract for difference***;
- (b) in relation to an option, means a thing (of any nature whatsoever and whether or not deliverable) for which the following are satisfied:
 - (i) the thing is specified under the terms of the option; and
 - (ii) the value of the option, or the amount of consideration that must, or may be required to, be provided under the option, is ultimately determined, derived from or varies by reference to (wholly or in part) the amount or value of the thing;

including, for example, one or more of the following:

- (iii) an asset;
- (iv) a rate (including an interest rate or exchange rate);
- (v) an index;
- (vi) a commodity.

6 After subsection 6(1)

Insert:

- (1A) Except in accordance with the condition specified in subsection (3B), a person must not, in the course of carrying on a business, offer a discount of the kind referred to in paragraph (3)(b) to a retail client or prospective retail client of a CFD issuer in circumstances where the issue of a CFD to the client by the CFD issuer would be covered by the conditional prohibition in subsection 5(1).

7 Paragraph 6(3)(a)

Repeal the paragraph, substitute:

- (a) the provision of, or access to, an information service or an education or research tool, if:
 - (i) the service or tool is provided, or made accessible to all retail clients; and

- (ii) the service or tool is not provided or made accessible as an inducement to a retail client or a prospective retail client to engage in conduct referred to in any of paragraphs (2)(b), (c) or (d);

8 Paragraph 6(3)(b)

Repeal the paragraph, substitute:

- (b) a discount in costs or fees (including a volume based discount) if:
 - (i) the discount is offered unconditionally (or is subject to conditions only to the extent the conditions are reasonably necessary to give effect to a volume based discount); and
 - (ii) the discount is offered to all retail clients and prospective retail clients on substantially the same terms and conditions; and
 - (iii) the discount, and the terms and any conditions on which the discount is offered, are clearly and prominently displayed on the CFD issuer's website and trading platform;

9 After subsection 6(3)

Insert:

Condition

- (3A) The condition in subsection (3B) is specified for the purposes of subsection (1A).
- (3B) If a person offers a discount of the kind referred to in paragraph (3)(b), the person must:
 - (a) keep a written record in relation to the discount that sets out the following:
 - (i) the terms and any conditions on which the discount was offered;
 - (ii) the period during which the discount was offered;
 - (iii) the manner in which the discount was offered;
 - (iv) particulars sufficient to demonstrate that:
 - (A) if the offer was subject to conditions—that the conditions were reasonably necessary to give effect to a volume based discount; and

- (B) the discount was offered to all retail clients and prospective retail clients on substantially the same terms and conditions; and
- (C) the discount, and the terms and any conditions on which the discount was offered, were made available in accordance with subparagraph (3)(b)(iii); and
- (b) retain each document or other record that evidences the matters referred to in subparagraph (iv), including any website content, trading platform notice, communication to a retail client or prospective retail client or promotional material given in relation to the offer of the discount; and
- (c) retain each document or record referred to in paragraphs (a) and (b) for 7 years after the discount expires or otherwise ceases to be available.

10 Paragraph 7(2)(d)

Omit “CFDs is a cryptoasset”, substitute “CFD is a digital asset”.

11 Paragraph 7(2)(e)

After “paragraphs (a) to (d)”, insert “and is not an option”.

12 At the end of subsection 7(2)

Add:

- ; and (f) if the underlying for a CFD is an option and the maximum loss exposure to the client under the terms of the CFD is limited to the premium paid by the client for the CFD—the amount of the premium; and
- (g) if the underlying for a CFD is an option and the maximum loss exposure to the client under the terms of the CFD is not limited to the premium paid by the client for the CFD—the initial margin that would be required under paragraphs (a) to (e) if references to the underlying for the CFD in paragraphs (a) to (e) were instead references to the underlying for the option.

Note: The initial margin requirement for a CFD under this subsection must be separately applied in relation to each CFD issued to a retail client. For example, long and short exposures under multiple CFDs held by a retail client cannot be netted when calculating the initial margin requirement for a CFD.