



29 November 2021

Retail Complex Products and Investor Protection
Market Supervision
Australian Securities and Investments Commission
Via email: Market.Supervision.OTC@asic.gov.au

RE: Consultation paper 348: Extension of the CFD product intervention order

Contracts for difference ('**CFDs**') are harmful and high-risk financial products that overwhelmingly lose consumers' money.

CHOICE commends ASIC for proposing to extend its product intervention order restricting the sale and distribution of CFDs to retail clients until it is revoked or sunsets on 1 April 2031. CFDs are precisely the kind of financial product that should be subject to market-wide product interventions.

CHOICE supports ASIC's initial product intervention order restricting the sale and distribution of CFDs. In October 2019, CHOICE supported ASIC's proposal to use its new product intervention powers on CFDs and binary options.¹ ASIC's subsequent product intervention order imposing conditions on the sale and distribution of CFDs was a welcome move.² It mirrors the actions taken by the European Securities and Market Authority in 2018³ and the United Kingdom's Financial Conduct Authority in 2019 to protect consumers in those jurisdictions from these harmful financial products.⁴

ASIC's analysis has found that there is a significant reduction in harm to consumers since the introduction of the production intervention order. This includes a:

- 94% reduction in retail clients net losses from \$377m to \$22m;
- 50% reduction in the average loss per retail loss-making account from \$1962 to \$986; and
- significant decline in negative balances and margin close-out for retail clients.⁵

This evidence shows that ASIC's product intervention order has reduced - but not removed - the consumer detriment caused by CFD products.

CHOICE strongly supports ASIC's product intervention order being extended until 2031 pending Ministerial approval. We anticipate that significant consumer harm would eventuate if the temporary

¹CHOICE submission to ASIC, 2019, RE: Consultation paper 322: Product intervention: OTC binary options and CFDs

²ASIC Corporations (Product Intervention Order—Contracts for Differences) Instrument 2020/986

³European Securities and Markets Authority, 2018, 'ESMA adopts final product intervention measures on CFDs and binary options' <https://www.esma.europa.eu/press-news/esma-news/esma-adopts-final-product-intervention-measures-cfds-and-binary-options>

⁴Financial Conduct Authority, 2019, FCA confirms permanent restrictions on the sale of CFDs and CFD-like options to retail consumers <https://www.fca.org.uk/news/press-releases/fca-confirms-permanent-restrictions-sale-cfds-and-cfd-options-retail-consumers>

⁵ASIC, 2021, Consultation paper 348: Extension of the CFD product intervention order, p.17-34

57 Carrington Road Marrickville NSW 2204

Phone 02 9577 3333 | Fax 02 9577 3377 | Email campaigns@choice.com.au | www.choice.com.au

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order expires in May 2022. If the order is not renewed, consumers would risk potentially losing billions of dollars in CFD losses as seen in 2020.⁶ CFD issuers would be allowed to resume unfair trading practices including being able to sell highly-leveraged financial products to retail consumers.

CHOICE believes the sale of CFDs to retail clients has limited, if any, public benefit. Given the widespread harm identified by ASIC, CHOICE recommends that the sale of CFDs to retail clients be banned. Both the United States and Hong Kong have banned the sale of CFDs to retail investors.⁷ Banning the sale of CFDs would bring Australia in line with international best practice in consumer financial protection and create a fairer financial system.

We commend ASIC for protecting the Australian community from harmful CFDs. For further information please contact CHOICE on [REDACTED] or [REDACTED]

Yours sincerely,

[REDACTED]

Patrick Veyret
Senior Policy & Campaigns Adviser
CHOICE

⁶ASIC 2021, CP348 Extension of the CFD product intervention order, p.19

⁷U.S. Securities and Exchange Commission (SEC) 2018, <https://www.sec.gov/litigation/complaints/2018/comp-pr2018-218.pdf>

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