1 October 2019

Manager
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To the Manager

RE: **Consultation paper 322: Product intervention: OTC binary options and CFDs**

We welcome the opportunity to provide comment on *Product interventions: OTC binary options and CFDs* and the associated draft regulatory instruments. We commend ASIC's decision to intervene in the market for binary options and Contracts For Difference (CFD) in the manner proposed in the draft instruments. Over The Counter (OTC) binary options and CFDs are designed to lose consumers money. They are precisely the kind of poor value financial products that should be the subject to market wide product interventions.

The consultation paper provides a solid evidence base of escalating consumer detriment. That the detriment remains ongoing, despite the use of multiple other regulatory levers, is clear grounds for use of the new product intervention power.

We offer the following in response to the questions set out in the consultation paper.

Binary Options

E1Q1 - Market wide product intervention order prohibiting issue and distribution to retail clients

We fully support the proposed prohibition on issue and distribution to retail clients. The consumer detriment caused by these products cannot be in doubt; the research paper released with this consultation provides unequivocal evidence that action is needed. We know that the vast majority of consumers who trade lose money. We also know that the market's gross annual turnover has doubled in the two years between market reviews in 2017 and 2019, and has accrued around 4000 complaints to regulators in the first seven months of this year.

We note ASIC has dipped into its toolkit to improve this industry many times over the last three years – revoking credit licenses, obtaining orders and enforceable undertakings, banning orders and issuing public warnings. These interventions have had a limited effect as they were unable to force change to the products fundamental design and promotion.

To restate our comments from the joint consumer group submission to ASIC's Consultation on Product Intervention Power (CP 313), product interventions should not be used as a 'last resort', or only occur after extended consultation with an effected industry. Delays can fundamentally undermine the purpose of the power, and result in interventions failing to protect consumers as intended.

E1Q2 - 18 month order

An 18 month initial order is sufficient. It would be useful for ASIC to seek to understand where consumers who are currently using binary options move their money to – for example if they move to other lightly regulated but complex product types in the financial services marketplace. This may assist ASIC in identifying potential future regulatory need.

E1Q3 - Delayed commencement

We consider the proposed 10 day implementation period to be appropriate. Given the substantial losses being accrued by retail consumers and growth in complaints, a short implementation period is most suitable. Consumer detriment will continue until the prohibition comes into effect. In short: the sooner, the better.

E1Q4 - Effects on competition in the financial system

Binary options are effectively a gambling product and the Australian financial system will only be better off by having consumer investments in products that are not designed to fleece them. We see no genuine benefit for consumers in using this product and agree with the summation in the consultation paper that lost revenue from products will be from losses avoided by retail clients.

Money not lost to binary options is money that can be used by consumers to use legitimate products and services in the Australian financial services market.

Contracts for Difference

F1Q1 - Do you agree to intervention and conditions 1-8

The Conditions outlined in the draft instrument will certainly enhance consumer protections significantly by both increasing transparency and improving a number of practices and we strongly support keeping the Conditions as set out in the draft instrument. Keeping our regulations closely coordinated with international regulatory regimes will also help legitimate businesses to understand and meet their obligations.

We do not offer any specific comment on the proposed ratios in Condition 1, other than to state that a measure of success should be a significant reduction in customer losses as has happened in other jurisdictions. It must be accepted that changes to the parameters of these products will make them a much safer product for those who continue to use it, even if for some this involves a reduction in their individual choice options.

Condition 3, which will prevent consumers owing a debt beyond what they initially sought to invest up front, is a significant and welcome protection that will improve the customer experience and actively prevent consumer detriment. Many of the CFD broker and provider websites we visited simply note this possibility in small print at the bottom of their homepage.

Similarly Condition 4 will also help ensure these products aren't targeted to consumers with little understanding of the product and who are naive to the pitfalls like owing more than your initial investment. We note the prevalence of marketing inducements and recommend ASIC undertake to investigate when the regulations come into effect to ensure compliance with this new requirement.

Conditions 6, 7 and 8 will also significantly improve consumer understanding of the riskiness of CFDs, and should help consumers and dispute resolution agencies to make decisions about unfair conduct in the event of a problem arising. Without this critical information, the balance between consumer interests and business interests will remain unfairly weighted.

F1Q2 Close out conditions

We support Condition 2's intent as a means of protecting consumers in the event of sudden losses.

F1Q3 Risk warnings

Given the high likelihood of losing money on CFDs, it is entirely reasonable a risk warning should exist on all forms of promotion and marketing.

Risk warnings are not, however, a substitute for safe products – written in a broad way, they are unlikely to have an effect on consumer decision making. Many CFD websites we visited already have some warnings in small print at the bottom of the page, possibly to comply with requirements from other jurisdictions. They are clearly not convincing people of the risk, given how many clients lose money. We would like to see the display risk warnings period shortened from the currently suggested three months.

What will be important is the specific information in a risk warning – specific information about customer losses using a particular platform. This requirement is absolutely critical if risk warnings are to be helpful to consumers choosing to make an informed financial choice.

Risk warnings should be audited by ASIC at the point at which the requirement takes effect to ensure they are displayed across the industry in the way intended by the regulations.

F1Q4 18 month duration

As per the binary options comments, 18 months is sufficient and again, it would be useful for ASIC to try and understand where customers who exit this market move to.

F1Q5 Delayed commencement

Delayed commencement is never ideal when the consumer detriment is well known and will continue until regulations take effect. We note that these products use complex platforms that are designed notify customers multiple times a day when markets change to encourage use of their product. We anticipate they would be sophisticated enough to incorporate many of the changes fairly readily, including detailing their pricing methodology and risk notifications.

F1Q6 Effects on competition in the financial system

We would simply reiterate that money not lost on CFDs is money that can be invested by consumers elsewhere in the financial services industry. Having a fair, well regulated financial service system which allows consumers to make well informed decisions is the best way to empower consumers and encourage them to enter the market.

Concluding remarks

We anticipate that the proposed measures will be very effective at addressing consumer detriment and believe the market targeted will improve significantly as a result of this intervention. We hope all future product interventions will seek to emulate this outcome.

For further information please contact CHOICE on pveyret@choice.com.au

Yours sincerely,

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