Intelligent
Financial Markets

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Dear Dr Chadwick

AUSTRALIAN CFD FORUM LIMITED AND OTHERS – APPLICATION FOR AUTHORISATION 91403 AND 91404 – INTERESTED PARTY CONSULTATION

YOUR REFERENCE 53574

Thank you for the invitation to comment and make a submission on the application for authorisation received by you from the Australian CFD Forum and its founding members, CMC Markets Asia Pacific Pty Ltd, GFT Global Markets UK Limited and IG Markets Limited (the Applicants)

1. INTRODUCTION

Margin foreign exchange contracts and contracts for difference have similar characteristics and are referred to in this submission as "CFDs" and the relevant industry is referred to as "the CFD industry". ASIC adopts this approach.

Also, you should note that there are references in the Applicants' submission to ASIC Regulatory Guide 239 and Consultation Paper 156. They are both now in ASIC Regulatory Guide 166.

It is instructive that we are aware that one of the Applicants in the early stages of its activities in Australia as a market-maker used client moneys for hedging purposes with an external counterparty(s). This, we believe, is relevant in assessing the merits of the Application.

We have adopted the same definitions as the Applicants.

2. EXECUTIVE SUMMARY

The Standards that are proposed to be administered in accordance with the proposed Forum's constitution and the Membership Rules do in fact contain exclusionary and cartel provisions and they give effect to those provisions. They are anti-competitive and constitute barriers to entry to the CFD industry by Australian companies. Furthermore, they are tainted by the apparent motives of the Applicants of improving or entrenching their own market positions in Australia.

The approval of the Application in respect of the Relevant Standards and the Membership Rules of the Forum will inevitably lead to control of the Australian CFD market by the Applicants and like-minded members of the Forum, whose interests, as we point out below, are not aligned to those of Australian consumers. They do not benefit the Australian public. The Application should, therefore, be refused.

3. BACKGROUND

Who are we?

We are the holder of Australian Financial Services Licence ("AFSL") No. 426359. We are authorised to generally advise on, and deal and make a market in, foreign exchange contracts and derivatives. Under our AFSL, we provide margin foreign exchange contacts and contracts for difference where the underlying instruments are commodities, bullion and index futures . The major part of our activities are margin foreign exchange.

We were established in January 2012.

We have implemented rigorous compliance standards and procedures that meet ASIC and other regulatory authorities' requirements.

We are licenced to operate three trading systems in the issue of our foreign exchange derivative products. It is important in the context of this submission to understand these systems because they have very different implications.

The three trading systems are:

Straight Through Processing (STP) or Direct Market Access (DMA)

Under this system, upon receiving a client order, we pass it directly onto our own liquidity providers, the main one in our case being [INSERT PRIME BROKER]. This is one of the purest forms of trading. The liquidity provider acts as a counterparty to the trade and fills the order at the prevailing market price. The provider is not, therefore, subject to client risk.

Market-making: professional traders

This involves the provider hedging the clients' transactions, either through an internal hedging process or with the providers' liquidity providers/counterparties such as [INSERT EXAMPLE], and others to diversify the counterparty risk. This is appropriate for professional traders.

Market-making: retail traders

This system is appropriate for retail clients whose transactions are not of the size or quantity that are appropriate for either of the above two systems. The provider assumes the client risk.

4. APPROVAL OF RELEVANT STANDARDS AND MEMBERSHIP RULES

The Applicants say that they will not proceed with the adoption of the Membership Rules or the implementation of the Standards, if authorisation is not given to the Relevant Standards. If the Membership Rules are authorised but the Relevant Standards are not, the Applicants may decide not to proceed with significantly watered down Standards if authorisation is not given to the Relevant Standards.

We believe the primary motivation for the establishment of the Forum is the promotion and mandating of Relevant Standards 7 and 12.

The intention of the founding members will be to attract as many members as they can and only those members who agree to the Relevant Standards will be accepted as members. This could give control of the industry to overseas interests, which is surely not in the Australian public interest,

Treasury and ASIC may want to introduce proposals that restrict the use of client money and impose higher financial standards and they, as the appropriate regulatory authorities, will do so, if it is necessary to protect consumer interests. AFMA is the appropriate body where industry concerns can be expressed. It has only been the self-interest of companies such as the Applicants that have caused difficulties

The Australian market is well regulated by ASIC. It had concerns about client protection and this lead to Regulatory Guide 166, which replaced Regulatory Guide 239. This guide came as a result of a consideration of the issues referred to in ASIC Consultation Paper CP156.

ASIC has a process under which it reviews the activities of providers and we have no doubt that it would like to see a forum that leads to the upholding of those standards and recommends new standards that are in interests of the Australian industry as a whole. But not those that reflect the apparent motives of the Applicants.

It is mischievous to imply, as the Applicants do, that ASIC supports these standards without specifying those standards that it does or does not support. RG166 (not RG239) was introduced after full consultation. ASIC and Treasury is obviously happy with the financial requirements set out in RG166.

The point must be made, however, that it is not for members with vested interests to attempt to mandate standards - through a collective body - that are anti-competitive on their face and may have a public benefit, but on closer analysis reveal that they have a detrimental effect on the CFD market by limiting consumer choice and leading to overseas control of the market and by extension to clients receiving less security as a result..

Market makers do not hedge all positions held by clients and the founding members may themselves or their parents carry the risk. This creates far larger risk to a client than the DMA/STP situation where the providers' exposure is hedged to cover 100% of client exposure and nothing else. We believe that the introduction of Relevant Standard 7 into the Australian market insofar as it affects the use of client moneys will lead to the decimation of the DMA/STP market in Australia. If client moneys cannot be used to hedge, DMA/STP providers will be forced to begin running risk

against their clients in order to generate profit from unprofitable clients. The result of the introduction of Relevant Standard 7 means the DMA/STP providers will be

required to use their own capital to hedge the client positions, and will have to impose margins much higher than their overseas competitors. The returns on the providers' capital will be reduced thereby placing pressure on its ability to meet ASIC's financial and prudential requirements.

As pointed out above, we are also licenced to act as a market-maker for retail clients. However, when hedging, our liquidity providers require a much higher level of margin than we can competitively require clients to pay. We must be able to impose competitive margins – at least those that compete with the overseas providers – to benefit Australian clients.

5. THE STANDARDS

We have no great difficulty with Standards other than Standards 7 insofar as it relates to the use of client moneys and 12 the acceptance of which will have a detrimental effect on the Australian CFD market by limiting consumer choice.

The adoption of Relevant Standard 7 will lead to the decimation of the STP/DMA system in Australia, which is fast becoming the preferred trading system worldwide.

By the very nature of the market-making system, market-makers have a clear conflict of interest in that their interests are not aligned to those of their clients. In other words, they make money when their clients lose money in both rising and falling markets.

MF Global

The Applicant's refer to the unfortunate situation that arose in connection with MF Global to support their justification for Relevant Standards 7 and 12. The MF Global difficulties caused significant problems for clients of the Australian subsidiary. But the cause of overseas parent's difficulties arose from a number of factors, including the misuse of client funds and it must be noted that the Australian clients would appear to have recovered over 90% of their funds.

6. CONCLUSION

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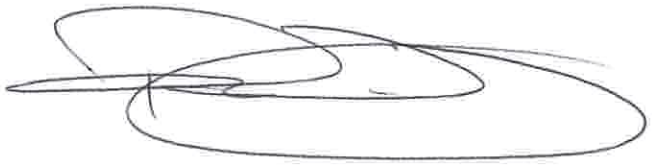
We support the establishment of a Forum whose Standards and Membership Rules are in the interests of all Australian participants in the CFD industry. But, IFM has vested interests in the introduction of the Standards, including Relevant Standards 7, insofar as far as it relates to the use of client moneys, and Relevant Standard 12. As has been shown above, these Relevant Standards do not benefit the public. As the founding members have indicated their reluctance to proceed with the Forum absent these Relevant Standards, the Application should be refused.

Yours sincerely



Paul Tsangaris