

MEDIA RELEASE (23-141MR)

ASIC issues first DDO stop order for failure to take reasonable steps in CFD distribution

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ASIC has made an interim stop order preventing Mitrade Global Pty Ltd (Mitrade) from opening trading accounts or dealing in contracts for difference (CFDs) or margin foreign exchange contracts (margin FX) to retail investors. ASIC's action was in response to concerns that Mitrade failed to take reasonable steps likely to result in distribution conduct being consistent with its target market determination (TMD).

This action is ASIC's first use of its stop order powers in response to a contravention of the reasonable steps obligations regarding a financial product since the design and distribution obligations (DDO) took effect in October 2021.

ASIC was concerned that Mitrade relied on a retail investor questionnaire with significant flaws as a key step for compliance with its obligations. When applying for a trading account, Mitrade's questionnaire gave prompts to a prospective retail investor to review any 'unacceptable answer' that would indicate that the investor was not likely to be in the target market for the products. Further, Mitrade allowed retail investors unlimited attempts to pass the questionnaire.

ASIC was also concerned that Mitrade's steps to reduce the likelihood of distribution conduct being inconsistent with the TMD included inadequate assessment of whether retail investors were likely to be in the target market for the CFDs, in the questionnaire or otherwise. ASIC considered that Mitrade's questionnaire:

- did not adequately enquire into the objectives and needs of retail investors to enable Mitrade to adequately assess whether the investors are likely to be in the target market described in its TMD for the complex, high-risk, leveraged CFDs and margin FX products; and
- lacked the degree of specificity required to adequately assess whether distribution to retail investors would likely be consistent with Mitrade's target market criteria on knowledge and experience, in relation to CFD and margin FX trading.

Under DDO, an issuer and distributors of a financial product must take reasonable steps that will, or are reasonably likely to, result in distribution conduct relating to retail investors being consistent with the TMD for the product.

The interim stop order is valid for 21 days unless revoked earlier. ASIC made the interim order to protect retail investors from acquiring CFDs or margin FX from Mitrade, where those products may not be suitable for their financial objectives, situation or needs. The order does not prevent Mitrade's existing clients from varying or closing their CFD positions.

Background

To date, ASIC has issued 41 interim stop orders under DDO, including the order for Mitrade. Of the 41 interim stop orders issued, 33 have been lifted following actions taken by the entities to address ASIC's concerns or where the products were withdrawn, and eight remain in place.

ASIC has targeted surveillances underway to check whether product issuers and distributors are complying with DDO. Where firms are not doing the right thing, ASIC can take quick action under DDO to disrupt poor conduct and prevent potential consumer harm.

On 3 May, ASIC called on investment product issuers to 'lift their game' after an initial review found significant room for improvement in how they meet their design and distribution obligations. Report

762 *Design and distribution obligations: Investment products* (REP 762) outlines the review findings and actions taken by ASIC in response (refer [23-115MR](#)).

CFDs and margin FX are leveraged derivative contracts that allow a client to speculate in the change in value of an underlying asset, such as foreign exchange rates (in the case of margin FX), stock market indices, single equities, commodities or crypto assets.

ASIC's product intervention order for CFDs strengthened consumer protections after reviews in 2017, 2019 and 2020 found that most retail clients lose money trading CFDs (refer [20-254MR](#)). In April 2022, ASIC extended this order for a further five years to 23 May 2027 (refer [22-082MR](#)).

ASIC's [Moneysmart website](https://moneysmart.gov.au/) (<https://moneysmart.gov.au/>) has further information about [forex trading](#) (<https://moneysmart.gov.au/investment-warnings/forex-trading>) and [CFDs](#) (<https://moneysmart.gov.au/glossary/contracts-for-difference-cfd>).

Editor's note:

Following a hearing on 22 June 2023, ASIC extended the interim stop order against Mitrade prohibiting the same conduct covered by the initial interim stop order.

Editor's note 2:

Following the interim stop order made on 22 June 2023, Mitrade addressed ASIC's concerns regarding its failure to take reasonable steps likely to result in distribution conduct being consistent with its TMD. ASIC revoked the stop order on 26 July 2023.

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