

MEDIA RELEASE (23-204MR)

# ASIC sues eToro in its first design and distribution action to protect consumers from high-risk CFD products

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ASIC has commenced proceedings in the Federal Court against online investment platform, eToro Aus Capital Limited (eToro), regarding its contract for difference (CFD) product.

ASIC is alleging breaches of design and distribution obligations and of eToro's licence obligations to act efficiently, honestly and fairly.

The case focuses on the appropriateness of eToro's target market, and the screening test used by eToro to assess whether a retail client fell within the target market for the CFD product.

ASIC alleges eToro's target market for the CFD product was far too broad for such a high-risk and volatile trading product where most clients lose money, and that the screening test was wholly inadequate to assess whether a retail client was likely to be within the target market.

ASIC considers that eToro's conduct is likely to have resulted in a significant number of retail clients being exposed to the CFD product that was unlikely to be consistent with their investment objectives, financial situation and needs, resulting in a significant risk of consumer harm.

ASIC alleges that between 5 October 2021 and 14 June 2023, almost 20,000 of eToro's clients lost money trading CFDs. eToro's website states that 77% of retail investor accounts lose money when trading CFDs with eToro.

ASIC Deputy Chair Sarah Court said, 'Our message to industry is that CFD target markets should be narrowly defined given the significant risk that retail clients may lose all of their deposited funds. CFD issuers must comply with the design and distribution regime and cannot simply reverse engineer their target markets to fit existing client bases.'

'ASIC is disappointed by the alleged lack of compliance in this case, given eToro's market penetration and the depth of its brand awareness, both in Australia and globally.'

ASIC alleges that from October 2021:

- eToro's CFD target market was far too broad. For example, if a retail client had a medium-risk tolerance but was not an experienced investor and had no understanding of the risks of trading CFDs, that client still fell within the target market;
- eToro's screening test was very difficult to fail and of no real use in excluding customers for whom the CFD product was not likely to be appropriate. For example, clients could amend their answers without limitation and clients were prompted if they selected answers which could result in them failing.
- ASIC further alleges eToro failed to do all things necessary to ensure that the financial services covered by its licence were provided efficiently, honestly and fairly by applying the screening test to determine whether to issue the CFD product to retail clients.

'ASIC is concerned eToro's screening test inappropriately exposed clients to the CFD product. Providers need to ensure clients are receiving products that are consistent with their needs and the design and distribution obligations are being met,' concluded Ms Court.

ASIC is seeking declarations and pecuniary penalties from the Court.

The date for the first case management hearing is yet to be scheduled by the Court.

## Background

A CFD is a leveraged derivative contract that allows a client to speculate in the change in value of an underlying asset, such as foreign exchange rates, stock market indices, single equities, commodities or crypto-assets.

ASIC has previously taken administrative action to protect consumers from high-risk CFD trading, not suited to their financial circumstances. These include stop orders against Saxo Capital Markets ([23-127MR](#)), Mitrade Global Pty Ltd ([23-141MR](#)).

The design and distribution obligations (DDO) require firms to design financial products that meet the needs of consumers, and to distribute those products in a targeted manner. A target market determination is an important requirement under DDO. It is a mandatory public document that sets out the class of consumers a financial product is likely to be appropriate for (target market) and matters relevant to the product's distribution and review.

ASIC's Moneysmart provides trusted tips, tools and guidance to support Australians with everyday money decisions. Find out more about the risks and complexities of CFD trading (<https://moneysmart.gov.au/investment-warnings/contracts-for-difference-cfds>).

### Editor's note:

The case management hearing on 23 August 2023 was vacated and has been set down for 15 December 2023.



## DOWNLOAD

### Concise statement (PDF)

(<https://download.asic.gov.au/media/s2qduat/23-204mr-asic-v-etoro-concise-statement.pdf>)

### Originating process (PDF)

(<https://download.asic.gov.au/media/3kkjqhy5/23-204mr-asic-v-etoro-originating-process.pdf>)

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