

31st March 2023

Dear CEO/Director,

Implementing the Consumer Duty in the Contracts For Difference (CFD) Portfolio

The Consumer Duty is a significant shift in our expectations of firms. It introduces a more outcomes-focused approach to consumer protection and sets higher expectations for the standard of care that firms give customers.

We are sending this letter to firms whose primary business model is marketing and providing CFDs, spread bets or rolling spot foreign exchange to retail consumers, to help them implement and embed the Duty effectively. Further information and links to resources can be found on page 4. This letter sets out:

- A reminder of the implementation timeline, key elements of the Duty and how it applies to firms in the CFD portfolio.
- Our expectations for how firms should embed the Duty, including relevant examples of good and poor practice.
- Feedback from our recent review of firms' implementation plans.
- Our approach to supervising the Duty and planned next steps.

We expect the Duty to be a top priority for you personally. We want good outcomes for customers to be at the heart of firms' strategies and business objectives, and leaders have a key role to play. Firms' boards and senior management should embed the interests of customers into the culture and purpose of the firm.

Your timeline for introducing the Duty

In July 2022, we published final rules and guidance for firms, and set out the following timeline for firms to implement the Duty:

- By the end of **October 2022**, firms' boards or management bodies should have agreed their plans for implementing the Duty.
- By the end of **April 2023**, manufacturers should have completed all reviews necessary to meet the outcome rules and shared necessary information with their distributors.
- The Duty comes into force on **31 July 2023** for new and existing products or services that are open to sale or renewal.
- On **31 July 2024**, the Duty comes into force for closed products or services.

For the avoidance of doubt, the Duty also applies to EEA firms in the Temporary Permissions Regime (TPR), including those in Supervised Run Off (SRO).

While our work on the Duty pre-dates the cost-of-living crisis, it is particularly important as consumers face increasing pressures on both their household finances and decisions affecting their financial future. Even before the crisis, consumers were being asked to make an increasing number of complicated and important decisions in a faster and increasingly complex environment. But the crisis underlines the need for high standards and strong protections. It is more important than ever that consumers can make informed, effective decisions, and pursue their financial objectives.

How the Duty applies to firms in the CFD portfolio

The Duty applies to products and services offered to retail customers and to all firms who determine or have a material influence over customer outcomes – not just those with a direct retail customer relationship. We have set out some more information and examples about how the Duty applies to firms in Annex 1 to this letter.

Overview of the requirements of the Duty

The [Finalised Guidance](#) we published in July provides firms with a full explanation of the requirements of the Duty, including many helpful examples of good and poor practice.

The Duty requires firms to act to deliver good outcomes for retail customers. Firms must act in good faith towards retail customers, avoid causing them foreseeable harm, and enable and support them to pursue their financial objectives. Firms should consider the diverse needs of their retail customers – including those with characteristics of vulnerability (see chapters 4-5 of the Guidance).

The Duty also introduces new rules and guidance to ensure that:

- **Products and services:** Are designed to meet the needs, characteristics, and objectives of a specified target market (chapter 6).
- **Price and value:** Products and services provide fair value with a reasonable relationship between the price consumers pay and the benefit they receive (chapter 7).
- **Consumer understanding:** Firms communicate in a way that supports consumer understanding and equips consumers to make effective, timely and properly informed decisions (chapter 8).
- **Consumer support:** Firms provide support that meets consumers' needs throughout the life of the product or service (chapter 9).

A key part of the Duty is that firms are able to define, monitor, evidence and stand behind the outcomes their customers are experiencing (chapter 10). This monitoring must enable firms to identify where customers, or groups of customers, are experiencing poor outcomes and, where this is the case, firms must take appropriate action to rectify the situation.

The Duty does not have a retrospective effect and does not apply to past actions by firms. However, the Duty applies, on a forward-looking basis, to firms' ongoing work for existing customers (chapter 3).

Our expectations for how firms should embed the Duty in the CFD portfolio

CFD firms should understand their obligations under the Duty and embed it fully, taking into account the nature, scale, and complexity of their business. The Duty is a step-change in our expectation of firms – a shift towards a more outcomes-focused approach to consumer protection.

Annex 2 of this letter sets out in detail the key things you should consider in embedding the Duty. You should inform us if you will not be able to meet the relevant deadlines around the Duty set out above. We will continue to conduct targeted testing to determine firms' readiness for, and implementation of, the Duty and will act where we find material deficiencies.

Feedback from our review of implementation plans

On 25 January, we [published feedback](#) for firms on the implementation plans we have reviewed across a range of industry sectors. This feedback contains examples of good practice, and areas for improvement, which will be useful for all firms to review as they implement the Duty.

Many of the plans we reviewed showed that firms have understood and embraced the shift to focus on consumer outcomes, established extensive programmes of work to embed the Duty, and are engaging with the substantive requirements.

However, we also saw plans that suggested some firms may be further behind in their thinking and planning for the Duty. This brings a risk that they may not be ready in time, or they may struggle to embed the Duty effectively throughout their business.

We have identified three key areas where firms should particularly focus their attention during the second half of the implementation period (to 31 July 2023):

- **Effective prioritisation:** We saw some plans where it was not clear what the basis was for prioritising some implementation work ahead of other aspects. Firms should make sure they are prioritising appropriately, focusing on reducing the risk of poor consumer outcomes and assessing where they are likely to be furthest away from the requirements of the Duty.
- **Embedding the substantive requirements:** We saw some plans that suggested firms may have considered the requirements superficially or are over-confident that their existing policies and processes will be adequate. We urge firms to carefully consider the substantive requirements of the Duty so that - when they are reviewing their products and services, communications, and customer journeys - they identify and make the changes needed to meet the new standards.
- **Working with other firms:** To implement the Duty on time, many firms need to work and share information with other firms in the distribution chain. However, some firms may need to accelerate their work on this important aspect of implementation.

Firms should be considering where and how they work with third parties to deliver products and services to customers and making sure these arrangements will meet expectations under the Duty. This includes other firms in the distribution chain and where firms outsource the delivery of services to other parties. In particular, manufacturers and distributors will need to work together and share information. We recognise that investment distribution chains can be complex, and relationships can be challenging. However, it is also essential for firms to recognise this and to invest the necessary time and commitment to meet the deadlines set out above.

As they oversee the implementation of the Duty, firms' boards and management bodies will want to particularly focus and provide challenge in the three areas above, as well as the wider points in the feedback published online. We expect you to contact us as soon as possible if you feel your firm will not be compliant by the July 2023 deadline.

Our supervisory approach and next steps

The Duty is a cornerstone of our [three-year strategy](#), a key element of our work to set and test higher standards between now and 2025. It is being prioritised at every level of the FCA, from the Board down, and it will drive our supervision strategies and prioritisation.

We have started looking at the adequacy of CFD firms' implementation plans for embedding the Duty and we will continue to focus on this as a priority. We will take action (i) where we see firms lagging in their preparation to meet the Duty's requirements ahead of it taking effect on 31 July, and (ii) against firms who are materially non-compliant with the Duty after that date.

For more information:

- Read our Consumer Duty [Policy Statement \(PS22/9\)](#) and [Finalised Guidance \(FG22/5\)](#)
- Consider our [feedback](#) on our review of implementation plans
- Visit our Consumer Duty [homepage](#) where you will find additional information about the Duty, on-demand webinars and [podcasts](#), and the option to sign up for email updates
- If you have any questions, you can email us at firm.queries@fca.org.uk

Yours sincerely,

Simon Walls

Director – Supervision, Policy & Competition, Wholesale Markets

Annex 1 – How the Duty applies to firms in the CFD provider portfolio

General

- The Duty applies to all firms that can determine or materially influence retail customer outcomes, regardless of size. How a firm implements the Duty is likely to vary depending on the nature, scale, and complexity of its business.
- The Duty has a broad scope, but its obligations must be interpreted reasonably. What is reasonable will depend on the nature of the product, the characteristics of the customers, and the firm's activities.
- Firms must positively act to deliver good customer outcomes: it is not enough just to avoid bad outcomes.
- Relationships with investors who elect to be treated as professional clients under COBS 3.5 are not subject to the Duty. However, the Duty does apply to the process used by firms to determine the customer's status. We have seen – and acted against – CFD firms encouraging customers to seek 'professional client' classification simply to circumvent the consumer protections afforded to retail consumers trading CFDs. We are clear that CFD firms engaging in this kind of behaviour would breach the Duty. Further, if a customer has been incorrectly classified, or the firm becomes aware that a customer has been previously incorrectly classified, the firm should reclassify the customer and restore the correct level of consumer protection.

Distribution Chain

- The Duty applies to all firms in the distribution chain for a product or service that will reach a retail customer. As such, all firms involved in the manufacture, provision, sale or ongoing administration, and management of a product or service to the end-retail customer are within the Duty's scope. Importantly, under the Duty, firms can be manufacturers of services as well as products.
- Firms need to consider their role as a manufacturer or provider of products and/or services, and their current and future relationships with distributors. Firms that are manufacturers should complete their assessment against the Duty outcomes by end-April 2023, so they can provide the results to their distributors for them to complete their assessment by end-July 2023.
- Firms that act as principal to appointed representatives must be able to demonstrate an appropriate degree of oversight for their products or services. Where those relationships inhibit good consumer outcomes, we expect firms to act to correct this. If they do not, we will consider whether there has been failure in the firm's oversight and take action where appropriate.
- Under the rules, manufacturer firms will also need to have an intended distribution strategy that is appropriate for their target market. They will also need to take all reasonable steps to ensure distribution to the target market and regularly review that the distribution strategy remains appropriate. Firms will need to consider these points where they employ the services of distribution networks, agents, financial influencers, or similar service providers. While firms are not responsible for the activities of independent firms, if they find the product is reaching customers outside the target market or the distribution strategy is no longer appropriate and

harm is foreseeable, they must take appropriate action. This may include reviews of distribution channels or the parties that are engaged.

Annex 2 – Key things for CFD firms to consider

The Duty requires firms to monitor and review customer outcomes on an ongoing basis. You should be able to demonstrate – and be prepared to provide us with evidence of – how you are monitoring whether good consumer outcomes are being delivered. We expect you to take action where you identify good consumer outcomes are not being delivered. Since July 2018, CFD firms have been required to calculate and publish the percentage of customers that lose money when trading CFDs with them. Beyond this, you should also consider the amounts of money made or lost by retail consumers, when assessing whether good customer outcomes are being achieved. Clearly, we would not consider it a good outcome if no customers make money.

In addition, you must comply with the Duty's cross-cutting rules, which require firms to:

- act in good faith towards retail customers;
- avoid causing foreseeable harm to retail customers; and
- enable and support retail customers to pursue their financial objectives.

Governance of products and services

- Firms are required to review their governance processes. Where the firm is a manufacturer, product approval processes should be in place and reviewed. For distributors, their distribution arrangements must be reviewed, particularly around potential or existing conflicts of interest (CoIs) that may inhibit or be a barrier to achieving good outcomes for consumers.
- Firms must ensure the target markets for CFDs (and CFD-like products and services) are appropriate, particularly given the high level of customer losses often experienced by consumers investing in CFDs. Firms should be especially vigilant where potentially [vulnerable customers](#) are included within their target markets, giving due regard to the potentially addictive nature of some CFD products and services.
- Firms are required to implement proper monitoring and regular reviews of their offerings, ensuring that they meet the Duty's requirements on an ongoing basis. The distribution strategy and the participants in the distribution chain should also be subject to regular review.
- We will continue to seek to identify where poor behaviour results in consumer harm and take action, particularly in areas identified in our recent [portfolio letter](#). These include scam and churn activities, pressure sales tactics, unauthorised investment advice and inappropriate inducements.

Price and value

- Firms must be able to demonstrate that their products and services provide fair value to customers. The charges customers incur must be reasonable relative to the benefits they receive. Firms should, therefore, consider whether their charges are fair, transparent, measurable, and commensurate with the relevant services and products. Firms should take appropriate action where such consideration suggests their charges could be unreasonable.

- In accordance with our Consumer Duty rules, manufacturers must consider the expected total costs paid by consumers, and distributors must consider the impact of their distribution arrangements on value. We would be concerned if firms did not consider the entire value chain or customer journey when reviewing the total costs of the service and products provided. Ancillary charges levied on customers over and above spread charges, including (but not limited to) overnight holding charges, commissions, account dormancy charges, and any additional charges levied by third parties where a distribution chain exists, should be considered when preparing to comply with the Duty.

Consumer understanding and communications

- We expect CFD firms to use the Duty to fully review their customer interactions and communications models. They should review how they advertise and market products to consumers, including the negative impacts of gamification highlighted in our [recent work on behaviours around high-risk investing](#). Communications to consumers should be reviewed to ensure they adequately reflect the high-risk nature of CFDs and that they are appropriate for the target audience.
- We do not expect firms to ensure customers always receive good investment returns; clearly, many investments carry a risk of loss. However, given the high levels of losses experienced by retail consumers investing in CFDs, firms should refer to [published guidance](#) and, where it is appropriate, test consumers' understanding.
- Where firms are responsible for the production, approval, or distribution of consumer communications, including where they have a contractual or regulatory responsibility, or an oversight role of another firms' marketing or distribution channels, they must comply with the rules in the consumer understanding outcome. Firms need to ensure that their communications meet the information needs of their customers, are likely to be understood, and equip customers to make decisions that are effective, timely and properly informed. Any false advertising, misleading product information or promotions should be addressed.
- While manufacturer firms are not responsible for the activities of their third-party distributors, they must take all reasonable steps to ensure their products are distributed to the identified target market. They must regularly review whether their distribution strategy remains appropriate. We have previously identified problems with the way CFDs are sold by third-party distributors and, under the Duty, we will expect you to review your distribution strategy with this in mind. This may include reviewing the communications of third parties that market or distribute your products, particularly affiliate marketers, introducers, financial influencers, and agents. Where foreseeable harm is identified, you will need to take appropriate action to mitigate that harm. This could include changing the distribution strategy or ceasing to work with certain distributors if they are not selling the product in accordance with the intended distribution strategy.

Consumer support and service

- Given the high-risk nature of CFD products and the potential for increased customer dissatisfaction, firms should consider if all consumer interactions, from initial onboarding onwards, provide an appropriate level of customer service that delivers good customer outcomes. The service must meet the needs of your customers, including those with characteristics of vulnerability.

- Firms should consider if they are causing foreseeable harm if they encourage consumers to put money at risk they cannot afford to lose, including where they are pressured to top up margin to avoid the crystallisation of losses on open positions.
- We expect firms to provide support that meets their customers' needs. The Consumer Duty rules should be read in conjunction with other existing rules covering customer service, such as complaints [handling](#) and [resolution](#) rules.
- We expect firms to act in good faith when they identify they have caused harm (either through action or inaction), and to take appropriate proactive action to rectify the situation, which may include redress. Redress should be paid promptly when it is due.
- You must ensure consumers do not face unreasonable barriers to acting. For example, consumers should easily be able to close positions and accounts, make fund withdrawal requests and then promptly receive withdrawn funds. Such customer actions should be as easy, if not easier, than opening positions and accounts and making fund deposits. This is particularly important given the current Cost of Living crisis.