



# WHOLESALE DISCLOSURE NOTICE

This Document on Wholesale Disclosure Notice is effective from 15 February 2021 and shall remain effective until a more recent version is released. Finalto (Australia) Pty Limited ("FinaltoAU") reserves the right to amend or supplement this Document at any time. This Document does not replace our Terms and Conditions The "Agreement") which we ask that you read carefully before you enter into any trading. The prevailing version of this Document is always available on our website [www.markets.com](http://www.markets.com).

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## 1. INTRODUCTION

This notice provides you with information about the risks associated with Contracts for Difference ('CFDs') issued to wholesale clients by FINALTO (AUSTRALIA) Pty Ltd ('FINALTOAU'). In this Notice, we may refer to ourselves as 'we', 'us', 'our', 'ours' or 'ourselves', as appropriate. Similarly, you, the client, may be referred to as 'you', 'your', 'yours' or 'yourself', as appropriate. Leveraged derivatives such as CFDs are complex instruments and come with a high risk of losing money rapidly due to leverage.

You should consider whether you understand how CFDs work, and whether you can afford to take the high risk of losing your money.

This notice provides a general description of the risks of CFDs that you are able to trade through your account with us, and the services provided by us, to you as a wholesale client. This notice does not explain all of the risks involved in CFDs or how such risks relate to your personal circumstances.

It is important that you fully understand the risks involved before making a decision to enter into a CFD ('Contract') as a wholesale client. If you are in any doubt about the risks involved with your FINALTOAU account, you should seek professional advice. If you choose to enter into a Contract with us, it is important that you remain aware of the risks involved, that you have adequate financial resources to bear such risks and that you monitor your positions carefully.

## 2. YOUR CATEGORISATION AS A WHOLESALE CLIENT

The financial products and services which we will provide to you as a wholesale client do not necessarily have the same investor protection and disclosure requirements as products made available to retail clients.

As a wholesale client, you will not receive certain disclosures from us or benefit from certain protections which you may have been given in the past. In particular, please note that as a wholesale client, we are not required to provide you with a Product Disclosure Statement or Financial Services Guide and our external dispute resolution scheme, the Australian Financial Complaints Authority, will have the discretion to exclude complaints from you.

We do not have any other obligation to you under Chapter 7 of the Corporations Act 2001 that we would have if the product or service were provided to you as a retail client.

We may, from time to time, voluntarily provide some of the retail client protections to you, at our absolute discretion and the provision of such protections at any particular time does not create any entitlement for you to their continued provision and does not affect our right to treat you as a wholesale client.

We may withdraw your status as a wholesale client, and treat you as a retail client, at any time at our absolute discretion.

## 3. CFDS

CFDs are high risk financial products, which are not appropriate for many members of the public.

CFDs are a type of transaction the purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of an underlying instrument. Types of CFDs include but are not limited to, Foreign Exchange CFDs, Futures CFDs, Share CFDs and Cryptocurrency CFDs. CFDs can only be settled in cash.

Investing in a CFD carries a high degree of risk because the 'gearing' or 'leverage' often obtainable means that a relatively small movement in the market can lead to a proportionately much larger movement in the value of your investment and this can work against you, as well as for you. You may need to provide further funds with little or no notice. It may be possible to lose more money than you have deposited into the account.

### NO PERSONAL ADVICE

We do not provide personal financial product advice in relation to CFDs. We sometimes provide factual information or research recommendations about a market, information about transaction procedures and information about the potential risks involved and how those risks may be minimised. However, any decision to use our products or services is made by you.

You are responsible for managing your tax and legal affairs including making any regulatory filings and payments and complying with applicable laws and regulations.

We do not provide any regulatory, tax or legal advice. If you are in any doubt as to the tax treatment or liabilities of investment products available through your CFD account, you should seek independent advice.

## APPROPRIATENESS

As a wholesale client, we will assume that you have the necessary levels of experience and knowledge to transact with FINALTOAU on a CFD account.

We do not monitor on your behalf whether the amount of money you have sent to us or your profits or losses are consistent with that information.

## 4. RISK OF TRADING CFDS

**It is up to you to assess whether your financial resources are adequate for your financial activity with us and your risk appetite in the products and services you use.**

**Additionally, you are responsible for informing FINALTOAU if you no longer meet the criteria to be considered a wholesale client.**

Our CFDs are not listed on any exchange. The prices and other conditions are set by us in accordance with our obligation to act efficiently, honestly and fairly, and in accordance with the applicable Customer Agreement. Each Contract you open with us (including where you have opened a Contract via our Direct Market Access platform) results in you entering into a Contract with us. These Contracts can be closed only with us, and are not transferable to any other person. A CFD does not provide any right to the underlying instruments or voting rights. All CFDs you enter into with us are legally enforceable by both parties.

Even though the characteristics of your CFD will vary from those of the underlying instrument or market, it is important that you understand the risks associated with trading in the relevant underlying market because fluctuations in the price of the underlying market will affect your instruments and the profitability of your trades.

## RANGE OF MARKETS

We offer our CFDs across a wide range of underlying markets. The characteristics of our CFDs can vary substantially from the actual underlying market or instrument. Full details of all our CFDs are set out in the Product Details section on our website, including: contract size, margin rates, last dealing time, settlement procedures, commissions and currency.

## STOPS

When a stop is triggered it has the effect of issuing an order from you to us to close your Contract. Your Contract may not be closed immediately when the stop is triggered. We aim to deal with such orders fairly and promptly but the time taken to fill the order and the level at which the order is filled depends upon the underlying market and the number of client orders triggered. If the market has gapped, or is in fast-moving markets, a price for the level of your order might not be available or the market might move quickly and significantly away from the stop level before we are able to fill it.

## CORPORATE EVENTS

If the price of a share is affected by a corporate action being applied on the underlying financial instrument, the Company reserves the right to perform any necessary adjustments to the value and/or the size of the position held on the CFD, aiming to neutralise the economic effect of the corporate action on the CFD price.

The Company will take all reasonable steps to ensure that it has reflected all market conditions affecting the price of the underlying financial instrument. In the occasion where the Company is unable to fairly value the effect of the Corporate action or in case of the underlying financial instrument being delisted from the relevant exchanges, the Company reserves the right to proceed to closure of your positions at the last official mid-price quoted on the underlying exchange prior to the relevant Corporate action. In the event of a blend's CFD constituent financial instrument being delisted or subject to a merger or acquisition we reserve the right to terminate any open position(s) on the Blend CFD and offer a new Blend where new constituent shares will be offered.

## GOING SHORT ON INDIVIDUAL SHARES

Going short on an individual share via a CFD carries some additional risks. These risks include but are not limited to:

- forced buy-back due to changes in regulatory or stock-borrowing conditions;
- imposition of, and increase in, borrowing charges over the lifetime of the Contract; and/or
- the obligation to take the other side of purchase opportunities (eg rights issues) afforded to clients who are long on the same stock. This might result in the obligation to go further short at unfavourable market prices.

In addition, you should be aware that corporate events affecting obligations of short sellers can often be announced at very

short notice, leaving no opportunity (or choice) to close Contracts out and avoid participation.

## **CURRENCY**

If you trade in a market denominated in a currency other than your base currency, currency exchange fluctuations will impact your profits and losses.

## **NEED TO MONITOR POSITIONS**

It is important that you monitor all of your positions closely. It is your responsibility to monitor your positions and during the period that you have any open Contracts or Transactions, you should always have the ability to access your accounts.

## **VOLATILITY**

Movements in the price of underlying markets can be volatile. This will have a direct impact on your profits and losses. Knowing the volatility of an underlying market will help guide you as to where any stops should be placed. It should be noted that volatility can be unexpected and unpredictable.

## **GAPPING**

Gapping is a sudden shift in the price of an underlying market from one level to another. Various factors can lead to gapping (for example, economic events or market announcements) and gapping can occur both when the underlying market is open and when it is closed. When these factors occur when the underlying market is closed, the price of the underlying market when it reopens (and therefore our derived price) can be markedly different from the closing price, with no opportunity to sell your instruments before the market opens. Unlike a guaranteed stop, a non-guaranteed stop will not protect you against the risk of gapping.

## **MARKET LIQUIDITY**

In setting our prices, spreads and the sizes in which we deal, we take into account the market or markets for the relevant underlying instruments. Market conditions can change significantly in a very short period of time, so that if you wish to sell an instrument or close a Contract, you may not be able to do so under the same terms as when you purchased or opened it. Under certain trading conditions it may be difficult or impossible to liquidate a position. This may occur, for example, at times of rapid price movement if the price rises or falls in one trading session to such an extent that under the rules of the relevant exchange trading is suspended or restricted.

## **OUT-OF-HOURS MARKET**

Orders will not be monitored or executed outside of the Trading Hours. For the underlying instruments which continue to trade outside our Trading Hours, the price at which the order may be executed on the resumption of trading may be substantially different to your specified order price due to the price changes on the market occurring prior to our Trading Hours.

If you access your Account and any Online Trading Platform outside of the hours when orders may be accepted, you should be aware that the orders may be processed at a later time when the relevant Exchange is open to trading, by which time the market prices might have changed significantly.

## **GEARING AND LEVERAGE**

Before you are allowed to enter into a Contract with us, you will generally be required to deposit money with us – this is called the margin requirement. This margin requirement will usually be a relatively modest proportion of the overall Contract value, 10% of the Contract value, for example. This means that you will be using 'leverage' or 'gearing' and this can work for or against you; a small price movement in your favour can result in a high return on the margin requirement placed for the Contract, but a small price movement against you may result in substantial losses.

At all times during which you have open positions, you must ensure that your account balance, taking into account all running profits and losses, is equal to at least the total margin requirement that we require you to have deposited with us. Therefore, if our price moves against you, you may need to provide us with significant additional funds immediately to meet your margin requirement and maintain your open positions. If you do not do this, we will be entitled to close one or more or all of your positions. You will be responsible for any losses incurred as a result.

You should also be aware that under the applicable Customer Agreement we are entitled to increase margin rates at short notice. If we do so, you may be required to deposit additional funds into your account to cover the increased margin rates. If you do not do this, we will be entitled to close one or more or all of your positions.

Unless you have taken steps to place an absolute limit on your losses (for example, by attaching a guaranteed stop) it may be possible for adverse market movements to result in the loss of the whole of your account balance and more, so that you owe additional money to us. We offer a range of risk management tools to help you to manage this risk.

The need to monitor your positions is of greater importance when you have entered into Contracts with us because of the effect of gearing. Gearing magnifies the rate at which profits or losses can be incurred and, as a result, it is important that you monitor your positions closely.

## **NO CLEARING HOUSE**

There is no clearing house for CFDs, and the performance of a CFD by FINALTOAU is not 'guaranteed' by an exchange or clearing house.

## **CRYPTOCURRENCY CFDs**

CFDs are high risk investment products, which are volatile, creating the opportunity for high financial returns or losses. Cryptocurrencies are also high risk facilities and their value fluctuates significantly.

Cryptocurrencies are subject, not just to market risks of supply and demand, but to technology risks. If you choose to invest in the high risk asset of cryptocurrencies through a high risk financial product such as CFDs you do so in the knowledge that you are exposed to the risk of loss.

Cryptocurrencies are digital currencies. We base the price of our cryptocurrency contracts on the underlying market, made available to us by the exchanges and market-makers with which we trade.

When you trade CFDs on cryptocurrencies (including cryptocurrency crosses such as Ether/Bitcoin), you need to be aware of the risk of a hard fork occurring. A hard fork is when a single cryptocurrency splits in two and occurs when a cryptocurrency's existing code is changed, resulting in both an old and new version. FINALTOAU reserves the right to determine which blockchain (ledger of cryptocurrency transactions) and cryptocurrency unit has the majority consensus behind them and use this as the basis for cryptocurrency contracts. If the hard fork results in a viable second cryptocurrency becoming tradeable on exchanges we have access to, then in our absolute discretion, we may create an equivalent position or cash adjustment on client accounts to reflect its value. When a hard fork occurs, there may be substantial price volatility around the event, and we may suspend trading throughout if we do not have reliable prices from the underlying market.

We will endeavour to notify you of potential forks, however it is your responsibility to make yourself aware of the forks that could occur. We may enforce a limit on the total amount of cryptocurrency exposure that each client is allowed to maintain. This information is available on our website or from our Helpdesk upon request.

Any client with a notional size above this limit is at risk of having their cryptocurrency positions reduced.

## **5. GENERAL RISKS**

### **ELECTRONIC COMMUNICATIONS**

We offer you the opportunity to deal and communicate with us via electronic means, for example by our dealing platform and, in certain circumstances, by email. Although electronic communication is often a reliable way to communicate, no electronic communication is entirely reliable or always available. If you choose to deal with us via electronic communication, you should be aware that electronic communications can fail, can be delayed, may not be secure and/or may not reach the intended destination.

### **OUR SERVICES**

Instructions to deal from you to us form a commitment which may only subsequently be revoked by you with our prior consent (such consent will not be unreasonably withheld) at any time before the instruction to deal is executed.

### **INSOLVENCY OR DEFAULT**

The insolvency or default of any other brokers involved with your transaction, may lead to positions being liquidated or closed out without your consent.

For money deposited in our client trust accounts, you should be aware that with the exception of clients that open the Segregated Bank Account type described below, all other clients' funds, regardless whether it is wholesale or retail client funds are co-mingled into one bank account i.e. all client money is co-mingled or mixed with other client money and is pooled into one bank account.

## REGULATORY AND LEGAL RISK

The risk that a change in laws and regulations will materially impact a security and investments in a sector or market. A change in laws or regulations made by the government or a regulatory body can increase the costs of operating a business, reduce the attractiveness of investment and/or change the competitive landscape and as such alter the profit potential of an investment. This risk is unpredictable and may vary from market to market. In emerging markets such risk may be higher than in more developed markets. For example in emerging markets the inadequacy or absence of regulatory measures can give rise to an increased danger of market manipulation, insider trading or the absence of financial market supervision can affect the enforceability of legal rights.

## ADVICE

We will not give you any personal financial product advice. Any general financial product advice that we may give you will have been prepared without taking into account your personal objectives, financial situation or needs. Accordingly, you should consider carefully trading with us and the appropriateness of any general advice having regard to your personal objectives, financial situation and needs, and obtain financial and legal advice before you open an account and trade with us.

The Customer Agreement contains a provision by which you agree that you enter into all CFDs in reliance on your own judgement, and that we will not be liable for any losses, costs, expenses or damages suffered by you arising from any inaccuracy or mistake in any information we give to you in the absence of fraud, willful default or gross negligence or as required by legislation.

## 6. TAXATION CONSIDERATIONS

### INTRODUCTION

The following is a summary of the Australian taxation implications of dealing in a Margin Trading Product known as Contracts for Differences (CFDs) and is based on the taxation laws as at the date of this PDS, and in particular Public Ruling TR2005/15 issued by the ATO on 31 August 2005 under Part IVA of the Taxation Administration Act 1953.

It is important to note that the ultimate tax implications to you will depend on your personal circumstances and, as such, you should consult an independent taxation advisor. Further, this PDS represents our understanding of the current view of the taxation laws and our interpretation of Public Ruling TR2005/15. It is important to note that our views have not been endorsed by the ATO and that tax laws and their interpretation are always subject to change.

The following summary represents our view of the current taxation treatment of gains and losses arising from trading CFDs as an Australian Tax Resident as at the date of this PDS. Taxation treatment will depend on your circumstances, and we strongly recommend that you consult an independent taxation advisor before deciding to open an account to deal in CFDs.

### PROFIT OR LOSS ON CFDs

#### INCOME TAX

An Australian resident taxpayer generally calculates their taxable income by including assessable income and after allowing for losses incurred in gaining or producing assessable income. CFDs can be characterised as cash settled Over-the-Counter (OTC) derivative products, in that your dealings with us under the Customer Agreement do not provide for a party to make or accept delivery of the underlying instrument. The ATO takes the view that CFDs are in law categorised as contracts of gaming and wagering, however this alone is not determinative of the tax treatment of gains and losses.

#### GAINS

The ATO has taken the view that gains from trading CFDs will be assessable income-

- (i) where the CFD is entered into as an ordinary incident of carrying on a business;
- (ii) where the profit was obtained in a business operation;
- (iii) where the profit was obtained in a commercial transaction for the purpose of profit making; or
- (iv) where the profit is made in carrying on or out a profit making scheme.

Further, the ATO has taken the view that even an isolated CFD transaction can be considered to produce assessable income for the taxpayer. It should be noted that the ATO's interpretation of what would fall within these parameters is very broad and appears likely to include all CFD trading, whether frequent or not. However the Ruling also contemplates that a gain from a CFD entered into for the purpose of recreation by gambling (and not for a profit-making purpose) will not be assessable as income (or capital gain). The Ruling acknowledges that a taxpayer who enters into a CFD only once, or very occasionally, who has no expertise in the price of the underlying by which the gain or loss of the CFD will be calculated, does not engage in any income producing activities of a character bearing some association or connection with the CFD or its underlying, and in particular who gambles in the ordinary recreational way and who has entered into the CFD in circumstances such that the CFD may be seen

to be part of that recreation, may establish that the gain or loss is a product of recreational gambling (and not the result of a profit making endeavor).

## LOSSES

The Ruling also concludes that a loss from a CFD transaction where the gain would have been assessable is an allowable deduction.

## CAPITAL GAINS TAX

While gains or losses would most often be on revenue account because it is expected that the CFD is usually entered into for a profit-making purpose, where it can be said that there was never any such purpose, then in that event (unless it is for recreational gambling – see above), the gain or loss would be an assessable capital gain. The ATO's view is that a CFD contract falls within the definition of a capital gains tax asset (a CGT asset) under section 108-5 ITAA 1997. However, pursuant to section 118-20 ITA 1997, to the extent a non-CGT provision includes an amount in the taxpayer's assessable income as a result of a CGT event, a capital gain arising from a CGT event is reduced. This means that, to the extent that profits made from trading CFDs are included in your assessable income, you will not be required to include the amount of the transaction in the calculation of any capital gains tax liability. The ATO has also expressed the view that losses incurred in trading CFDs can be regarded as capital losses for the purposes of capital gains tax to the extent that they are not otherwise excluded by law. Accordingly, such losses can be set off against any capital gains tax liabilities. However pursuant to subsection 110-55(4) of the ITAA 1997, to the extent that a loss of a CFD is deductible under section 8-1 or section 25-40, the reduced cost base of the asset is reduced thereby reducing the amount of the capital loss. Paragraph 118-37(1) (c) of the ITAA 1997 provides that capital gains and capital losses arising from 'gambling, a game or a competition from prizes' are to be disregarded. The ATO's position is that capital gains and capital losses from trading CFDs do not qualify for this or any other exemption in the ITAA 1997.

## NOTIONAL INTEREST AND DIVIDEND ADJUSTMENTS

A share CFD is an agreement between two parties where one party pays to the other party an amount equal to the notional financial performance of a share between the time the CFD is opened and the time the CFD is closed. Any dividends paid in respect of the underlying share are notionally credited or debited as the case may be to each party in determining the notional financial performance of the share. At no time will you have an interest in the underlying share. An adjustment is also made representing the notional interest on funding of the underlying share position. Any interest and dividend adjustments are notional amounts, which are unlikely to be characterised as dividends or interest for tax purposes. Instead, these notional adjustments will be taken into account in determining the overall profit or loss on the CFD. The taxation of the overall profit or loss on the CFD is set out above.

## COMMISSION AND OTHER CHARGES

As profits or losses are assessable or deductible by you, any commissions, interest or other fees that you pay to us will be deductible.

## GST

According to the GST Determination GSTD2005/3 issued on 22 June 2005, the provision, acquisition or disposal of a CFD is a financial supply under the provisions of the A New Tax System (Goods and Services) Tax 1999 ('GST Act') and the GST Regulations and is input taxed, with no GST imposed. Further the supply of interests in CFDs does not constitute gambling supplies, as defined in section 126-35 of the GST Act. A CFD does not therefore in the view of the ATO represent a gambling event. The commission paid to us at the time of entering the CFD would constitute additional consideration for an input taxed financial supply. This would also apply to any premium for Limited Risk Protection on the basis that this charge is additional consideration for a variation to the ordinary CFD and, therefore, no GST is imposed.

## 7. INTERPRETATION

Below is a list of some words used in this Notice and their meanings. The Customer Agreement defines many terms and expressions and you should refer to them if in any doubt about the meaning of any term or expression. You should also refer to the Product Details for specific information and on market terminology.

'Account' means an account of the Customer with us

'ASIC' means the Australian Securities & Investments Commission

'ATO' means the Australian Tax Office

'Customer Agreement' means the Margin Trading Customer Agreement, as amended from time to time