ESMA Notice

Notice of ESMA's Product Intervention Renewal Decision in relation to contracts for differences

On 23 October 2018, the European Securities and Markets Authority (ESMA) adopted a Decision under Article 40 of Regulation (EU) No 600/2014 to restrict the marketing, distribution or sale of contracts for differences (CFDs) to retail clients. The Decision renews and amends ESMA Decision (EU) 2018/796.

In accordance with Article 40(5) of Regulation (EU) No 600/2014, this Notice provides details of the Decision and the time from which the measure will take effect. The full text of the Decision is published in the *Official Journal of the European Union.*

Restriction in relation to CFDs

The enacting terms of the Decision provide:

Article 1
Definitions

For the purposes of this Decision:

(a) '*contract for differences*' or '*CFD*' means a derivative other than an option, future, swap or forward rate agreement, the purpose of which is to give the holder a long or short exposure to fluctuations in the price, level or value of an underlying, irrespective of whether it is traded on a trading venue, and that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event;

(b) '*excluded non-monetary benefit*' means any non-monetary benefit other than, insofar as they relate to *CFDs*, information and research tools;

(c) '*initial margin*' means any payment for the purpose of entering into a *CFD*, excluding commission, transaction fees and any other related costs;

(d) '*initial margin protection*' means the *initial margin* determined by Annex I;

(e) '*margin close-out protection*' means the closure of one or more of a retail client's open *CFDs* on terms most favourable to the client in accordance with Articles 24 and 27 of Directive 2014/65/EU when the sum of funds in the *CFD* trading account and the unrealised net profits of all open CFDs connected to that account falls to less than half of the total *initial margin protection* for all those open *CFDs*;

(f) ‘*negative balance protection*’ means the limit of a retail client’s aggregate liability for all *CFDs* connected to a *CFD* trading account with a *CFD* provider to the funds in that *CFD* trading account.

Article 2

Temporary restriction on CFDs in respect of retail clients

The marketing, distribution or sale to retail clients of *CFDs* is restricted to circumstances where at least all of the following conditions are met:

(a) the *CFD* provider requires the retail client to pay the *initial margin protection*;

(b) the *CFD* provider provides the retail client with the *margin close-out protection*;

(c) the *CFD* provider provides the retail client with the *negative balance protection;*

(d) the *CFD* provider does not directly or indirectly provide the retail client with a payment, monetary or *excluded non-monetary benefit* in relation to the marketing, distribution or sale of a *CFD,* other than the realised profits on any *CFD* provided; and

(e) the *CFD* provider does not send directly or indirectly a communication to or publish information accessible by a retail client relating to the marketing, distribution or sale of a *CFD* unless it includes the appropriate risk warning specified by and complying with the conditions in Annex II.

Article 3

Prohibition of participating in circumvention activities

It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the requirements in Article 2, including by acting as a substitute for the *CFD* provider.

Article 4

Entry into force and application

1. This Decision enters into force on the day following that of its publication in the *Official Journal of the European Union*.

2. This Decision shall apply from 1 November 2018 for a period of 3 months.

ANNEX I

Initial margin percentages by type of underlying

(a) 3,33% of the notional value of the *CFD* when the underlying currency pair is composed of any two of the following currencies: US dollar, Euro, Japanese yen, Pound sterling, Canadian dollar or Swiss franc;

(b) 5% of the notional value of the *CFD* when the underlying index, currency pair or commodity is:

   (i) any of the following equity indices: Financial Times Stock Exchange 100 (FTSE 100); Cotation Assistée en Continu 40 (CAC 40); Deutsche Bourse AG German Stock Index 30 (DAX30); Dow Jones Industrial Average (DJIA); Standard & Poors 500 (S&P 500); NASDAQ Composite Index (NASDAQ), NASDAQ 100 Index (NASDAQ 100); Nikkei Index (Nikkei 225); Standard & Poors / Australian Securities Exchange 200 (ASX 200); EURO STOXX 50 Index (EURO STOXX 50);

   (ii) a currency pair composed of at least one currency that is not listed in point (a) above; or

   (iii) gold;

(c) 10% of the notional value of the *CFD* when the underlying commodity or equity index is a commodity or any equity index other than those listed in point (b) above;

(d) 50% of the notional value of the *CFD* when the underlying is a cryptocurrency; or

(e) 20% of the notional value of the *CFD* when the underlying is:

   (i) a share; or

   (ii) not otherwise listed in this Annex.

ANNEX II
Risk warnings

SECTION A
Risk warning conditions

1. The risk warning shall be in a layout ensuring its prominence, in a font size at least equal to the predominant font size and in the same language as that used in the communication or published information.

2. If the communication or published information is in a durable medium or a webpage, the risk warning shall be in the format specified in Section B.

3. If the communication or published information is in a medium other than a durable medium or a webpage, the risk warning shall be in the format specified in Section C.

4. By way of derogation to paragraphs 2 and 3, if the number of characters contained in the risk warning in the format specified in Section B or C exceeds the character limit permitted in the standard terms of a third party marketing provider, the risk warning may instead be in the format specified in Section D.

5. If the risk warning in the format specified in Section D is used, the communication or published information shall also include a direct link to the webpage of the CFD provider containing the risk warning in the format specified in Section B.

6. The risk warning shall include an up-to-date provider-specific loss percentage based on a calculation of the percentage of *CFD* trading accounts provided to retail clients by the *CFD* provider that lost money. The calculation shall be performed every three months and cover the 12-month period preceding the date on which it is performed ('12-month calculation period'). For the purposes of the calculation:

    a. an individual retail client *CFD* trading account shall be considered to have lost money if the sum of all realised and unrealised net profits on *CFDs* connected to the *CFD* trading account during the 12-month calculation period is negative;

    b. any costs relating to the *CFDs* connected to the *CFD* trading account shall be included in the calculation, including all charges, fees and commissions;

    c. the following items shall be excluded from the calculation:

        i. any *CFD* trading account that did not have an open *CFD* connected to it within the calculation period;

        ii. any profits or losses from products other than *CFDs* connected to the *CFD* trading account;

iii. any deposits or withdrawals of funds from the *CFD* trading account.

7. By way of derogation from paragraphs 2 to 6, if in the last 12-month calculation period a *CFD* provider has not provided an open *CFD* connected to a retail client *CFD* trading account, that *CFD* provider shall use the standard risk warning in the format specified in Sections E to G, as appropriate.

SECTION B
Durable medium and webpage provider-specific risk warning

CFDs are complex instruments and come with a high risk of losing money rapidly due to leverage. **[*insert percentage per provider*]% of retail investor accounts lose money when trading CFDs with this provider.** You should consider whether you understand how CFDs work and whether you can afford to take the high risk of losing your money.

SECTION C
Abbreviated provider-specific risk warning

[*insert percentage per* provider]% of retail investor accounts lose money when trading CFDs with this provider. You should consider whether you can afford to take the high risk of losing your money.

SECTION D
Reduced character provider-specific risk warning

[*insert percentage per* provider]% of retail CFD accounts lose money.

SECTION E
Durable medium and webpage standard risk warning

CFDs are complex instruments and come with a high risk of losing money rapidly due to leverage.

Between 74-89% of retail investor accounts lose money when trading CFDs.

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

SECTION F
Abbreviated standard risk warning

Between 74-89% of retail investor accounts lose money when trading CFDs.

You should consider whether you can afford to take the high risk of losing your money.

SECTION G

Reduced character standard risk warning

74-89% of retail CFD accounts lose money.