



Adoption of intervention measures by CONSOB on the offering of binary options and contracts for difference to retail investors

CONSULTATION DOCUMENT

January 7, 2019

Responses to the consultation must be received by January 22, 2019, online by means of the [SIPE \(Integrated System for External User\)](#) or to the following address:

C O N S O B
Divisione Intermediari (Intermediaries Division)
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20121 MILANO (Italy)

The comments received will be evaluated and processed for the purposes of the adoption of intervention measures, and will be published on the CONSOB website, unless it is expressly requested that they not be disclosed.

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On May 22, 2018, the ESMA decided to adopt temporary intervention measures relating to the marketing of binary options (hereinafter BOs) and financial contracts for difference (hereinafter CFDs) to retail clients in the European Union. The decisions of the ESMA were published in the Official Journal of the European Union on June 1, 2018.

The measures were adopted by ESMA by virtue of intervention powers provided for by Article 40 of Regulation (EU) no. 600/2014 (MIFIR) on markets in financial instruments, on the consideration that in this sector, this is the most appropriate instrument to ensure greater protection for retail investors. The decisions of ESMA shall prevail over any measure previously adopted by the competent national authorities, shall apply on a temporary basis for a period of three months from their date of entry into force and may be renewed by the ESMA.

ESMA, after having assessed the impact of their implementation, decided to renew the decision on BOs on August 24 and the decision on CFDs on September 26, providing to consider a second renewal. In any case, the ESMA expects the competent national authorities to adopt similar measures on a permanent basis in accordance with Article 42 of the MIFIR, in order for them to enter into force after the expiry of ESMA's decisions, and is pursuing coordination actions for this purpose.

Intervention powers are granted to national authorities by Article 42 of the MIFIR without time constraints, contrary to the case for ESMA measures.

CONSOB shares the analysis made at ESMA level and considers that special protection measures are required for investors in relation to the offering of CFDs and BOs to retail clients, mainly for the following reasons:

- The BOs and CFDs are financial instruments characterised mainly by their complexity and high risk and by their high volatility in the short term. The CFDs are also instruments with financial leverage for which the investor might incur losses in excess of the amount originally invested;
- Often the trading conditions of CFDs and BOs are not sufficiently transparent, which undermines the ability of retail investors to correctly understand the terms of the products and to assess their performance expectations and the risks assumed;
- CFDs and BOs are generally products offered to retail investors through electronic trading platforms without being accompanied by the advice or portfolio management services;
- Leverage is the factor which most contributes to the fact that a large proportion of the retail investors are not aware of the high risk to which they are exposed when investing in CFDs. This is due to the fact that the likelihood keeps increasing that the investor will not have sufficient margins to keep their positions open to price fluctuations of the underlying assets, so that automatic closure of the positions often occurs and the losses exceed the amounts initially paid by investors by way of margin;
- Similarly, the financial leverage also hinders understanding on the part of the investor of the impact of fees and differentials on the result, because these are usually applied on the notional amount of the transaction and not on the margins paid by the investor.

Please note that, for the reasons given above and in order to strengthen the protection of investors, in February 2017 CONSOB published a warning that highlights the fact that CFDs - and other similar products - are products which are inherently very risky and complex and as such are not considered suitable for the majority of retail clients.

CONSOB has shared fully in the decisions made so far by ESMA and considers that the power to intervene in the matter of products is the most appropriate instrument and effective way to address these issues and to ensure that retail investors have a common level of protection. CONSOB also considers that it is appropriate that this type of measure is adopted at the European level, by ESMA or in a coordinated manner by the national authorities in order to avoid the regulatory arbitrage.

For this reason and in order to ensure the stability of the measures adopted by ESMA, CONSOB considers it appropriate to adopt a decision that allows their implementation in Italy indefinitely, without prejudice to any revisions due to changing market circumstances or to a general reconsideration at European level.

The measures adopted by CONSOB shall apply to the offering to retail clients of the products in question (under freedom to provide services and/or through a branch) and shall be altogether similar

to the ones adopted by ESMA, thus satisfying all the requirements laid down in Article 42 of Regulation (EU) no. 600/2014, as the existence of significant investor protection concerns, the absence in the European Union's legislation of other possible responses sufficient to tackle the problem, the proportionality of the measure and its non-discriminatory effect. In particular, the measures adopted by ESMA and that CONSOB will adopt on a permanent basis in a coordinated manner with ESMA and with other EU supervisory authorities, are the following:

- **Prohibition of marketing, distribution or sale of binary options to retail investors.**
- **Determination of certain limits and requirements in relation to the marketing, distribution or sale of CFDs to retail investors:**
 - i. Limits to financial leverage in relation to the volatility of the underlying asset ranging from 30:1 (for the variations between major currencies) and 2: 1 (for cryptocurrencies);
 - ii. Obligation to close positions on behalf of the client in the event of a reduction in margins with determination of the percentage from which the providers are obliged to close one or more open CFD positions (50 % of the required margin);
 - iii. Provision of a mechanism for the protection of the client's trading account from negative balance;
 - iv. Prohibition to offer incentives for clients to operate in CFDs; and
 - v. Obligation to publish a standardised warning on the risks related to operation in CFDs, including the percentage of losses suffered by the provider's retail investors.

CONSOB shall communicate to ESMA the intention to adopt the measures described above at least a month before their entry into force in accordance with the provisions of Article 42, paragraph 3, of Regulation (EU) no. 600/2014.

Taking account of the above, CONSOB is interested to hear the opinions of market participants on aspects that are considered important in relation to the adoption of the intervention measures in question at a national level.