European Securities and Markets Authority

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PRESS RELEASE

ESMA agrees to prohibit binary options and restrict CFDs to protect retail investors

The European Securities and Markets Authority (ESMA) has agreed on measures on the provision of contracts for differences (CFDs) and binary options to retail investors in the European Union (EU). The agreed measures include:

1. **Binary Options** - a prohibition on the marketing, distribution or sale of binary options to retail investors; and

2. **Contracts for Differences** - a restriction on the marketing, distribution or sale of CFDs to retail investors. This restriction consists of: leverage limits on opening positions; a margin close out rule on a per account basis; a negative balance protection on a per account basis; preventing the use of incentives by a CFD provider; and a firm specific risk warning delivered in a standardised way.

In accordance with MiFIR, ESMA can only introduce temporary intervention measures on a three monthly basis. Before the end of the three months, ESMA will consider the need to extend the intervention measures for a further three months.

Significant Investor Protection Concern

ESMA, along with National Competent Authorities (NCAs), concluded that there exists a significant investor protection concern in relation to CFDs and binary options offered to retail investors. This is due to their complexity and lack of transparency; the particular features of CFDs – excessive leverage – and binary options - structural expected negative return and embedded conflict of interest between providers and their clients; the disparity between the expected return and the risk of loss; and issues related to their marketing and distribution.

NCAs' analyses on CFD trading across different EU jurisdictions shows that 74-89% of retail accounts typically lose money on their investments, with average losses per client ranging from €1,600 to €29,000. NCAs' analyses for binary options also found consistent losses on retail clients' accounts.

These measures were agreed by ESMA's Board of Supervisors on 23 March 2018.

Steven Maijoor, Chair, said:

> "The agreed measures ESMA is announcing today will guarantee greater investor protection across the EU by ensuring a common minimum level of protection for retail investors. The new measures on CFDs will for the first time ensure that investors cannot lose more money than they put in, restrict the use of leverage and incentives, and provide risk warning for investors. For binary options, the prohibition we are announcing is needed to protect investors due to the products' characteristics.
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> "The combination of the promise of high returns, easy-to-trade digital platforms, in an environment of historical low interest rates has created an offer that appeals to retail investors. However, the inherent complexity of the products and their excessive leverage – in the case of CFDs – has resulted in significant losses for retail investors.
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> "A pan-EU approach is required given the cross-border nature of these products, and ESMA's intervention is the most appropriate and efficient tool to address this major investor protection issue."

CFDs – agreed measures

The product intervention measures ESMA has agreed under Article 40 of the Markets in Financial Instruments Regulation include:

1. Leverage limits on the opening of a position by a retail client from 30:1 to 2:1, which vary according to the volatility of the underlying:

    - 30:1 for major currency pairs;
    - 20:1 for non-major currency pairs, gold and major indices;
    - 10:1 for commodities other than gold and non-major equity indices;
    - 5:1 for individual equities and other reference values;
    - 2:1 for cryptocurrencies;

2. A margin close out rule on a per account basis. This will standardise the percentage of margin (at 50% of minimum required margin) at which providers are required to close out one or more retail client's open CFDs;

3. Negative balance protection on a per account basis. This will provide an overall guaranteed limit on retail client losses;

4. A restriction on the incentives offered to trade CFDs; and

5. A standardised risk warning, including the percentage of losses on a CFD provider's retail investor accounts.

Next steps

ESMA intends to adopt these measures in the official languages of the EU in the coming weeks, following which ESMA will publish an official notice on its website. The measures will then be published in the Official Journal of the EU (OJ) and will start to apply one month, for binary options, and two months, for CFDs, after their publication in the OJ.

Notes for editors

1. [ESMA35-43-1000 Additional information on the agreed product intervention measures relating to binary options and CFDs]

2. Regulation (EU) No 600/2014 (the Markets in Financial Instruments Regulation)

3. On 18 January 2018, ESMA launched a call for evidence on its potential product intervention measures on the marketing, distribution or sale of CFDs and binary options to retail clients. The call for evidence was closed on 5 February 2018. ESMA received almost 18,500 responses. The responses came from providers, trade associations, stock exchanges and brokers involved in the CFD and/or binary option business, consumer representatives as well as individuals.

4. ESMA's mission is to enhance investor protection and promote stable and orderly financial markets.

   It achieves these objectives through four activities:

   i. assessing risks to investors, markets and financial stability;

   ii. completing a single rulebook for EU financial markets;

   iii. promoting supervisory convergence; and

   iv. directly supervising specific financial entities.

5. ESMA achieves its mission within the European System of Financial Supervision (ESFS) through active cooperation with the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA), the European Systemic Risk Board, and with national authorities with competencies in securities markets (NCAs).

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