

## PRESS RELEASE

### ESMA warns CFDs providers on application of product intervention measures

The European Securities and Markets Authority (ESMA), the EU's securities markets' regulator, has today published a statement addressed to providers marketing, distributing or selling contracts for differences (CFDs) to retail clients. The statement is in response to various practices and situations observed in the market, which raise concerns of non-compliance with the legal requirements applicable when providing services to retail clients.

ESMA still has serious concerns about firms' marketing, distribution or sale of CFDs to retail clients and considers it necessary to remind CFD providers about some of the requirements connected with the offering of CFDs. ESMA has identified undesirable practices related to:

- Professional clients on request; and
- Marketing, distribution or sale by third-country CFD-Providers.

Steven Maijor, Chair, said:

“ESMA has acted in response to the significant investor protection concerns raised by the offer of CFDs to retail clients and adopted its own product intervention measures in 2018. To date, many NCAs across the EU have adopted similar measures but on a permanent basis.

Ensuring investors are protected necessitates that all CFD providers respect all applicable requirements and do not circumvent them using professional client status or third country entities.”

#### Professional clients on request

ESMA is aware that some CFD providers are advertising to retail clients the possibility to become professional client on request. Investment firms should strictly refrain from implementing any form of practice that incentivises, induces or pressures an investor to request to be treated as a professional client. In this respect, any form of promotional language in

relation to the status of professional client shall be seen as incentivising a retail client to request a professional client status. This includes providing a comparison between leverage limits available to different types of clients and the provision of any form of rewards for becoming a professional client.

### **Marketing, distribution or sale by third-country CFD-Providers**

ESMA is also aware that some third-country firms are marketing CFDs that do not comply with ESMA's measures to retail clients in the European Union (EU), particularly through online advertising, and that EU firms are engaged in activities that are intended to circumvent ESMA's temporary product intervention measures.

ESMA observes that some CFD providers established in the EU are marketing the possibility for retail clients to move their accounts to an intra-group third-country entity. ESMA notes that firms should not incentivise retail clients to start trading with an intra-group firm established in a non-EU jurisdiction.

ESMA clarifies in its statement that in the absence of authorisation or registration in the EU in accordance with MiFIR or with the national third-country regimes in force in various Member States, third-country firms are only allowed to provide services to clients in the Union at the client's own exclusive initiative. Furthermore, information in relation to the 'benefits' of trading CFDs with such an intra-group third-country entity could be seen as a circumvention of ESMA's product intervention measures by the EU authorised firm.

### **Next steps**

Firms must ensure that they are compliant with all applicable legislative requirements and with the relevant product intervention decisions, taking into consideration clarifications provided in relevant Q&As and the content of this statement. ESMA and NCAs will continue to monitor compliance of CFD providers with the product intervention decisions.



## Notes for editors

- i. ESMA35-36-1743 [Statement of ESMA on the application of product intervention measures under Article 40 and 42 of Regulation \(EU\) No. 600/2014 \(MiFIR\) by CFD providers](#)
- ii. ESMA35-43-349 [Questions and Answers on MiFID II and MiFIR investor protection and intermediaries topics](#)
- iii. ESMA35-36-1262 [Technical Q&As on product intervention measures on CFDs and Binary Options](#)
- iv. More information on ESMA's product intervention can be found on its [website](#).
- v. ESMA's mission is to enhance investor protection and promote stable and orderly financial markets.

It achieves these objectives through four activities:

- vi. assessing risks to investors, markets and financial stability;
- vii. completing a single rulebook for EU financial markets;
- viii. promoting supervisory convergence; and
- ix. directly supervising specific financial entities.
- x. 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).

Further information:

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