

THE CNMV APPROVES INTERVENTION MEASURES ON BINARY OPTIONS AND FINANCIAL CONTRACTS FOR DIFFERENCES

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- The content and scope of the measures are substantially the same as those agreed by the European Securities and Markets Authority (ESMA) in 2018 which, after successive extensions, are to cease to apply in July and August of this year.
- Securities supervisors in most European countries are also adopting similar national measures in order to give continuity to those agreed by ESMA.
- The sale and distribution of binary options are prohibited and the marketing of contracts for differences is restricted among retail clients in Spain.
- The measures will apply to all entities marketing these products in Spain regardless of their country of origin.
- Both products are characterised by their complexity and high risk, as well as by their high short-term volatility.

The Spanish Official State Gazette has published a CNMV [Resolution on intervention measures in relation to Binary Options \(BOs\) and Financial Contracts for Differences \(CFDs\)](#), which consist of a ban on the marketing, distribution and sale of BOs and restrictions on the marketing, distribution and sale of CFDs among retail clients in Spain.

The resolution applies to all entities marketing these products in Spain, irrespective of their country of origin.

On 22 May 2018, the European Securities and Markets Authority (ESMA), of which the CNMV is a member, agreed to adopt [various temporary intervention measures](#) on the marketing of BOs and CFDs to retail clients in the European Union.

After evaluating the effects of their implementation, ESMA approved the renewal of the Decisions on three occasions and informed the national competent authorities, including the CNMV, that it expected

them to adopt similar measures that would take effect after the expiry of its Decisions.

For this reason, and with the aim of providing stability to the measures adopted by ESMA, it has been considered appropriate to adopt a resolution allowing their implementation in Spain indefinitely, subject to review if market circumstances change or if they are reconsidered generally at a European level at any given time.

The measures adopted by the CNMV, which apply to the provision of services in Spain (including the freedom to provide services without a branch), coincide with those adopted by ESMA and are as follows:

- Prohibition on the marketing, distribution or sale of binary options to retail investors.
- Establishment of limitations and requirements in relation to the marketing, distribution and sale of CFDs to retail investors:
 1. Leverage limits on the opening of a position by a retail client from 30:1 (for major currency pairs) to 2:1 (for cryptocurrencies), which vary according to the volatility of the underlying assets.
 2. An obligation to close out positions in the event of margin consumption, establishing the percentage based on which providers are obliged to close one or more open CFD positions (50% of the minimum required margin).
 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 by providers to clients to trade CFDs.
 5. Standardised risk warnings, including the percentage of losses on a CFD provider's retail investor accounts.

In addition, the requirement to obtain the handwritten statement of recognition of the special complexity of CFDs from clients is maintained, as provided for in Circular 1/2018, and this requirement is extended to entities operating under the freedom to provide services in Spain.

For further information:

[CNMV](#) Communications Department

Tel.: 91 5851530 - comunicacion@cnmv.es

Furthermore, the CNMV will consider it good practice for entities to have adequate procedures in place to request additional margins from clients before the threshold for closing positions is reached, so that they are informed and can provide further margins or, as the case may be, close the position, before the threshold is reached.

The CNMV fully shares ESMA's analysis and decisions and considers that the power of product intervention is the most appropriate and efficient tool to address these issues and ensure that retail investors have a common level of protection. The CNMV also considers that this type of measure should be adopted at European level, on a coordinated way by the national authorities, in order to avoid regulatory arbitrage.

The decision now taken by the CNMV is mainly based on the following reasons:

- ✓ BOs and CFDs are financial instruments that are essentially characterised by their complexity and high risk as well as by their high short-term volatility. In the case of CFDs, they are also leveraged instruments where investors may incur losses exceeding the amount initially paid.
- ✓ The trading terms and conditions of CFDs and BOs are often not sufficiently transparent, which impairs the ability of retail investors to properly understand product terms and assess their expected return or the risks assumed.
- ✓ CFDs and BOs are products that are usually offered to retail investors through electronic trading venues, without the provision of investment advice or portfolio management services.
- ✓ Leverage is the most important factor contributing to many retail clients not being aware of the high risks to which they are exposed when investing in CFDs. This is because there is a higher probability of the investor not having sufficient margins to hold their open positions in the event of fluctuations in the prices of the underlying assets, and the investor's positions are often closed automatically, leading to losses that exceed the amounts initially paid by the clients by way of margin.

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- ✓ Similarly, leverage also makes it harder for investors to understand the impact that fees and spreads paid have on the expected return, as these are based on the notional amount of the transaction and not on the margins posted by the client.

Prior to the implementation of the measures described above, the CNMV has complied with the requirement to notify ESMA of these measures at least one month prior to their entry into force, and has received a favourable opinion on the measures from ESMA.

The new Resolution is to enter into force on 2 July 2019 for BOs and on 1 August 2019 for CFDs.