

## RELATIONSHIP BETWEEN ESMA'S DECISION ON BINARY OPTIONS AND CFDS AND THE CNMV CIRCULAR ON WARNINGS REGARDING FINANCIAL INSTRUMENTS

15 June 2018

The European Securities and Markets Authority (ESMA) published on 1 June (in the Official Journal of the European Union) [product intervention measures on the marketing of contracts for differences \(CFDs\) and binary options to retail investors](#).

These measures were agreed by ESMA's Board of Supervisors on 22 May 2018, making use for the first time after the entry into force on 3 January of the product intervention powers established in Article 40 of Regulation (EU) No 600/2014 on markets in financial instruments.

The measures, which have been adopted taking into account the cross-border nature of the marketing of binary options and CFDs and the desirability of establishing a harmonised approach at European level, are applicable to those who market, distribute or sell these products to retail investors in the European Union and are the following:

- The marketing, distribution or sale of binary options to retail investors is prohibited.
- Certain limitations and requirements are established in relation to the marketing, distribution and sale of CFDs to retail investors.

The measures will enter into force as of 2 July 2018 for binary options and from 1 August 2018 for CFDs; no additional national provisions are necessary for them to be effective, and they will be valid for three months, although ESMA may extend them at the end of this term.

CNMV has expressed its support for and agrees with ESMA's measures and considers that product intervention powers are an adequate tool to ensure that retail investors in the European Union have a common level of protection and avoid regulatory arbitrage practices.

The approval of measures on binary option and CFD transactions, in line with what has been decided by ESMA to ensure their permanent validity, has been included as an objective in CNMV's 2018 Activity Plan.

## Restrictions applicable to the marketing of CFDs

More specifically, CFD restrictions consist of setting leverage limits on opening positions, imposing a margin close-out rule on a per account basis in the event of use of guarantees at 50% of the minimum required margin for the set of positions, establishing a mechanism for protection against negative balances on a per account basis, preventing the use of client incentives by CFD providers, and establishing a standardised warning on the risk corresponding to each entity. Specifically, the measures adopted by ESMA on CFDs include the following protection:

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.
2. A margin close-out rule on a per account basis in the event of use of guarantees. A standardisation of the percentage of margin (at 50% of the 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 by providers to clients to trade CFDs; and
5. A standardised risk warning, including the percentage of losses on a CFD provider's retail investor accounts.

## ESMA's restrictions on the marketing of CFDs and CNMV Circular 1/2018 on warnings

Prior to the date from which ESMA's decisions will apply, on 27 June 2018, [CNMV Circular 1/2018 on warnings related to financial instruments](#) will enter into force. Therefore, it is necessary to clarify the interaction between both provisions:

- As the CFDs are particularly complex financial instruments, as provided in the Second Standard of the aforementioned Circular, the entities that market them must issue the warnings provided in the Second Standard between 27 June 2018 (date of entry into force of the Circular) and 31 July 2018 (the day before ESMA's measures on CFDs enter into force). Likewise, as of 27 June 2018, they must obtain the retail client's signature and written statement provided for in the same Standard.<sup>1</sup>

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<sup>1</sup> In the case of binary options, such requirements will logically only be applicable between 27 June and 2 July 2018, the date on which the prohibition approved by ESMA will enter into force.

- As of 1 August 2018, the date of entry into force of the intervention measures adopted by ESMA on CFDs, and as long as they remain in force, CNMV considers that instead of the warning provided for in the Second Standard of Circular 1/2018, the one envisaged in ESMA's decision, in relation to CFDs, must be issued. However, the requirement to obtain the retail client's signature and written statement will be maintained, and it must accompany the warning text included in the ESMA measures.
- In any case, CNMV considers it acceptable for entities to be able to use the warnings provided for in ESMA's Decision on CFDs, instead of those required by CNMV Circular 1/2018 from this coming 27 June 2018, although ESMA's decision enters into force at a later date (1 August).
- Finally, it is considered that as from the entry into force of the aforementioned CNMV Circular 1/2018, the requirements that CNMV has imposed on financial intermediaries that market binary options and CFDs (to which the press release published on 21 March 2017 refers), which stipulated that certain warnings had to be issued and that certain specific statements had to be obtained from retail clients prior to purchasing these products, will cease to apply.