

THE CNMV RESTRICTS CFDs ADVERTISING AND LIMITS OPERATIONS OF LEVERAGED INSTRUMENTS

12 July 2023

- Between 70% and 90% of CFD investors suffer losses. The CNMV has decided to apply its powers to limit products in order to protect investors in Spain.
- CFD advertising aimed to retailers or the general public, event and organisation sponsorship, brand advertising and the use of public figures are prohibited.
- The maximum leverage to which retailers can be exposed in futures and options is limited and the provider is forced to close positions when it falls below 50% of the initial margin, thus limiting loss.
- The measure came to be in 2022 and has been the subject to long period of public consultation and discussion with European authorities.

The National Securities Market Commission (CNMV) approved a [Resolution on intervention measures for the marketing, distribution or sale of financial contracts for differences \(CFD\) and other leveraged instruments to retail investors.](#)

The Resolution forbids the advertisement of these products to retail investors, as well as certain remuneration policies and sales techniques. Moreover, intervention measures for the marketing, sale and distribution to retailers of other leveraged instruments are established.

Such measures aim to strengthen investor protection against certain commercial and advertising practices in the offer of CFDs that had prevented regulation and intervention measures in place from being effective. Additionally, guarantees for retailers against certain excessive leverage practices in other instruments, such as futures and certain options, are improved.

The Resolution is made up of two parts:

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- The first one establishes the prohibition of advertising CFDs aimed to retail investors or the general public, event (including sporting) sponsorship, as well as brand advertising and the use of public figures.

Additionally, certain remuneration policies for the commercial network (such as associating remuneration to the number of customers attracted, the revenue they generate for the entity or the losses incurred) are prohibited, as well as other sales techniques (like the use of call centres, webinars or demo accounts) that encourage the distribution of these products to retail investors.

CFDs are complex and high-risk products and therefore not generally suitable for retail investors. As a result, both the European Securities Markets Supervisor (ESMA), in 2018, and the CNMV in 2019 implemented various intervention measures establishing conditions related to marketing, distribution or sale to such investors.

However, the CNMV currently considers that these measures have not been efficient in sufficiently protecting Spanish retail investors. Although they initially led to a reduction in CFD trading, aggressive trading practices and massive advertising of these products on the internet and social networks have made the restrictions less effective.

Today, CFDs continue to be the main derivative product marketed to retailers, of which a high percentage (between 70% and 90% depending on the entities) suffer losses. This took place despite the intensification of the CNMV's supervisory activity, which has led to the cessation of retail activity in Spain of 12 foreign entities that provided CFD services without being physically present, as well as the closure of two entities with an establishment or agent in Spain.

Thus, the CNMV considered it necessary to implement measures of a greater scope for such products, as is the case in other jurisdictions (France or Belgium).

- The second part of the Regulation establishes specific intervention measures related to marketing, sale and distribution to retailers of other leveraged instruments (such as futures and options) whose maximum risk is not known upon subscription or whose risk of loss is greater than the amount of the initial financial contribution. Said specific measures limit the maximum leverage to which retail investors investing in these products can be exposed and force the provider to facilitate them with so-called "margin call protection", as had been determined for CFDs, and implied closing positions when

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the client's position falls below 50% of the initial margin, limiting their losses.

In both cases, the measures apply to entities authorised to provide investment services in Spain, regardless of the origin of the investment firm and whether it has a branch in Spain (therefore including entities under the freedom to provide services without an establishment), but do not bind Spanish entities when operating in other States.

However, bearing in mind the corresponding high risk, if the underlying instrument is a crypto-asset that is not considered a financial instrument under Directive 2014/65/EU of the European Parliament and of the Council (MiFID), the measures also apply to authorised companies in Spain when providing services in other member States.

The Resolution has been implemented according to Article 42 of the Regulation (EU) no. 600/2014 on markets and financial instruments (MiFIR). Particularly, the CNMV complied with the requirement to communicate the measures to ESMA and the other competent authorities by 12 May 2023 (at least one month before its entry into force). ESMA's final report states that the measures are legitimate and proportionate.

Comments received from ESMA and other European authorities, as well as from participants in the public consultation process (which ended on 31 January 2023), have been taken into account in the approved text.

The CNMV shall monitor compliance with the Resolution by the entities subject to its supervision and, considering that a significant part of the activity in Spain is carried out by entities acting under the freedom to provide services regime, it will request the collaboration of other European supervisors to pass on the English version to the entities under their jurisdiction that offer CFDs in Spain without an establishment or agent and remind them of their obligation to comply.

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