Commission de Surveillance du Secteur Financier

In case of discrepancies between the French and the English text, the French text shall prevail.

CSSF Regulation No 19-06 of 26 June 2019
restricting the marketing, distribution or sale of contracts for differences to retail clients

Having regard to Article 108a of the Constitution;

Having regard to the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), and in particular Article 9(2) thereof;

Having regard to the Law of 5 April 1993 on the financial sector (LFS), and in particular point (13) of Article 53(1) thereof, pursuant to which the CSSF, in its capacity as designated authority, may suspend the marketing or sale of financial instruments;

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation EU No 648/2012, and Article 42 thereof, pursuant to which the CSSF, in its capacity as competent authority, may suspend the marketing, distribution or sale of financial instruments;

Having regard to the European Securities and Markets Authority Decision (EU) 2018/796 of 22 May 2018 to temporarily restrict contracts for differences in the Union in accordance with Article 40 of Regulation (EU) No 600/2014 of the European Parliament and of the Council;

Having regard to the opinion of the Consultative Committee for Prudential Regulation;

The Executive Board of the Commission de Surveillance du Secteur Financier,

Decides:

Article 1

Definitions

For the purposes of this decision:

(a) ‘contract for differences’ or ‘CFD’ means a derivative other than an option, future, swap or forward rate agreement, the purpose of which is to give the holder a long or short exposure to fluctuations in the price, level or value of an underlying, irrespective of whether it is traded on a trading venue, and that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event;

(b) ‘excluded non-monetary benefit’ means any non-monetary benefit other than, in so far as they relate to CFDs, information and research tools;

(c) ‘initial margin’ means any payment for the purpose of entering into a CFD, excluding commission, transaction fees and any other related costs;

(d) ‘initial margin protection’ means the initial margin determined by Annex I;

(e) ‘margin close-out protection’ means the closure of one or more of a retail client's open CFDs on terms most favourable to the client in accordance with Articles 24 and 27 of Directive

2014/65/EU[1] when the sum of funds in the CFD trading account and the unrealised net profits of all open CFDs connected to that account falls to less than half of the total initial margin protection for all those open CFDs;

(f) 'negative balance protection' means the limit of a retail client's aggregate liability for all CFDs connected to a CFD trading account with a CFD provider to the funds in that CFD trading account.

Article 2

Restriction on CFDs in respect of retail clients

The marketing, distribution or sale to retail clients of CFDs is restricted to circumstances where at least all of the following conditions are met:

(a) the CFD provider requires the retail client to pay the initial margin protection;

(b) the CFD provider provides the retail client with the margin close-out protection;

(c) the CFD provider provides the retail client with the negative balance protection;

(d) the CFD provider does not directly or indirectly provide the retail client with a payment, monetary or excluded non-monetary benefit in relation to the marketing, distribution or sale of a CFD, other than the realised profits on any CFD provided; and

(e) the CFD provider does not send directly or indirectly a communication to or publish information accessible by a retail client relating to the marketing, distribution or sale of a CFD unless it includes the appropriate risk warning specified by and complying with the conditions in Annex II.

Article 3

Prohibition of participating in circumvention activities

It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the requirements in Article 2, including by acting as a substitute for the CFD provider.

Article 4

Entry into force

This regulation shall enter into force on 1 August 2019.

[1] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

Article 5

Publication

This regulation shall be published in the Journal officiel du Grand-Duché de Luxembourg and on the website of the Commission de Surveillance du Secteur Financier.

Luxembourg, 26 June 2019

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

Claude WAMPACH Director	Marco ZWICK Director	Jean-Pierre FABER Director
Françoise KAUTHEN Director	Claude MARX Director General	

ANNEX I

INITIAL MARGIN PERCENTAGES BY TYPE OF UNDERLYING

(a) 3.33% of the notional value of the CFD when the underlying currency pair is composed of any two of the following currencies: US dollar, Euro, Japanese yen, Pound sterling, Canadian dollar or Swiss franc;

(b) 5% of the notional value of the CFD when the underlying index, currency pair or commodity is:

- (i) any of the following equity indices: Financial Times Stock Exchange 100 (FTSE 100); Cotation Assistée en Continu 40 (CAC 40); Deutsche Bourse AG German Stock Index 30 (DAX30); Dow Jones Industrial Average (DJIA); Standard & Poors 500 (S&P 500); NASDAQ Composite Index (NASDAQ), NASDAQ 100 Index (NASDAQ 100); Nikkei Index (Nikkei 225); Standard & Poors / Australian Securities Exchange 200 (ASX 200); EURO STOXX 50 Index (EURO STOXX 50);
- (ii) a currency pair composed of at least one currency that is not listed in point (a) above; or
- (iii) gold;

(c) 10% of the notional value of the CFD when the underlying commodity or equity index is a commodity or any equity index other than those listed in point (b) above;

(d) 50% of the notional value of the CFD when the underlying is a cryptocurrency; or

(d) 20% of the notional value of the CFD when the underlying is:

- (i) a share; or
- (ii) not otherwise listed in this Annex.

ANNEX II

RISK WARNINGS

SECTION A

Risk warning conditions

1. The risk warning shall be in a layout ensuring its prominence, in a font size at least equal to the predominant font size and in the same language as that used in the communication or published information.

2. If the communication or published information is in a durable medium or a webpage, the risk warning shall be in the format specified in Section B.

3. If the communication or information is in a medium other than a durable medium or a webpage, the risk warning shall be in the format specified in Section C.

4. The risk warning shall include an up-to-date provider-specific loss percentage based on a calculation of the percentage of CFD trading accounts provided to retail clients by the CFD provider that lost money. The calculation shall be performed every 3 months and cover the 12-month period preceding the date on which it is performed ('12-month calculation period'). For the purposes of the calculation:

   (a) an individual retail client CFD trading account shall be considered to have lost money if the sum of all realised and unrealised net profits on CFDs connected to the CFD trading account during the 12-month calculation period is negative;

(b) any costs relating to the CFDs connected to the CFD trading account shall be included in the calculation, including all charges, fees and commissions;

(c) the following items shall be excluded from the calculation:

(i) any CFD trading account that did not have an open CFD connected to it within the calculation period;

(ii) any profits or losses from products other than CFDs connected to the CFD trading account;

(iii) any deposits or withdrawals of funds from the CFD trading account.

5. By way of derogation from paragraphs 2 to 4, if in the last 12-month calculation period a CFD provider has not provided an open CFD connected to a retail client CFD trading account, that CFD provider shall use the standard risk warning specified in Sections D and E, as appropriate.

SECTION B

Durable medium and webpage provider-specific risk warning

> CFDs are complex instruments and come with a high risk of losing money rapidly due to leverage.
>
> **[*insert percentage per provider*] % of retail investor accounts lose money when trading CFDs with this provider.**
>
> You should consider whether you understand how CFDs work and whether you can afford to take the high risk of losing your money.

SECTION C

Abbreviated provider-specific risk warning

> **[*insert percentage per provider*] % of retail investor accounts lose money when trading CFDs with this provider.**
>
> You should consider whether you can afford to take the high risk of losing your money.

SECTION D

Durable medium and webpage standard risk warning

> CFDs are complex instruments and come with a high risk of losing money rapidly due to leverage.
>
> **Between 74-89 % of retail investor accounts lose money when trading CFDs.**
>
> You should consider whether you understand how CFDs work and whether you can afford to take the high risk of losing your money.

SECTION E

Abbreviated standard risk warning

> **Between 74-89 % of retail investor accounts lose money when trading CFDs.**
>
> You should consider whether you can afford to take the high risk of losing your money.