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01/06/2018

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Additional Information

Level 1 Regulation

Markets in Financial Instruments Regulation (MiFIR) Regulation (EU) No 600/2014 - Investor Protection and Intermediaries

Topic

Product intervention

Additional Legal Reference

ESMA Decision 2018/795; ESMA Decision 2019/796

Subject Matter

Existing contracts

Question

How should firms apply these restrictions to existing retail client accounts with open CFD contracts and binary option contracts entered into prior to the date of entry into application?

ESMA Answer

01-06-2018

Original language

[ESMA 35-36-1262 Q&As on product intervention Q&A 5.1]

The prohibition of the marketing, distribution or sale of binary options to retail clients and the restrictions on the marketing, distribution or sale of CFDs to retail clients apply from the moment that the measures in Decision 2018/795 and Decision 2018/796 come into application.

Firms are not required to apply the product intervention measures to CFDs sold to retail clients prior to this date. The restrictions on the marketing, distribution or sale of CFDs apply to CFD positions entered into from the date the product intervention measures come into application. Firms are required to cease the marketing, distribution or sale of binary options from the date the product intervention measures in relation to binary options come into application.

In relation to CFDs, firms are required to apply the *margin close-out protection* and the *negative balance protection* under Article 1(e) and 1(f) of Decision 2018/796 to new CFD positions when the measures come into effect. Firms may choose to create separate sub-accounts for CFD positions opened prior to the implementation date. Alternatively, firms may choose to extend the *margin close-out protection* and the *negative balance protection* to existing CFD positions. Firms should inform clients of the changes in the terms and conditions of their account in a durable medium in good time before the changes apply.

Firms exercising their discretion to close retail clients' open CFD and binary option positions, other than in accordance with existing terms and conditions, prior the measures coming into effect without the express consent of their retail clients will not be considered as acting in the best interests of the client as required under Article 24 of MiFID II.

Retail clients are not required to post additional margin for existing CFD positions to meet the initial margin protection requirement under Article 1(d) and Annex I of Decision 2018/796.

Retail clients are only required to provide margin required under Article 1(d) and Annex I for CFD positions entered into after the date of application.