

ESMA_QA_1986

Status: Answer Published

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

Guaranteed stop loss orders

Question

How should firms apply the margin close-out rule for CFDs where they also offer guaranteed stops or limited risk protection on a per position basis?

01-06-2018

Original language

[ESMA 35-36-1262 Q&As on Product intervention, Q&A 5.8]

ESMA is aware that some firms currently offer guaranteed stop loss orders or limited risk features on a per position basis. In such cases, current market practice is for firms to typically charge the client margin commensurate to the maximum loss they would incur at the guaranteed stop level. Firms also ring-fence margin dedicated to a position with a guaranteed stop from consideration of whether a margin close-out event is triggered across the rest of a client's leveraged CFD positions (based on the firm's terms and conditions).

The margin close-out rule applies on an account basis across all open CFD positions in a client's account based on 50% of the initial margin required. This includes positions with a guaranteed stop loss order or limited risk protection.

ESMA recognises that this will create situations in which a client's position operating with a guaranteed stop could be closed out prior to the guaranteed stop level being reached as firms are required to close out one or more open CFDs at 50% of the initial margin protection required per account for all those open CFD positions. This would most likely occur where the guaranteed stop is set at a point where a client would be losing more than 50% of the initial margin required for all open CFD positions, although the guaranteed stop would still have value in a market gap event in which the margin close-out could not be executed without price slippage. Guaranteed stops set closer to the market than 50% of initial margin required will continue to provide enhanced protection, in addition to the protection provided by negative balance protection at account level mandated in the intervention measures.

ESMA expects firms to explain to their clients in a clear, fair and not misleading manner how the intervention measures will impact the operation of their account if they currently use guaranteed stops or limited risk protection, including by amending their terms and conditions as necessary in advance of the application of the measures. Firms may need to consider whether costs or charges levied by the firm for guaranteed stops should be revised to reflect

the potentially reduced value they have for clients.