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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
Risk warning prominence

Question

How should a firm ensure the prominence of the appropriate risk warning specified in Annex II of the CFD Decision?

ESMA Answer

09-11-2018

Original language

[ESMA 35-36-1262 Q&As on Product intervention, Q&A nr 5.13]

Pursuant to Article 2(e) of the CFD Decision, a firm must not send a communication directly or indirectly to a retail client, 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 complying with the conditions in Annex II.

The first paragraph of Section A of Annex II provides: "*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".*

Firms are also required to comply with Article 44 of Commission Delegated Regulation (EU) 2017/565[1], which specifies that information addressed to, or disseminated in such a way that it is likely to be received by, a retail client must give a fair and prominent indication of any relevant risks when referencing any potential benefits of an investment service or financial instrument.

In the context of internet-based marketing, giving prominence to the risk warning implies that it is displayed on the relevant webpages in a way that would signal that the message is of importance and makes it unlikely that a client or a prospective client would not to notice it. It should attract attention, for instance, by virtue of its size or position on the webpage.

In deciding whether a particular risk warning is ‘prominent’, firms should consider the target audience, the characteristics of CFDs and the likely information needs of the average recipient of the communication.

Examples of good practice that will indicate firms have given sufficient prominence to a risk warning include:

- Warnings are shown using easily readable font styles (at least in the predominant font size of the respective communication, letters displayed in a discernible font colour) across a neutral background.
- The size of the warning occupies a noticeable portion of the text displayed, taking into account the content, size and orientation of the communication as a whole.
- Warnings are contained within their own distinct border, drawing the reader’s attention to them.
- In the context of web pages, warnings remain fixed on the screen even when the customer scrolls up and down respective web page.
- Warnings are repeated on linked pages further into the website product chain.
- In other communications than web pages, warnings are clearly stated within the main body of the communication.

?Examples of poor practice, that will indicate firms have given insufficient prominence to a risk warning include:

- Warnings are obscured through the close proximity of promotional illustrations and/or additional text.
- Warnings are diminished due to their location being outside of the main advertisement border.
- Warnings are diminished through the use of small font sizes and unclear type styles.
- Warnings are contained within a ‘pop-up’ box that only appears on the user’s first visit to a website.
- Warnings are difficult to locate within a website or placed under a separate section or heading that may be overlooked, such as ‘FAQs’, ‘Legal Information’ or ‘Disclaimers’.
- Firms have not taken into account the different-sized browsers of consumers when positioning risk information (i.e. it is necessary to scroll down to access the information).
- Warnings are superimposed across coloured or patterned backgrounds, which lessens their visual impact.

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1. Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 87, 31.3.2017, p. 1).