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## **ESMA announces its intention to activate Article 40 of MiFID 2**

The European Securities and Markets Authority (ESMA) issued a statement on December 15th indicating that it is considering the possible use of its product intervention powers as of January 3rd 2018 under Article 40 of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (MiFIR), to address investor protection risks posed by some speculative products.

### **ESMA's position**

ESMA is considering specific measures to:

- prohibit the marketing, distribution or sale to retail clients of binary options; and
- restrict the marketing, distribution or sale to retail clients of CFDs, including rolling spot forex.

The restrictions on CFDs currently under review are:

- leverage limits on the opening of a position between 30:1 and 5:1, whose limit will vary according to the volatility of the underlying asset;
- a margin close-out rule by position;

- a negative balance protection by account to provide a guaranteed limit on client losses;
- a restriction on monetary or non-monetary benefits incentivizing trading; and
- a standardized risk warning.

ESMA will conduct a brief public consultation in January 2018 on these possible measures.

Any product intervention measure adopted by ESMA under Article 40 of MiFIR can have an initial duration of up to three months and is renewable.

## An initiative welcomed by the AMF

The French regulator welcomes and supports ESMA's initiative. For several years, the AMF has focused its attention on exposing the danger posed to retail investors by these highly speculative products. In addition to calls for public awareness campaigns and to legal claims for blocking access to illegal websites, the AMF welcomed the adopted measure included in the "Sapin II" law <sup>[1]</sup> to ban electronic advertising for certain toxic financial products.

### Read more

- 📄 [ESMA's statement of 15 December 2017](#)

[1] French Law n° 2016-1691 of 9 December 2016 on transparency, fighting corruption and modernizing economic life.

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