AUTORITÉ
DES MARCHÉS FINANCIERS

AMF

AMF's decision of 1 August 2019 restricting the marketing, distribution or sale, in France or from France, of contracts for differences to retail investors

I. Background

1. In recent years, the European Securities and Markets Authority (ESMA) and several national competent authorities (NCAs) have observed a sharp increase in the marketing, distribution or sale of contracts for differences (***CFDs***) to retail clients[1] across the Union. CFDs are inherently risky and complex products and are often traded speculatively. ESMA and NCAs have also observed that their offer to retail clients has been increasingly featured by aggressive marketing techniques as well as a lack of clear information that do not allow retail clients to understand the risks underlying these products. ESMA and NCAs have expressed their concerns on the increasing number of retail clients trading in these products and losing their money. These concerns are also supported by the numerous complaints received from retail clients across the EU who have suffered significant detriment.

2. These significant investor protection concerns have led ESMA and the 'Autorité des marchés financiers (***AMF***) to take a number of actions. ESMA has promoted supervisory convergence in the Union in respect of the offer of CFDs to retail clients through the issuance of an opinion[2] as well as a number of Questions and Answers (Q&As)[3] pursuant to Article 29 of Regulation (EU) No 1095/2010. Finally, ESMA has published warnings[4] in which it highlighted its concerns in respect of the risks posed by the uncontrolled offer of inter alia CFDs and binary options to retail clients. At national level, the AMF has implemented in recent years a series of measures such as the mystery shopping campaigns[5], the setting up of systematic monitoring tools[6], the publication of dedicated press releases[7] as well as a « black list » of CFD providers[8]not authorized to offer CFDs in France. The AMF closely monitors the offer of these speculative products to retail clients, which gave rise to many complaints[9]. Their number has decreased as a result of the legislative[10] and regulatory[11] changes that have occurred in France in order to prohibit online advertisements related to such

---

[1] Defined as clients who do not meet the conditions laid down under paragraph 2 of Article L. 533-16 of the French Monetary and Financial Code, as further detailed under Article D. 533-11 of the same code.
[2] Opinion on MIFID practices for firms selling complex financial products (ESMA/2014/146).
[3] Questions and Answers (Q&As) relating to the provision of CFDs and other speculative products to retail clients under MiFID (ESMA-35-36-794).
[4] ESMA and EBA's investor warning on 'contracts for difference (CFDs)' of 28 February 2013; ESMA's investor warning on 'risks in investing in complex products' of 7 February 2014.
[5] On 29 websites in 2014 and 15 websites in 2016.
[6] The AMF continuously monitors advertising on financial placements. Media subject to monitoring include the press, websites, mobile phone applications and social networks (specific pages of the websites of financial institutions and emailings on social networks).
[7] See AMF press release published on 28 July 2017 (Forex, binary options: a market to avoid).
[8] See AMF press release published on 4 May 2018 (Forex, binary options: the AMF has obtained the closure of 138 website addresses in three years) and the black list of unauthorised Forex providers, lastly updated on 23 April 2019.
[9] The number of complaints received by the AMF in relation to CFD or Forex is as follow: 355 complaints in 2014, 477 complaints in 2015, 383 complaints in 2016, 237 complaints in 2017 and 185 complaints in 2018 (more than two-third of these complaints related to non-authorised providers).
[10] Article 72 of Law n°2016-1691 of 9 December 2016 creating a new article L. 533-12-7 of the French Monetary and Financial Code.
[11] Article 314-of the AMF General Regulation.

offers. Although these measures have had positive effects, ESMA has considered that an important issue of protection of investors remained.

3. On 18 January 2018, ESMA launched a call for evidence on its potential product intervention measures on the marketing, distribution or sale of CFDs and binary options to retail clients[12] (the 'call for evidence'). The call for evidence disclosed a general concern from product providers, as to the decrease of revenues, which the proposed measures may cause as well as the costs related to their implementation. Furthermore, concerns were also expressed by a large number of individual respondents mainly about proposed leverage limits being too low.

4. ESMA has considered such concerns. However, after balancing them against the significant investor protection concern identified, which was further confirmed by the responses received from consumer representatives and individuals in support of the proposed measures and calling for more stringent measures, ESMA has considered it necessary to impose a temporary restriction on the marketing, distribution or sale of CFDs to retail clients in accordance with Article 40 of Regulation (EU) No 600/2014. For this purpose, ESMA therefore adopted a decision on 22 May 2018, applicable for three months as of 1 August 2018[13].

5. A measure imposed under Article 40 of Regulation (EU) No 600/2014 must be reviewed at appropriate intervals and at least every three months. After reviewing its decision, ESMA has considered that if its decision temporary restriction was not renewed, it was likely that CFDs would be offered again to retail investors unless adequate measures are taken to protect retail investors against the risks associated with these products, as identified in ESMA's decision (EU) 2018/796. ESMA has therefore considered that a renewal of its decision to restrict the marketing, distribution and sale of CFDs to retail clients in the Union was necessary. ESMA hence renewed its decision on 23 October 2018 (decision applicable as of 1st November 2018), on 23 January 2019 (decision applicable as of 1st February 2019) and on 17 April 2019 (decision applicable as of 1st May 2019)[14]. Should this last decision not be renewed, it would expire on 31 July 2019. While renewing its measure, ESMA also recalled, after recording an increase in the number of clients treated as professional on request since the adoption of its decision, that retails clients may request to be treated as professional clients provided that the client submits a request in writing in accordance with all the requirements set out in the applicable legislation. Providers should ensure that they comply at all times with those requirements. In addition, ESMA noted that some third-country firms were actively approaching Union clients or were marketing the possibility for retail clients to move their accounts to an intra-group third-country entity and recalled that, without authorisation or registration in the Union, third-country firms are only allowed to offer services to clients established or situated in the Union at the client's own exclusive initiative. Finally, ESMA also stated to be aware that firms were starting to provide other speculative investment products. In this context, the AMF will continue to monitor the offer of products subject to this Decision so as to ensure that providers comply with their obligations.

[12] Call for evidence on potential product intervention measures on contracts for differences and binary options to retail clients of 18 January 2018 (ESMA35-43-904).
[13] ESMA, Decision (EU) 2018/796 of 22 May 2018 to temporarily restrict contracts for differences in the Union.
[14] ESMA, Decision (EU) 2018/1636 of 23 October 2018 renewing and amending the temporary restriction in Decision (EU) 2018/796 ; Decision (EU) 2019/155 of 23 January 2019 and Decision (EU) 2019/679 of 17 April 2019.

AUTORITÉ DES MARCHÉS FINANCIERS

AMF

6. Intervention powers granted under MiFIR to ESMA being temporary in nature, ESMA regularly called Member States, whose intervention powers under MiFIR are more sustainable, to adopt national intervention measures at least as stringent to those previously adopted by ESMA. Some NCAs already have notified ESMA of national measures aiming at restricting the marketing, distribution and sale of CFDs to retail clients, in accordance with Article 42 of MiFIR[15].

7. The risks for investor protection identified by ESMA and the AMF in relation to the distribution in France of CFD to retail clients are especially likely to materialize again if the restrictions adopted by ESMA, which are only temporary, are not renewed or taken over and perpetuated by the NCAs. In order to limit these risks, it is therefore necessary for the AMF to adopt a decision restricting the marketing, distribution and sale of CFD to retail clients in France or from France, in accordance with article 42 of MiFIR, as supplemented by Article 21 of Commission Delegated Regulation (EU) 2017/567 of 18 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council « with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions » (***MiFIR Delegated Regulation***). MiFIR expressly grants NCAs, among which the AMF, a direct intervention power enabling them to prohibit or restrict the marketing, distribution and sale of certain financial instruments or of financial instruments with certain features or certain practices or activities, that give rise to significant investor protection concerns or pose a threat to the orderly functioning and integrity of financial markets or to the stability of whole or part of the financial system.

8. The adoption by the AMF of such prohibition or restriction based on Article 42 of MiFIR is subject to the satisfaction of conditions laid down under Article 42 of MiFIR, as supplemented by Article 21 of MiFIR Delegated Regulation and detailed below.

II. The existence of a significant investor protection concern in relation to the marketing, distribution and sale of CFDs to retail clients (Article 42(2)(a) of MIFIR)

9. This Decision relates to CFDs that are derivatives (within the meaning of Article 2(1)(29) of MiFIR), 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. These CFDs include, inter alia, rolling spot forex products and financial spread bets. This Decision does not relate to options, futures, swaps, and forward-rate agreements.

10. ESMA has confirmed that only CFDs are in scope of Decision (EU) 2018/796, warrants and turbo certificates not being in its scope[16]. ESMA has acknowledged that there are similarities between CFDs and warrants and turbo certificates but that the products also differ in various respects. As the AMF shares ESMA's view in this respect, this Decision does not apply to warrants and turbo

---

[15] ESMA published on 2 April 2019 an opinion on the measure restricting marketing, distribution and sale of CFDs to retail clients notified by the *Authority for the Financial Markets* (***AFM***) of Netherlands.

[16] ESMA Decision (EU) 2018/796 of 22 May 2018, recital 10 ; *questions and answers on ESMA's temporary product intervention measures on the marketing, distribution or sale of CFDs and binary options to retail clients* (ESMA35-36-1262, last update: 09 November 2018), point 5-10.

certificates. Derivatives structured as securities (securitised derivatives) that can be assimilated to CFDs are not explicitly excluded from the definition of CFDs. Although ESMA has indicated that it was not aware of such products, ESMA has considered that the wrapper of a security and the tradability on a trading venue do not change the key characteristics of a CFD and that, in case such products were to be launched, these products would be in scope of its decision. The AMF also shares this analysis; should CFD structured as securities (securitised derivatives) be available on the market, such products would fall with the scope of this Decision.

11. CFDs that offer leveraged exposure to price, level or value changes in underlying asset classes constitute a speculative short-term investment product provided to a niche client base in some jurisdictions for several years. As well as a number of NCAs, ESMA has also observed an increase in the levels of leverage being offered in such products to retail clients and in the levels of client losses arising from investing in these products. These concerns are amplified by often aggressive marketing techniques and inappropriate practices from providers marketing, distributing or selling CFDs (such as the offering of payments, monetary or non-monetary benefits) or through inappropriate disclosures of risks.

12. These concerns have materialised across several jurisdictions (with a majority of retail clients typically losing money as evidenced by a number of NCAs). In an attempt to address these concerns, some NCAs took measures in this area[17].

13. One of the conditions referred to in Article 42(2)(a) of MiFIR is that there must exist inter alia a significant investor protection concern. In accordance with Article 21(2) of MiFIR Delegated Regulation, the AMF has assessed the relevance of certain criteria and factors, in particular those listed under points a), b), c), d), e), f), j) and v) of this Article. After taking these relevant criteria and factors into consideration, the AMF has concluded that there is a significant investor protection concern for the following reasons.

II.1. The degree of complexity and absence of transparency of CFDs (Articles 21(2)(a) and (d) of MiFIR Delegated Regulation)

14. CFDs are complex products[18], typically not traded on a trading venue. The pricing, trading terms, and settlement of such products is not standardised, impairing retail clients' ability to understand the terms of the product. In addition, CFD providers often require clients to acknowledge that the reference prices used to determine the value of a CFD may differ from the price available in the respective market where the underlying is traded, making it difficult for retail clients to check and verify the accuracy of the prices received from the provider.

15. The costs and charges applicable to trading in CFDs are complex and lack transparency for retail clients. In particular, retail clients typically find it difficult to understand and assess the expected performance of a CFD, also taking into account the complexity arising from the impact of

[17] ESMA, Decision (EU) 2018/796, recitals 73 and 75.
[18] CFDs do not meet the criteria to be regarded as non-complex financial instruments according to the combined reading of Article 25(4) of Directive 2014/65/EU and Article 57 of the 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.

AUTORITÉ DES MARCHÉS FINANCIERS
AMF

transaction fees on such performance. Transaction fees in CFDs are normally applied to the full notional value of the trade and investors consequently incur higher transaction fees relative to their invested funds at higher levels of leverage. Transaction fees are usually deducted from the initial margin deposited by a client and high leverage can lead to a situation where the client, at the moment of opening a CFD, observes a significant loss on their trading account, caused by the application of high transaction fees. Since transaction fees at higher leverage will erode more of the client's initial margin, clients will be required to earn more money from the trade itself to realise a profit. This lowers the client's chances of realising a profit net of transaction fees, exposing clients to a greater risk of loss.

16. In addition to transaction fees, spreads and various other financing costs and charges may be applied. These include commissions (a general commission or a commission on each trade, or on opening and closing a CFD account) and/or account management fees. Financing charges are also usually applied to keep a CFD open, such as daily or overnight charges, to which a mark-up can also be added. The number and complexity of the various costs and charges and their impact on clients' trading performance contribute to the lack of sufficient transparency in relation to CFDs in order to enable a retail client to make an informed investment decision.

17. Another complexity arises from the use of stop loss orders. This product feature may give retail clients the misleading impression that a stop loss order guarantees execution at the price which they have set (the level of the stop loss) and protect them from potential losses compared to the amount invested. However, stop loss orders do not guarantee a protection level but the triggering of a ‘market order’ when the CFD price reaches the price set by the client. Accordingly, given the volatility of CFDs, the execution price can be different from the price at which the stop loss was set (17). While stop losses are not unique to CFDs, leverage increases investor's exposure to price movements of the underlying increasing the risk of risk of sudden losses and means that traditional trading controls such as stop-losses are insufficient to manage investor protection concern.

18. Another key complexity associated with CFDs may arise from the relevant underlying market. For instance, with FX trading, clients speculate on one currency against another. If neither of these currencies is the currency used by the client to open a CFD position, any return received by the client will be dependent on the measures taken by the client to assess the movement of these three currencies. This suggests that a high level of knowledge of all the currencies involved is required to successfully navigate the complexities of such currency trading. Retail clients do not normally have such knowledge.

19. CFDs with cryptocurrencies as an underlying raise separate and significant concerns. Cryptocurrencies are a relatively immature asset class that pose major risks for investors. ESMA and other regulators have repeatedly warned of the risks involved with investing in cryptocurrencies[19]. For CFDs on cryptocurrencies many of these concerns remain present. This is

[19] See for example the joint warning by ESMA, EBA and EIOPA on virtual currencies (available at: https://www.esma.europa.eu/sites/default/files/library/esma50-164-1284_joint_esas_warning_on_virtual_currenciesl.pdf), the EBA warning from 2013 (available at: https://www.eba.europa.eu/documents/10180/598344/EBA+Warning+on+Virtual+Currencies.pdf) and see IOSCO's webpage for an overview of regulator's warnings on virtual currencies and initial coin offerings (available at: http://www.iosco.org/publications/?subsection=ico-statements).

because retail clients typically do not understand the risks involved when speculating on an extremely volatile and relatively immature asset class, which are exacerbated by techniques used to levy fees on margin as described above, as it requires clients to react in a very short time period.

20. The high level of complexity, poor degree of transparency, nature of risks and types of underlying confirm that a significant investor protection concern exists in respect of these CFDs.

II.2. The particular features or components of CFDs (Article 21(2)(e) of MiFIR Delegated Regulation)

21. The main feature of CFDs is their ability to incorporate leverage. Whilst leverage can increase the possible profit for clients, it can also increase the possible losses. NCAs have noted that leverage levels applied to CFDs across the Union range from 3:1 to 500:1[20]. As far as retail clients are concerned, the application of leverage may increase the probability of a larger loss to a greater extent than the probability of a larger gain for the reasons set out below.

22. Leverage affects an investment's performance by increasing the impact of transaction fees incurred by retail clients.

23. Another risk related to trading in leveraged products is linked to the interaction of high leverage and the practice of automatic margin close-out. Under commonly applied contractual terms, CFD providers are granted the discretion to close-out a client's account once the client's net equity reaches a specified percentage of the initial margin that the client is required to pay in order to open one or more CFD positions.

24. The interaction between high leverage and automatic margin close-out is that it increases the probability that a client's position will be closed automatically by the CFD provider in a short timeframe or a client has to post additional margin in the hope of turning around a losing position. High leverage increases the probability that the client has insufficient margin to support their open CFDs by making the client's position(s) sensitive to small fluctuations in the price of the underlying to the client's disadvantage.

25. In practice, margin close-out appears to have been introduced by CFD providers mainly to allow them to more easily manage client exposures and the provider's credit risk by closing out a client's position before the client had insufficient funds to cover their current exposure. Automatic margin close-out also provides a degree of protection for clients as it reduces, but does not eliminate, the risk that clients lose all or more than their initial margin.

26. The level at which automatic margin close-out is applied is inconsistent across CFD providers[21]. CFD providers with clients who typically trade at lower value order sizes, and who act as direct counterparty to the clients' trades, have previously set the margin close-out rule between 0 and 30 % of initial margin required. By eroding the client's funds close to 0, the provider is placing the client at increased risk of losing more money than they had invested. Some NCAs have also observed that it is standard market practice to apply margin close-out on a per account basis[22].

[20] For instance, the AMF has observed leverages of up to 400:1 for the most liquid currency pairs.
[21] In France, automatic margin close-out set by providers typically between 120-150 % of the initial margin.
[22] ESMA, Decision (EU) 2018/796, recital 26.

This means that minimum margin requirements are applied based on the combined margin required for all a client's open positions connected to the CFD account, including across different asset classes. This allows profitable positions to offset losing positions across the client's account.

27. A related risk of leverage is that it places clients at risk of losing more money than they have invested. This is a key risk which retail clients may not understand, even despite written warnings. The margin posted by a client is posted as collateral to support the client's position. If the price of the underlying, for example, moves against the client's position in excess of the initial margin posted, the client can be liable for losses in excess of the funds in their CFD trading account, even after the closure of all their other open CFD positions. The AMF, as well as other NCAs, has reported to ESMA that a number of retail clients lost significant sums of money during the de-pegging of the Swiss Franc in January 2015. Many retail clients were unaware that they could lose more money than they had invested.

28. Trading at high leverage levels also increases the impact of 'gapping' during periods of significant market volatility (for example the Sterling flash crash and Swiss franc de-pegging). Gapping occurs when there is a sudden movement in the price of the underlying. Gapping is not unique to CFDs, but the risks related to such events are exacerbated by high leverage. If gapping occurs, the client on the losing side may be unable to close an open CFD at their preferred price and can result in significant client losses when trading at high leverage. In the case of the Swiss franc shock in 2015 for example, this has led to retail clients losing significantly more than the sum initially invested.

29. The often high levels of leverage offered to retail clients, the volatility of certain underlying assets, together with the application of transaction costs which impact the investment's performance, can result in rapid changes to a client's investment position. This results in the client having to take swift action to manage the risk exposure by posting additional margin to avoid the position being automatically closed out. In such instances, high leverage can lead to large losses for retail clients over a very short time span and exacerbates the risk that clients will lose more than the funds paid to trade CFDs.

30. The above factors confirm that a significant investor protection concern exists in respect of these CFDs.

II.3. The size of potential detrimental consequences and the degree of disparity between the expected return for investors and the risk of loss (Articles 21(2)(b) and (f) of MiFIR Delegated Regulation)

31. Information provided by NCAs to ESMA indicates that the number of retail clients investing in CFDs as well as the number of providers offering these products across the Union has grown in recent years[23].

32. Active client numbers in relation to these products are moving due to the relatively short life span of CFD client accounts and the cross-border nature of activities. Based on data gathered by ESMA from a number of NCAs, ESMA estimates that the number of retail clients' trading accounts from

[23] ESMA, Decision (EU) 2018/796, recital 31.

AUTORITÉ DES MARCHÉS FINANCIERS
AMF

EEA-based CFD and binary option providers increased from 1,5 million in 2015 to approximately 2,2 million in 2017.

33. Retail clients complaints data also indicates ongoing consumer concerns in this area. In particular, the AMF received a significant number of complaints in relation to these products, even after the implementation of measures designed to restrict advertisement on such products aimed at retail clients[24].

34. The AMF also found that that more than 89 % of retail investors investing in CFDs lost money overall over a 4-year period from 2009 to 2013, and that the average loss per retail client was EUR 10 887 (43)[25]. In addition, data from the office of the Ombudsman of the AMF identified that (i) the average overall loss per year for complaints of CFDs was EUR 15 207 in 2016 and (ii) in 2016 and 2017, the practices of regulated providers became even more aggressive and increasingly targeted investors likely to make significant payments. Several complaints regarding incidents of harassment and manipulation were from applicants with substantial savings. Figures for 2016 mediations before the French Ombudsman appear to support this, with the average amount recovered increasing to EUR 11 938 and half of all cases concerning an amount above EUR 5 000. The losses incurred by some investors topped EUR 90 000, and the cumulative losses in cases handled on the merits, that is involving authorised companies, exceeded EUR 1 million. The AMF also found that retail investors who trade the most (by number of trades, average trade size or cumulative volume) lose the most. The same applies to those who continue over time, indicating there is no learning curve.

35. Specific studies carried out by other NCAs on results obtained by retail clients investing in CFDs also show that a majority of investors in the concerned Member States lose money on these transactions[26].

36. Notably, the consistent pattern of average losses for retail clients in CFDs over time and across countries comes despite positive returns for retail clients in other financial products in many of the years in question. The percentage of retail clients losing money in the AMF study referred to in recital 34 in each year from 2009 to 2013 remained remarkably consistent, despite varying annual returns in stock market and commodity indices over the same period, for example (51). The persistence of the pattern of losses for retail clients in CFDs indicates a structural feature of the return profile, in contrast to positive historical returns on (long term) investments in other financial products such as equity investment funds.

37. These studies paint a stark picture of the significant investor protection concern raised by the offer of these CFDs to retail clients.

[24] As stated above, the number of complaints received by the AMF in relation to CFDs or Forex is as follow: 355 complaints in 2014, 477 complaints in 2015, 383 complaints in 2016, 237 complaints in 2017 and 185 complaints in 2018 (more than two-third of these complaints related to non-authorised providers).
[25] AMF, « *Etude des résultats des investisseurs particuliers sur le trading de CFD et de Forex en France* », 13 October 2014.
[26] ESMA, Decision (EU) 2018/796, recital 35.

II.4. The type of clients involved (Article 21(2)(c) of MiFIR Delegated Regulation)

38. CFDs are marketed, distributed or sold to both retail and professional clients. However, retail clients do not normally possess the experience, knowledge and expertise to make investment decisions which properly assess the risks they incur with regard to the complex CFDs that are restricted by this Decision.

39. Indeed, one study in a Member State has indicated that the highest maximum leverage levels were often offered to retail clients, whilst professional clients and eligible counterparties were offered lower maximum leverage levels[27]. Given the evidence of losses observed by ESMA in retail client accounts described in this Decision, it is clear that a significant investor protection concern exists in respect of the unrestricted marketing, distribution or sale of CFDs to this category of client.

II.5. Marketing and distribution practices in relation to CFDs (Article 21(2)(j) of MiFIR Delegated Regulation)

40. Although CFDs are complex products, they are offered to retail clients most commonly via electronic trading platforms, without the provision of investment advice or portfolio management. An assessment of appropriateness is required in such cases pursuant to Article 25(3) of Directive 2014/65/EU on markets in financial instruments (***MiFID2***). However, this assessment does not prevent CFD providers or their clients or potential clients proceeding with a transaction, subject to a simple warning to the client. This can occur where the client has provided no or insufficient information as to their knowledge and experience in the investment field relevant to the specific type of product as well as where the provider has concluded that the product is not appropriate for the client. This enables retail clients to access products, such as CFDs, which, by their features, should not be distributed to them.

41. The Financial Conduct Authority (***FCA***) has observed repeated failings by the approach of CFD providers to completing the appropriateness assessment, including inadequacies in the assessment itself, inadequate risk warnings to retail clients who failed the appropriateness assessments and lack of establishment of a process to assess whether clients who fail the appropriateness assessment, but who nonetheless wish to trade CFDs, should be allowed to proceed with CFD transactions. Revisiting this issue in late 2016, the UK-FCA found that a significant number of firms had failed to address these failings following the previous feedback provided to them[28].

42. Furthermore, certain NCAs have voiced concerns about CFD providers' compliance with their obligations to give clients clear and not misleading information, or act in the best interests of clients. NCAs have also voiced concerns regarding the inadequate performance of appropriateness tests in practice and inadequate warnings to clients when they fail the appropriateness test. Examples of these bad practices are described in and gave rise to ESMA's Questions and Answers relating to the provision of CFDs and other speculative products to retail clients under MiFID[29].

---

[27] ESMA, Decision (EU) 2018/796, recital 40.
[28] ESMA, Decision (EU) 2018/796, recital 42.
[29] Questions and Answers (Q&As) relating to the provision of CFDs and other speculative products to retail investors under MiFID (ESMA-35-36-794).

AUTORITÉ DES MARCHÉS FINANCIERS
AMF

43. Aggressive marketing practices as well as misleading marketing communications in this sector of the market have also been observed[30]. They include, for example, the use of sponsorship arrangements or affiliations with major sports teams, which give the misleading impression that complex and speculative products such as CFDs are suitable for the retail mass market by promoting general brand name awareness. Furthermore, they also include the use of misleading statements such as ‘Trading has never been so easy’, ‘Start your career as a trader right now’, ‘Earn GBP 13 000 in 24 Hours! Get started’.

44. In the context of the development of ESMA’s CFD Q&As, some NCAs have reported to ESMA that CFD providers often fail to adequately disclose the risks of these products. In particular, some NCAs found that CFD providers did not adequately describe the potential for rapid losses that could exceed their invested funds[31].

45. Also in this context, some NCAs have also raised concerns about the ‘churning’ nature of some CFD providers' business models. Because the average life span of a client account can be relatively short, this can place a certain pressure on providers to maintain a steady stream of new clients, which could incentivise providers to adopt aggressive marketing and sales techniques that are not in the retail client's best interests.

46. A common feature of marketing and sales techniques adopted by the CFD industry has been the offer of trading (monetary and non-monetary) benefits, such as bonuses to attract and encourage retail clients to invest in CFDs, the offer of gifts (for example holidays, cars, electronic goods), trading tutorials or reduced costs (for example spread or fees)[32].

47. Bonuses and other trading benefits can act as a distraction from the high-risk nature of the product. They are typically targeted to attract retail clients and incentivise trading. Retail clients can consider these promotions as a central product feature to the point they may fail to properly assess the level of risks associated with the product.

48. Furthermore, such trading benefits to open CFD trading accounts often require clients to pay funds to the provider and conduct a specified number of trades over a specified period of time. Available evidence demonstrating that the majority of retail clients lose money trading CFDs, this often means that clients lose more money from trading CFDs more frequently than they otherwise would have without receiving a bonus offer.

49. Supervisory work by several NCAs has discovered that the terms and conditions on promotional offers are often misleading and that many clients were unaware of the conditions to access the

[30] See the scientific working paper published in May 2017 by the AMF (Analysis of techniques used to market speculative trading in Forex and binary options with regard to research on compliance without pressure, persuasion techniques and nudges).
[31] ESMA, Decision (EU) 2018/796, recital 45.
[32] Section 6 of the Questions and Answers (Q&As) relating to the provision of CFDs and other speculative products to retail investors under MiFID (ESMA-35-36-794) as updated on 31 March 2017 states that it is unlikely that a firm offering a bonus that is designed to incentivise retail clients to trade in complex speculative products such as CFDs, CFDs and rolling spot forex could demonstrate that it is acting honestly, fairly and professionally and in the best interests of its retail clients.

benefits/bonuses offered. Finally, a number of clients reported difficulties in withdrawing funds when trying to use such bonuses[33].

50. In addition to the factors outlined above, many NCAs observe that distribution models observed in this sector of the market bear certain conflicts of interest The pressure to maintain a pipeline of new clients increases the potential for conflicts of interest to occur. Conflicts of interest have and may arise from the fact that some CFD providers are counterparties to clients' trades without hedging their exposure, therefore placing their interests in direct conflict with that of their clients. For these providers there is a greater risk and incentive to manipulate or use less transparent reference prices, or to pursue other questionable practices such as cancelling profitable trades on spurious pretexts. There is also a risk that providers may seek to exploit asymmetric slippage (for example pass on any loss as a result of slippage to the client, while retaining any profit obtained as a result of slippage). Providers may purposefully delay the time between quotes and execution of CFD trades to further exploit this practice. NCAs have also identified practices whereby CFD providers apply an asymmetrical or inconsistent mark up to core spreads.

51. The marketing and distribution practices associated with CFDs described above confirms the existence of a significant investor protection concern in respect of these CFDs.

II.6 Risks related to the threat to investors' confidence in the financial system (Article 21(2)(v) of MiFIR Delegated Regulation)

52. The combination of factors such as the level of complexity and the lack of transparency of CFDs, the high risk of losing a significant part or, more frequently, all of the amount invested, the aggressive and misleading of most marketing techniques and the size of potential detrimental consequences significantly increases the probability that retail clients may lose confidence in the financial system.

53. Given the probability that retail clients may register losses on their investment in CFDs, investors that do not have any other experience of financial instruments investment may conclude that such products are representative of all financial instruments. Considering the high number of complaints from retail investors having invested in CFDs generated by these products, the AMF considers that CFDs are likely to adversely affect investors’ confidence in the financial system.

III. The insufficiency of regulatory requirements under Union law to address identified concerns (Article 42(2)(b) of MiFIR)

54. In accordance with article 42(2)(b) of MiFIR, the AMF has considered whether existing regulatory requirements in the Union that are applicable to the relevant financial instrument or activity are sufficient ensure investor protection in relation to the marketing, distribution and sale of CFDs to retail investors. The applicable existing regulatory requirements are set out in MiFID2, MiFIR and Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November

[33] ESMA, decision (EU) 2018/796, recital 50.

2014 on key information documents for packaged retail and insurance-based investment products (***PRIIPs Regulation***)[34].

55. Some providers, brokers and trade organisations explicitly mentioned in their responses to ESMA's call for evidence that ESMA needs to consider the effects of new legislation before applying any product intervention measures, notably the recent introduction of MiFID2 (in particular, the product governance rules) and PRIIPs.

56. It should be noted that the scope and content of several applicable regulatory requirements under MiFID2 and MIFIR are similar to those existing under Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (***MiFID***). While the adoption of MiFID2 and MiFIR aimed to improve several notable aspects of investment services and activities to strengthen investor protection (including through product intervention powers), the improvements in a number of relevant provisions do not address the specific concerns described in this Decision. From the perspective of the risks and the investor detriment addressed in this Decision, several provisions have therefore remained substantially unchanged.

57. The requirements to provide appropriate information to clients have been further detailed in MiFID2, with a significant improvement in the area of the disclosure of costs and charges, with investment firms required to provide clients with aggregated information on all costs and charges in connection with the investment services and the financial instruments. However, disclosure-based rules alone — including improved information on costs — are clearly insufficient to tackle the complex risk arising from the marketing, distribution or sale of CFDs to retail clients.

58. In particular, Article 24(3) of MiFID2 requires inter alia investment firms to ensure that all information, including marketing communications, addressed to clients or potential clients is fair, clear and not misleading. Article 24(4) of MiFID2 further requires investment firms to give appropriate information in good time to clients and potential clients with regard to the firm and its services, the financial instruments and proposed strategies, execution venues and all costs and related charges, including notably guidance on and warnings of the risks associated with investing in those financial instruments and whether the financial instrument is intended for retail or professional clients.

59. The AMF has also taken into consideration the relevance of the disclosure rules under PRIIPs Regulation. PRIIPs Regulation lays down uniform rules on the format and content of the key information document to be provided by manufacturers of packaged retail and insurance based investment products ('PRIIPs') to retail investors in order to help them understand and compare the key features and risks of a PRIIP. In particular, Article 5 of this Regulation sets out a methodology for the presentation of the summary risk indicator and accompanying explanations including whether the retail investor can lose all invested capital or incur additional financial commitments. However, this type of disclosure does not sufficiently draw retail clients' attention

[34] In particular, they include: (i) the requirement to provide appropriate information to clients in Article 24(3) and (4) of Directive 2014/65/EU (51); (ii) the suitability and appropriateness requirements in Article 25(2) and (3) of Directive 2014/65/EU (52); (iii) the best execution requirements in Article 27 of Directive 2014/65/EU (53); (iv) the product governance requirements in Articles 16(3) and 24(2) of Directive 2014/65/EU; and (v) the disclosure requirements in Articles 5 to 14 of Regulation (EU) No 1286/2014.

to the consequences of investing in CFDs in particular. For example, the performance ratio only relates to the individual CFD product and this does not provide the client with the overall percentage of retail client accounts that lose money when trading CFDs. Furthermore, the summary risk indicator does not include direct information on the past performance of the product and this information may not be provided in the accompanying narrative explanations as some discretion is left to the PRIIPS manufacturer on the extent to which certain narratives should be included.

60. The AMF has considered whether those requirements could address some or all of the concerns in relation to the marketing, distribution or sale of CFDs to retail clients or at least remove the need to introduce the risk warnings in this Decision. However, these requirements do not ensure that retail clients across the Union are provided with uniform and effective information on the risks related to trading in CFDs. In particular, the guidance and warnings referred to in Article 24(4) of MiFID2 do not appear to address these concerns given the divergence in the information that may be provided to clients which may not sufficiently draw clients' attention to the concrete consequences arising from trading CFDs. The risk warnings introduced in this Decision would provide retail clients with important information, namely the percentage of retail accounts losing money when trading CFDs with each particular firm.

61. The requirements on suitability have also been strengthened in MiFID2 by requiring the delivery of a suitability report to the client and refining the suitability assessment. In particular Article 25(2) of MiFID2 requires CFD providers to obtain the necessary information regarding the client's or potential client's knowledge or experience in the investment field relevant inter alia to the specific type of product, the client's or potential client's financial situation including their ability to bear losses, and their investment objectives including their risk tolerance, so as to enable the CFD provider to recommend the client or potential client financial products that are suitable for them and are in accordance with their risk tolerance and ability to bear losses. However, the suitability requirements are only applicable to the provision of investment advice and portfolio management and hence they are usually not applicable in relation to CFD trading which mostly occurs via electronic platforms, without the provision of investment advice or portfolio management.

62. Furthermore, the objectives of the suitability assessment (considering products against clients' knowledge and experience, financial situation and investment objectives) are substantially unchanged compared to the regime in MiFID and, as evidenced in this Decision, have not been sufficient to avoid the investor detriment identified.

63. Similarly, the requirements on appropriateness have been strengthened under MiFID2, mainly by narrowing down the list of non-complex products and therefore restricting the scope of products for execution-only services. Article 25(3) of MIFID2 requires CFD providers to ask their clients or potential clients to provide information regarding their knowledge and experience in the investment field relevant inter alia to the specific product offered or demanded so as to enable the provider to determine whether that product is appropriate for the client or potential client. If the provider considers the product to be inappropriate for the client or potential client, the provider shall warn them. CFDs qualify as complex financial products and therefore are subject to the appropriateness test pursuant to Article 25(3) of MIFID2.

AUTORITÉ
DES MARCHÉS FINANCIERS
AMF

64. However, that was already the case under MiFID, which provided for substantially the same appropriateness test as the one set out in MiFID2. As evidenced in this Decision and as NCAs' supervisory experience has demonstrated, the appropriateness test has not been sufficient to address the investor protection concern described in this Decision[35].

65. Both the suitability and appropriateness tests under the existing regulatory requirements therefore are unlikely to prevent retail clients from trading CFDs in a way that ensures that the significant investor protection concern is addressed.

66. With regard to best execution, most of the best execution rules by themselves already existed under MIFD. However, these rules have been strengthened under MiFID2. In particular, Article 27 of MiFID2 provides that investment firms must take 'all sufficient steps' (and no longer 'all reasonable steps') to obtain the best possible result for their clients when executing orders. Furthermore, additional information has to be published by market participants and in particular investment firms are required to disclose the top five venues where they executed client orders and the outcomes achieved when executing those orders.

67. The AMF has considered whether the revised best execution rules could address at least some of the concerns identified in relation to the marketing, distribution or sale of CFDs to retail clients. Increased transparency around order execution helps clients to better understand and to evaluate the quality of the firm's execution practices and thus to better assess the quality of the overall service provided to them. In addition, improved information on how firms execute clients' orders, assists clients when monitoring that the firm has taken all sufficient steps to achieve the best possible results for the client. The requirements in relation to best execution also strengthen the best execution standard in relation to OTC products by requiring firms to check the fairness of the price proposed to the client when executing orders or taking decisions to deal in OTC products, including bespoke products. The requirements in MiFID2 imply gathering market data to use for the estimation of the price of such products and, where possible, by comparing with similar or comparable products. However, the best execution rules by themselves do not address the risks linked to the product's features, other than execution, and to the wide marketing, distribution or sale of these products to retail clients.

68. In respect of these substantially similar existing regulatory requirements, ESMA has repeatedly noted the risks described above in investor warnings, Questions and Answers (Q&As) and its opinion on 'MiFID practices for firms selling complex products'. ESMA has also carried out supervisory convergence work through, inter alia, the Joint Group and the CFD task force. Despite ESMA's extensive use of its non-binding instruments to ensure a consistent and effective application of the applicable existing regulatory requirements, ESMA has considered that the investor protection concern persisted. This highlights that, for the reasons set out in this section, these requirements do not address the concern identified.

69. The AMF has also considered the potential impact of the product governance rules set out in Articles 16(3) and 24(2) of MiFID2. These rules require providers manufacturing financial

[35] ESMA, Decision (EU) 2018/796, recital 63.

instruments (including CFDs) for sale to clients to ensure that the products are designed to meet the needs of an identified target market of end clients within the relevant category of clients; that the strategy for distribution of the products is compatible with the identified target market; and that the providers takes reasonable steps to ensure that the financial instruments are distributed to the identified target market and periodically review the identification of the target market of and the performance of the product. CFD providers shall understand the financial instruments they offer or recommend, assess the compatibility of the instrument with the needs of the client to whom it provides investment services, also taking into account the identified target market of end clients, and ensure that financial instruments are offered or recommended only when it is in the interest of the client. Furthermore, CFD providers that would distribute a financial instrument not manufactured by them shall have appropriate arrangements in place to obtain and understand the relevant information concerning the product approval process, including the identified target market and the characteristics of the product. CFD providers distributing financial instruments manufactured by providers not subject to the product governance requirements in MIFID2 or by third-country providers shall also have appropriate arrangements to obtain sufficient information about the financial instruments.

70. Product governance requirements have been introduced for the first time in Union law under MiFID2 and clarified by ESMA[36].

71. The purpose of these requirements is to narrow down the type of clients (the target market) for which CFDs would be appropriate and to which they should therefore be distributed. They do not address the key risks described in this Decision linked to the product's features (for example high leverage) or associated practices (for example, allowing additional payment obligations or the offer of bonuses). They also do not restrict specifically the distribution of products with the above features to the mass market. The detriment occurred to clients shows that the marketing, distribution or sale of CFDs is not appropriate for the retail mass market, unless accompanied by certain restrictions which the product governance requirements do not detail. Where respondents to ESMA's call for evidence fairly state that the product governance requirements are important aspects in determining the target market and aligning the distribution strategy with this target market, it is also clear from the call for evidence that certain providers indicated in their response that they consider that CFDs with high leverage limits (for example, 100:1) are, even where the product governance requirements are applicable, an appropriate product for retail clients (they conclude that the target market for CFDs with this particular leverage is a mass market). Several firms, after implementation of MiFID2 and its product governance requirements, still market CFDs with such high leverages to the mass market (assessing only the appropriateness). ESMA and the NCAs, among which the AMF, disagree with such an approach. This demonstrates that product governance requirements still give a broad margin of discretion to individual providers to identify the features of products they intend to offer to their clients.

72. Despite the existence of these regulatory requirements, evidence shows that retail clients continue and will continue to systematically lose money on CFDs. Therefore, the envisaged national measure appears necessary to address the threat.

[36] ESMA 'Guidelines on MiFID II product governance requirements' of 2 June 2017 (ESMA35-43-620).

AUTORITÉ
DES MARCHÉS FINANCIERS
AMF

73. In France, despite the adoption of national restrictive provisions[37], the AMF still has concerns linked to the features of these products and to the continuing offer of these products to retail clients. By way of example, while the AMF has recorded a reduction in the number of complaints in 2017, it still observes a significant number (33 %) of complaints in relation to these products, compared to the overall number of complaints it receives in relation to other investment products and services.

74. As ESMA[38], the AMF does not have evidence that a plain prohibition of the marketing, distribution or sale of CFDs to retail clients is necessary at this stage. However, given that the individual restrictions applied in the national measures taken so far which featured only some of the elements included in this measure (for example specific leverage limits or marketing restrictions) proved to be insufficient to solve the investor protection concern identified, the AMF considers it necessary to impose each of the restrictions detailed in this Decision as a package to achieve a minimum level of protection of retail clients in France.

75. Furthermore, CFDs are commonly marketed, distributed or sold through online trading accounts. Therefore, a national ban or restriction could prove inadequate to protect retail clients in Member States other than France. As evidenced by data gathered by some NCAs, CFD providers have been able to reach out to new clients across the Union easily and quickly by operating online[39].

76. In the light of the above, for national measures to be effective for retail clients across the Union, it would be necessary for NCAs in all other Member States to take action aimed at introducing a common minimum level of investor protection as set out in decisions adopted by ESMA and this Decision within a short period of time. Some NCAs have already started to adopt such measures. These measures gave rise to opinions issued by ESMA, who concluded that there were justified and proportionate and invited other NCAs to adopt national intervention measures at least as stringent as those adopted by ESMA[40]. Therefore, the adoption by the AMF, as well as by other NCAs, of a national intervention measure on CFDs appears necessary in order to address any potential resurgence of the risks raised by these products for investor protection when the restriction measure adopted by ESMA, whose powers are only temporary, will come to expiry.

77. Lastly, the use of supervisory powers under Article 69 of MiFID2, for example under paragraph (2)(f) (temporary prohibition of professional activity) and (t) (suspension of the marketing or sale for a lack of compliance with the product approval process requirements) would also not address the significant investor protection concern. A product intervention measure applies to a product, or to an activity relating to that product, and therefore applies to all investment firms providing that product or activity, rather than one particular non-compliance by an individual investment firm. By addressing on a national basis the risks arising from the offer of CFDs to retail clients, an intervention measure is more effective than NCAs trying to take action against each firm

[37] AMF, Press release published on 10 January 2017 (A major investor protection milestone: the AMF sets specifics for its ban on the advertising of the riskiest products).
[38] ESMA, Decision (EU) 2018/796, recital 80.
[39] ESMA, Decision (EU) 2018/796, recital 81.
[40] ESMA, Press release of 2 April 2019 (*ESMA issues four positive opinions on national product intervention measures, ESMA71-99-1138*).

individually. As noted above, evidence shows that this is a market wide issue as the problem is not limited to the specificities of particular providers and that the key risks are inherent to the product and to the providers' business model. As such, varied individual supervisory actions would not immediately ensure that further harm to retail clients is prevented and would not provide an adequate alternative to the use of the AMF's intervention powers.

IV. Absence of disproportionate effect (Article 42(2)(c) of MiFIR)

78. Taking into account the size and nature of the significant investor protection concern identified, the AMF considers it necessary and proportionate to restrict at national level, the marketing, distribution or sale of CFDs to retail clients to circumstances where a number of conditions are met. In addition, the AMF considers that such restriction does not have a detrimental effect on the efficiency of financial markets or on investors that is disproportionate to its intended benefits.

79. The main intended benefits linked to the adoption of a national intervention measure are the following:

    (i) reduction of the mis-selling risk of CFDs and its related financial consequences. This is a major benefit for retail clients and for the financial markets as a whole;

    (ii) restoring investors' confidence in financial markets including confidence in providers active in this sector which may have suffered from reputational damage arising from problems encountered by investors.

80. Given (i) the adoption by ESMA, on 22 May 2018, of a measure temporary restricting the marketing, distribution and sale of CFDs to retail clients[41], (ii) ESMA's continuous renewal of this restriction[42] and (iii) the position publicly disclosed by ESMA regarding the taking over of these measures by NCAs at national level, the AMF believes that potential financial consequences and costs that providers will necessarily be limited.

81. In addition, prior to adopting national product intervention measure on CFDs and binary options, the AMF has carried out a public consultation from 25 March to 15 April 2019 on its draft decisions in order to gather feedback from interested investors and market participants and, as the case may be, information enabling it to assess the likely effect of its measures on investors and market participants. The AMF has received 40 answers during this consultation, nearly half of which come from associations representing consumers and investors, the other replies being issued by professional associations or market participants active on the CFD and binary options markets. The vast majority of respondents expressed a favourable opinion on the draft national measures subject to consultation and regarding the approach taken by the AMF, consisting in the adoption of national measures having a similar nature and scope to that of ESMA's measures.

82. Finally, the AMF considers that the various characteristics of the national measure defined in this decision, which are built upon those of the measure adopted by ESMA and are further detailed

[41] ESMA, Decision (EU) 2018/796.
[42] ESMA, Decision (EU) 2018/1636 of 23 October 2018; Decision (EU) 2019/155 of 23 January 2019 and Decision (EU) 2019/679 of 17 April 2019.

below, appear justified and proportionate considering the nature of identified risks, the level of sophistication of investors or market participants concerned and the likely effect of the action on investors and market participants who may hold, use or benefit from CFDs.

IV.1. Initial margin protection

83. The AMF considers it necessary to restrict the marketing, distribution or sale of CFDs to retail clients by the application of certain specific leverage limits depending on the nature of the underlying.

84. The introduction of these leverage limits will protect clients by requiring them to pay a minimum initial margin in order to enter into a CFD. This requirement is known as 'initial margin protection'. This will limit the client's notional investment exposure in relation to the amount of money invested. As the costs a client faces are increasing in notional investment exposure, initial margin protection will reduce the probability of client losses compared to those that would be expected if the client were to trade at higher leverage. As further explained below, empirical academic research corroborates this analysis and establishes that leverage limits improve average outcomes for investors.

85. The AMF has also taken into account the responses to ESMA's call for evidence. The responses from providers, trade organisations and other interested entities to ESMA's call for evidence were, with some exceptions, generally negative on the proposed leverage limits. The main impact on providers of imposing leverage limits as proposed was an expected decrease of revenues. However, many of them indicated that they — in general — did not oppose leverage limits as an intervention measure, but disagreed with the specific limits proposed by ESMA.

86. The consumer representatives who responded to ESMA's call for evidence were generally positive towards the measures proposed by ESMA on CFDs, including the leverage limits proposed by ESMA. In almost half of the responses from consumer representatives to ESMA's call for evidence, however, it was proposed to go beyond the measures proposed by ESMA, by adopting stricter measures such as stricter leverage limits or a full ban on the marketing, distribution or sale of CFDs to retail clients.

87. The large majority of responses from individuals to ESMA's call for evidence expressed a generic, often very short, approval or disapproval of the proposed measures and only a very limited number qualified their comments in a more substantial way. A vast majority of these individuals were negative towards the proposed leverage limits. Among the few individuals supporting ESMA's proposed measures on CFDs, some mentioned that they believe retail clients require a further layer of protection when trading these instruments. Some of them referred to the amount of losses arising from CFDs trading or complained about the aggressive behaviour carried out by some firms. In some instances, the investors claimed that they have been victims of fraud.

88. Some respondents to ESMA's call for evidence indicated that they would appreciate further fine-tuning of the categories used for the initial margin protection.

89. Existing research indicates that lower leverage is associated with improved client outcomes, including lower losses per trade and lower total transaction fees as a function of lower volumes of trading[43].

90. ESMA has not received during the call for evidence any quantitative data evidencing that introducing initial margin protection results in lower returns on investment for retail clients. Equally, the AMF has not received any indication in that direction during the course of its public consultation.

91. The requirement of a minimum initial margin will address some of the distribution risks relating to CFDs by ensuring that only retail clients who are capable of posting sufficiently high margin can trade in these products[44].

92. Relatedly, the initial margin protection is also expected to lower the likelihood that CFD providers target a mass retail client through smaller account sizes, supported by higher leverage. It will likely encourage firms to focus on sophisticated retail clients and professional clients, rather than ‘churning’ less sophisticated retail clients. The proposed initial margin protection will therefore help ensure that CFD providers act on terms that are in the best interests of their clients instead of seeking to attract new clients or to expand market share through higher levels of leverage.

93. The initial margin protection will also help address the risk of potential conflicts of interest particularly when CFD providers do not hedge their clients' trades and so benefit directly from client losses, by reducing the risk of firms profiting from losing client trades and expected profits from trading. It reflects a common investor protection approach taken by a number of other international jurisdictions[45].

94. The initial margin protection for each underlying has been set by ESMA according to the volatility of that underlying using a simulation model to assess the likelihood of a client losing 50 % of their initial investment over an appropriate holding period. Specifically, ESMA undertook a quantitative simulation of the distribution of returns an investor in a single CFD might expect to receive at different leverage levels. The starting point of the simulation was approximately 10 years of daily market price data (in most cases) for various underlying types commonly used in CFDs sold to retail clients. For the purpose of the analysis, ESMA considered a CFD that is automatically closed out if the margin reaches 50 % of its initial value. The simulated probability with which close-out occurs depends on (and is increasing in) the given leverage. A metric examined was the probability of (automatic) close-out as a function of leverage. This metric allows for leverage limits to be set according to a model that is expected to address detriment on a consistent basis across different underlying types[46].

[43] ESMA, Decision (EU) 2018/796, recitals 96 and 97.
[44] As such, initial margin protection should also reduce the extent to which these products are distributed to particularly vulnerable investors, such as low income groups of clients.
[45] Leverage limits are for instance in force in the US, Japan, Hong Kong and Singapore. Leverage limits and minimum margin requirements are also included in IOSCO's Consultation Paper dated February 2018.
[46] ESMA, Decision (EU) 2018/796, recitals 102 et seq..

95. ESMA considered that, given the retail nature of investors and statistics on the distributions of CFD holding periods (using data collected by NCAs) it was appropriate to set initial margin protection by assuming retail clients hold an asset for at least 1 day. To provide a consistent reference point, ESMA then simulated what leverage would lead to margin close-out with a 5 % probability, for different underlying assets. The range of results within each asset class then informed the selection of leverage limits. In most cases, the limits were set conservatively towards the lower end of the range. Consideration was given to how widely traded different assets are. For example, among CFDs on commodities, oil and gold are both commonly traded by retail clients, but simulations indicate that the leverage implying a 5 % probability of margin close-out for CFDs in gold is around twice that of CFDs in oil. The leverage limit for CFDs in gold is accordingly different to that for those in oil and other commodities. Determining initial margin protection in this way, in particular through simulated positions lasting at least 1 day, provides a consistent and necessary level of protection for retail clients who may not actively monitor their position over the course of a trading day or may not be able to assess the need for quick reactions in light of the volatility of the underlying market. In the case of CFDs on equities, data suggest that holdings are typically longer than for other assets, and consideration was given to holding periods of up to 5 days.

96. ESMA considered alternative approaches to the calibration of the initial margin protection. For example, an alternative would be to set a single leverage limit for all CFDs irrespective of their underlying. However, ESMA considered it appropriate to distinguish between different underlying types given differences in historic price volatility between different classes of underlying, in addition to differences in typical fee structures within the current CFD firm population and typical client behaviour.

97. While implementing the initial margin protection implies certain costs for those CFD providers in order to adjust the leverage limits made available to retail clients, ESMA has considered that these costs would not be disproportionate to the benefits of introducing such a protection. These limits being applicable on an on-going basis, pursuant to ESMA decisions, since 1 August 2018, the AMF considered that these limits cannot be regarded as disproportionate when compared to the benefits provided by the implementation of this protection.

IV.2. Margin close-out protection

98. Another measure to protect retail clients is the margin close-out protection. This measure complements the introduction of initial margin protection and mitigates the risk of retail clients losing significant funds in excess of the funds they have invested in a CFD, under normal market circumstances.

99. The provision of a margin close-out protection and the standardisation of the percentage at which CFD providers are required to close-out a client's open CFD (at 50 % of the initial required margin) is also designed to address the inconsistent application of margin close-out practices by CFD providers. Some NCAs have observed that CFD providers allow their clients' funds to fall to 0 – 30 % of the initial margin required to conclude a CFD[47]. By allowing clients to erode their margin close to zero, providers are placing clients at risk of losing more than their deposited funds particularly

[47] Please refer to recital 25 above.

during a gapping event. Conversely, a too high level of margin close-out would expose clients to be frequently closed out which might not be in their interest. The 50 % threshold set out in ESMA's measure and taken over in this Decision aims at mitigating the risk of substantial loss by retail clients and is therefore proportionate.

100. In its call for evidence, ESMA has described a margin close-out protection per individual position. Such approach was intended to address a number of concerns about the application of this measure on an CFD trading account basis in the current market. In particular, as initial margin protection is being applied based on the underlying of the CFD, applying a margin close-out rule on a per position basis would ensure the effective application of the initial margin protection for each underlying class and ensure a hard cap on leverage available per underlying class. Another reason for such an approach was the intention to help ensure that retail clients are aware and understand their exposure to each individual underlying. ESMA originally proposed the application of a margin close-out rule at 50 % of initial margin on a per position basis to provide an effective protection for retail clients while also reducing the complexity of the product, and with improving retail clients' understanding of their exposure.

101. ESMA has taken into account the responses provided to its call for evidence. A vast majority of the providers, brokers and trade organisations that responded to ESMA’s call for evidence listed their concerns about a margin close-out rule on a per position basis. Regarding impacts on firms, key points raised were the prospect of significant IT implementation costs and ongoing monitoring costs. Many responses from firms also flagged concerns in relation to existing clients who are familiar with close-out per account. Additionally, respondents to ESMA’s call for evidence highlighted that investors that apply specific trading strategies would no longer be able to use these strategies effectively, as individual positions could be closed at a certain moment if clients do not top up their margins for the specific position, therefore resulting in unanticipated market exposure on the remaining positions. Another argument identifying potential negative consequences of margin close-out on a per position basis was that due to the closure of positions, clients would be required to re-open positions which could lead to higher costs of trading.

102. Similar concerns with regard to negative consequences for investors of margin close-out on a per position basis were mentioned by a substantial part of the responses from individual investors to ESMA’s call for evidence. The most frequent arguments were that a per position rule would inhibit the use of certain trading strategies, and would require investors to continuously monitor their positions as they could no longer rely on certain hedges they placed.

103. Most consumer representatives answering to ESMA’s call for evidence were in favour of the proposed measures or even proposed considerably more restrictive measures in relation to CFDs (such as a full ban of the marketing, distribution or sale of these financial instruments to retail clients).

104. There were also responses to ESMA’s call for evidence from firms in the call for evidence that were in favour of the per position margin close-out rule proposed in the call for evidence. These firms indicated that they already apply such an approach and are content with the outcomes of it.

105. ESMA conducted analysis on expected investor outcomes according to whether a margin close-out rule was applied per position (a CFD will be closed out when its value falls below 50 % of the value of the initial margin) or per CFD trading account (a CFD will be closed out when the value of all open CFDs connected with the trading account together with all funds in that account falls below 50 % of the value of the total initial margin for all those open CFDs). In particular, it assessed the frequency of close-out and the impact of crystallising clients losses for a simulated portfolio of CFD positions under each scenario. This analysis did not estimate precise numerical outcomes, reflecting that there is an extremely large range of different potential portfolios that an investor could hold. Instead, the analysis considered whether either of the two bases would be expected in general to lead to better outcomes for investors. The general conclusion was that the better investor outcome for a position or account basis of margin close-out depends on the price movements of the underlyings of the CFDs in investment portfolios. The reason for this is that following a close-out which would happen on one basis but not the other, the price of an underlying may recover or may deteriorate.

106. In general, close-out would be expected to happen slightly more frequently under a position basis, assuming an investor's portfolio were the same in each case. However, close-out is expected to be rare under either basis, due to the initial margin protection. For clients with one single position in their CFD trading account, there would not be any difference between the account basis and the position basis. From ESMA’s call for evidence, it is clear that there are many retail CFD trading accounts that include just one position.

107. While the difference in outcomes resulting from the per position basis versus the per account basis is expected to be small for many investors (but cannot be precisely quantified in the absence of a representative portfolio), responses to ESMA’s call for evidence highlighted additional reasons why an account basis may be better for some investors. Firstly, in allowing gains from one position to offset losses from another, an account basis supports a diverse portfolio of investments. Secondly, to the extent close-out happens less frequently on an account basis, it reduces the scope for investors to bear costs arising from re-entering positions

108. Taking into consideration the above analysis and the responses to ESMA’s call for evidence, ESMA has considered that a standardised margin close-out rule per account basis at 50 % of the total initial margin protection, as an individual measure to take in addition to the other measures described in this Decision, is more proportionate as a minimum protection to be applied. In particular, this rule should provide for close-out of one or more CFDs on terms most favourable to the retail client to ensure that the value of the account does not fall lower than 50 % of the total initial margin protection that was paid to enter into all currently open CFDs at any point in time. The value of the account for these purposes should be determined by the funds in that account together with any unrealised net profits from open CFDs connected to that account.

109. The margin close-out protection proposed by ESMA and taken over by the AMF in this Decision does not prevent a provider from applying a per position close-out rule at 50 % of the initial margin requirement of the specific position instead of a per account close-out rule; indeed this could reduce the complexity for retail clients. Furthermore, by applying a per position close-out rule at

50 %, the provider would inherently fulfils the close-out requirement on a per account basis as all the single positions will be closed in accordance with the 50 % close-out rule.

IV.3. Negative balance protection

110. The negative balance protection aims at protecting retail clients in exceptional circumstances where there is a price change in the underlying that is sufficiently large and sudden to prevent the CFD provider from closing out the position as required by the margin close-out protection, such that the client has a negative account value. In other words, large market events can cause gapping, preventing the automatic margin close-out protection from being effective. A number of NCAs have observed that, following such events, clients have owed considerably more than they invested, ending up with a negative balance on their CFD trading account[48].

111. The purpose of a negative balance protection is to ensure that an investor's maximum losses from trading CFDs, including all related costs, are limited to the total funds related to trading CFDs that are in the investor's CFD trading account. This should include any funds yet to be paid into that account due to net profits from the closure of open CFDs connected to that account. An investor should not incur any additional liability connected with its trading of CFDs. Other accounts should not be part of the investor's capital at risk. In case a trading account also includes other financial instruments (for example, units or shares of UCITS or shares), only the funds explicitly dedicated to CFD trading, and not those dedicated to other financial instruments, are at risk.

112. The purpose of the negative balance protection is also to provide a 'backstop' in case of extreme market conditions. ESMA conducted analysis of the Swiss franc event in January 2015 to consider its direct impact on investors across a number of scenarios[49]. These scenarios were the following:

(i) protection against any negative balance on a CFD trading account held by a retail client;
(ii) protection against any negative balance on each CFD position held by a retail client; and
(iii) no negative balance protection.

113. In assessing these options, ESMA noted that the direct impact on investors resulting from the different options in the case of extreme market events needed to be weighed against the resulting ongoing costs of providing this protection. In particular, CFD providers would face ongoing costs attributable to additional capital or hedging, as part of their risk management. Some portion of these costs could in turn be passed through to investors themselves in the form of higher spreads or other charges.

114. On the other hand, an important risk of major consumer detriment that arises in the absence of negative balance protection is the potential for an investor to owe money to a firm as a result of extreme market conditions. Such a situation is especially detrimental for investors without considerable liquid wealth[50]. ESMA decided to adopt negative balance protection per CFD trading account as the way to address this source of potential major detriment while minimising

[48] ESMA, Decision (EU) 2018/796, recital 118.
[49] ESMA Decision (EU) 2018/796, recital 119.
[50] The detriment caused in such a situation was evident in relation to the Swiss franc crash, where some investors unwittingly became liable for tens of thousands of euros, sums they were unable to pay.

associated costs to firms and investors. In particular, ESMA considered that the imposition of a negative balance protection per each CFD would have risked imposing disproportionate costs on investors and firms. If a negative balance protection per position were introduced, firms would be required to forgive any losses by the client in excess of the funds dedicated to that position, including initial margin and any additional margin paid by the client. As negative balance protection would not enable the netting of a significant loss with other positions in a client's portfolio, a per position rule would increase the market risk assumed by firms. This would likely result in an increase of the capital requirements for firms, the costs of which would likely be passed on to retail clients.

115. Regarding the proposal on negative balance protection, a majority of the providers, brokers and trade organisations expressed a positive view while answering ESMA’s call for evidence. Some providers asked for further clarification of this rule. The concerns flagged were related to the impact of the measures on firms' capital requirements and the possibility that clients could use this to speculate against the providers by entering two opposite positions with the same broker on different accounts. The consumer representatives who have answered to ESMA’s call for evidence and to AMF’s consultation were positive towards the proposed measures, including negative balance protection. In general, the individuals that responded to ESMA’s call for evidence and explicitly referred in their response to the proposals on a negative balance protection were positive on these proposals.

116. The AMF has considered the effects on CFD providers of providing negative balance protection as well as the substantial detriment to retail clients, which can arise without this protection. The AMF considers that, on balance, negative balance protection on an account basis addresses the investor protection concern identified and is proportionate.

IV.4. Risk warnings

117. Another measure to address risks to retail clients in relation to CFDs is to require the provision of standardised and effective firm specific risk warnings including information on the percentage of retail client accounts' losses. As previously noted, several NCAs have noted the low quality of risk warnings provided to clients and have reported on CFD providers often failing to clearly set out the high-risk and complex nature of the products. In particular, risk warnings often do not clearly explain the potential for rapid losses that could exceed the money invested by clients, or the messages are diluted by the way warnings are presented or by statements about potential profits.

118. In their responses to ESMA’s call for evidence, only a minority of the providers and brokers opposed introducing a standardised risk warning. Some firms flagged that they appreciate a firm-specific loss percentage instead of a more standardised warning. The consumer representatives who responded to ESMA’s call for evidence were mixed as almost half of the responses indicated that they were in favour of more strict measures on CFDs (for example a ban). The consumer representatives that explicitly mentioned the risk warning in their response were positive on the proposal, as long it is considered in combination with the other proposed measures. In addition, no respondent to the AMF’s public consultation opposed to maintain a standardised risk warning at national level.

119. The firm specific risk warnings introduced in this Decision will provide retail clients with essential information about these particular products, namely the percentage of retail accounts losing money when trading CFDs. A study found that a standardised risk warning significantly improved a retail client's understanding of the product, including the possibility of losing more money than they invested and the likelihood of making a profit[51].

120. A requirement for CFD providers to state the percentage of retail client accounts that are at a loss is designed to offset the tendency of CFD providers to highlight the potential profits over losses.

121. Furthermore, the warnings are expected to support retail clients in making an informed decision about whether they wish to proceed with a high risk product that is more likely to result in a loss than a gain.

122. In order to warn investors of the risk of losses related to investing in CFDs, the AMF considers that each CFD provider should inform their clients of the percentage of its CFD trading accounts of retail clients that lost money over the last 12 month period. To ensure the figure is kept up-to-date, this calculation should be updated on a quarterly basis. The percentage shown should be presented in a simple and clear manner as part of a risk warning in every communication of the provider.

123. In order to determine whether an account lost money, both the realised and unrealised profits or losses have to be taken into account. Realised profits and losses relate to the CFD positions that were closed during the calculation period. Unrealised profits and losses relate to the value of open positions at the end of the calculation period. In order to provide a complete picture of the percentage of accounts that resulted in a profit or loss all costs in relation to the trading of CFDs should be taken into account in the calculation.

124. For newly established CFD providers and CFD providers that have not had any open CFD positions in the past 12 months, it is not possible to calculate such a percentage over the last 12 months. This Decision prescribes for these firms a standardised risk warning in which reference is made to the percentages found by NCAs in their existing studies.

125. As mentioned above, almost all providers that responded to ESMA’s call for evidence supported or were neutral towards a standardised risk warning and no respondent to the AMF’s public consultation raise any particular comment regarding such warning. The respondents to ESMA’s call for evidence who were negative either questioned the effectiveness of a risk warning or disagreed with the percentages found by NCA studies. A frequently made comment to ESMA’s call for evidence is that firms requested a more condensed version of the risk warning which could be used for digital marketing by the firms.

126. ESMA has considered the possibility of requiring a generic risk warning stating only the risk that retail clients may lose money rapidly due to the leverage of CFDs or a more specific risk warning based on average losses for retail clients based on the studies of NCAs. The former option has been discarded because it did not effectively draw retail clients' attention to the actual risk, specific to CFDs trading. The latter option has been discarded because these studies do not reflect any

[51] ESMA Decision (EU) 2018/796, recital 127.

specificities (for example a firm offering only certain types of CFDs). Although firm specific calculations may be more burdensome for providers than a generic risk warning, in line with feedback from ESMA's call for evidence, ESMA has considered that they are necessary to properly warn investors of the risk of losses.

127. One risk ESMA and NCAs acknowledged of the firm-specific loss percentages is that these percentages will be used for marketing instead of the original purpose, being the risk warning. For these reasons NCAs monitor that investment firms will not use the firm-specific percentages in an inappropriate manner and will review the application of this measure.

128. As ESMA, the AMF considers a more proportionate approach would also adapt the risk warning to the type of communication channels used. For this reason, an abbreviated risk warning for communications through a non-durable medium, such as mobile applications or social media posts, is prescribed in this Decision. CFD providers have experienced technical difficulties in using the abbreviated risk warning due to the character limits imposed by third party marketing providers for communications other than through a durable medium or a webpage[52]. Therefore, a reduced character risk warning is introduced in this Decision. The reduced character risk warning is not intended to replace the abbreviated risk warning. The new warning is envisaged to be used only for cases where the third party relied on by a CFD provider to market the product imposes a character limit that is not compatible with the number of characters comprising the risk warnings. The reduced character risk warning provides retail clients with information on the percentage of CFD retail accounts losing money. However, in order to fully draw clients' attention to whether they can afford the high risk of losing their money when investing in CFDs, this Decision requires that any communication containing the reduced character risk warning also includes a direct link to a webpage of the CFD provider where the warning required for durable media or webpages is shown.

129. The AMF has considered the effects for CFDs providers of a standardised risk warning. As this requirement is built upon a requirement previously imposed under ESMA's measure, the AMF considers that, overall, this requirement address the identified investor protection and is proportionate.

IV.5. The prohibition of monetary and non-monetary benefits

130. A final measure to address risks relating to the distribution of CFDs to retail clients is a ban on monetary (for example so called 'trading bonuses') and certain types of non-monetary benefits. Financial promotions offering bonuses or other incentives to trade CFDs often distract retail clients from the high-risk nature of CFD products. They draw in retail clients who may not otherwise choose to invest in these products. Such benefits are often contingent on clients depositing money on the account or on executing a certain volume of trades.

131. The prohibition of benefits however does not capture information and research tools provided to retail clients insofar as they relate to CFDs (excluded non-monetary benefits), as these would help clients' decision-making.

[52] ESMA, Decision (EU) 2018/1636, recital 12.

132. A majority of the responses to ESMA’s call for evidence received from providers, trade organisations and brokers were in favour of the measures in relation to incentivisation of clients. Also the consumer representatives that explicitly referred to these measures while responding to ESMA’s call for evidence were positive. In addition, respondents to the AMF’s public consultation did not expressed any opposition to maintain this requirement at national level. Considering the risks posed to retail clients of these benefits, the AMF considers it is necessary and proportionate to restrict them.

IV.6. Overall proportionality

133. Despite the use of non-binding instruments developed by ESMA and the legislative and regulatory measures adopted in France in this area[53], the detriment in relation to the marketing, distribution or sale of CFDs to retail clients had continued to develop over the past years.

134. This Decision measure is therefore necessary and proportionate to address the investor protection concern identified. In general, it is expected that it will reduce abnormal and significant losses experienced by retail clients on CFDs as well as enhance retail clients' awareness of the risks related to these products. The benefits gained from addressing the investor protection concern identified in the way proposed outweigh the potential consequences for CFD providers, including through implementation costs associated with complying with these requirements and a potential reduction in CFD providers' revenues (through lower volumes of trading, lower total transaction fees paid by clients and lower client losses), in particular considering the ongoing application in the Union of similar measures adopted by ESMA since 1 August 2018.

135. This Decision lays down requirements which aim to provide a necessary minimum level of protection to retail clients, coherent with the one previously refined by ESMA, and in addition to existing requirements. It is not intended to prevent NCAs or CFD providers from ensuring a greater level of investor protection, for example, by applying higher initial margins requirements.

V. Absence of discriminatory effect (article 42(2)(e) of MiFIR)

136. Considering the identified risks, the type and number of concerned investors, the position previously expressed by ESMA regarding the marketing of CFDs to retail clients and the measures adopted by ESMA[54] or certain Member States in order to address the risks raised by CFDs for retail investors and given the fact that the marketing, distribution or sale of CFDs mainly occur cross-border and that, in accordance with Article L. 621-2, paragraph 2 and Article L. 621-13-7, I of the French Monetary and Financial Code, and Article 42 of MiFIR, the AMF is only entitled to restrict or prohibit the marketing, distribution and sale of certain products to the extent that this activity occurs in France or from France, the AMF considers that the envisaged restrictionprovides for equal treatment of the marketing, distribution or sale of CFDs regardless of the Member State from which those services or activities are carried out and does not have a discriminatory effect on

[53] See recital 2 above.

[54] ESMA Decision (EU) 2018/796 of 22 May 2018; ESMA Decision (EU) 2018/1636 of 23 October 2018; ESMA Decision (EU) 2019/155 of 23 January 2019 and ESMA Decision (EU) 2019/679 of 17 April 2019.

services or activities provided from another Member State, in accordance with Article 42(2)(e) of MiFIR.

VI. Consultation and notice (Article 42(2)(d) and (f), 42(3) and 42(5) of MiFIR)

137. In accordance with Article 42(2)(d) of MiFIR, the AMF has properly consulted competent authorities in other Member States that the AMF considered likely to be significantly affected by its decision, namely the NCAs of Belgium, Cyprus, Latvia and the United Kingdom (the Cypriot and Latvian NCAs supervising actors having marketed and broadcasted advertisement for CFDs in France in 2017 and the United Kingdom having a developed and active CFDs industry).

138. In accordance with Article 42(3) of MiFIR, the AMF has, one month before the date on which the measure is intended to take effect, informed all other competent authorities and ESMA in writing of the details of: (a) the financial instrument to which the proposed action relates; (b) the precise nature of the proposed restriction and when it is intended to take effect; and (c) the evidence upon which it has based its decision and upon which it is satisfied that each of the conditions Article 42(2) of MiFIR are met.

139. In accordance with Article 42(2)(f) of MiFIR, the AMF did not consulted public bodies competent for the oversight, administration and regulation of physical agricultural markets under Regulation (EC) No 1234/2007, as the AMF has considered that CFDs subject to this Decision do not raise a serious threat to the orderly functioning and integrity of the physical agricultural markets. The AMF nonetheless informed these authorities of its decision.

140. In accordance with Article 42(3) of MiFIR, the AMF publishes on its website a notice of this Decision, specifying its details, the date on which it takes effect and the evidence upon which it is satisfied that each of the conditions laid down in Article 42(2) of MiFIR are met.

VII. Decision

141. On the basis of Article L. 621-13-7, I and Article L. 621-2, paragraph 2 of the French Monetary and Financial Code, and Article 42 of 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 21 of Commission Delegated Regulation (EU) 2017/567 of 18 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions, the AMF decides the following:

Article 1

Definitions

For the purposes of this Decision:

(a) ‘contract for differences’ or ‘CFD’ means a derivative (within the meaning of Article 2(1)(29) of Regulation (EU) no. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments) 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 information and research tools, insofar as they relate to CFDs;

(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 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 his CFD trading account to the sum of the funds in that trading account with regard to CFD.

Article 2

Restriction on CFDs in respect of retail clients

The marketing, distribution or sale to retail clients of CFDs is limited 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.

AUTORITÉ
DES MARCHÉS FINANCIERS
AMF

Article 3

Prohibition of participating in circumvention activities

It shall be prohibited to participate knowingly in activities the object or effect of which is to circumvent the requirements in Article 2.

Article 4

Entry into force and application

1. This Decision enters into force on the day of its publication of the website of the Autorité des marchés financiers and shall only apply in relation to actions taken after this date, in accordance with Article 42(5) of MiFIR.

2. This Decision shall apply until it is revoked by the AMF in accordance with the conditions set forth Article 42(6) of MiFIR.

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 digital asset refered to in point 2 of article L. 54-10-1 of the French monetary and financial code; or

e) 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 published 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. By way of derogation to paragraphs 2 and 3, if the number of characters contained in the risk warning in the format specified in Section B or C exceeds the character limit permitted in the standard terms of a third party marketing provider, the risk warning may instead be in the format specified in Section D.

5. If the risk warning in the format specified in Section D is used, the communication or published information shall also include a direct link to the webpage of the CFD provider containing the risk warning in the format specified in Section B.

6. 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 three 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.

7. By way of derogation from paragraphs 2 to 6, 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 to G, as appropriate.

AUTORITÉ DES MARCHÉS FINANCIERS
AMF

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 - Reduced character provider-specific risk warning

[insert percentage per provider] % of retail CFD accounts lose money.

SECTION E - 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 F - 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.

SECTION G - Reduced character standard risk warning

74-89 % of retail CFD accounts lose money.