



FMA FOCUS PRODUCT INTERVENTION

I. FMA FOCUS PRODUCT INTERVENTION

1. What does "product intervention" mean?

Since January 2018, it has been possible to restrict or even prohibit the marketing, distribution and selling of individual, particularly high risk and complex products by supervised entities. **There are nevertheless still very risky financial products available that can be purchased by retail investors.**

The restriction and prohibition of financial products may also be imposed by European and national supervisory authorities, ie. also by the FMA towards supervised entities such as banks, insurance companies and investment firms.

2. When and why may a production intervention measure be taken?

A product intervention is possible, if products:

- cause considerable grounds for concern with regard to investor protection,
- cause a danger for financial or commodity markets, or
- is associated with a threat to the stability of the financial system.

Concerns regarding investor protection in particular exist in the case of financial products, whose design, functioning and risks are particularly difficult to understand as a result of their complexity and lack of transparency for retail investors. Furthermore, if a financial product lends itself well to financial criminality or if it is widely distributed to an unsuitable target group, then the risks for retail investors are increased still further and it may lead to the imposing of a product intervention.

A product intervention is the ultimate measure available to supervisory authorities to prevent investors from purchasing certain products or from entering into certain risks. A product intervention only comes into question, in the event that such risks cannot be addressed by other instruments available under supervisory law.

3. What investors should be aware of

Despite the possibility for supervisory authorities to perform a product intervention, there are still also particularly risky products on the financial market, that may also be purchased by retail investors, and which may even lead to a total loss. Before they invest, investors should always read up about information and warnings about the typical types of risks associated with the financial product in question. The following applies to all financial products without exception: **a greater return is always associated with a higher risk.**

- **If something sounds too good to be true, then it probably isn't true!**
- **Only buy products that you also understand about!**
- **Be informed and be critical!**

II. ESMA PRODUCT INTERVENTION FOR BINARY OPTIONS AND CONTRACTS FOR DIFFERENCE (CFDs)

1. Product intervention for binary options

The European Securities and Markets Authority (ESMA) has temporarily prohibited the distribution, marketing and sale of binary options to retail investors with effect from 2 July 2018.

Link to the ESMA decision:

[https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018X0601\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018X0601(01)&from=EN).

2. Product intervention for contracts for difference (CFDs)

The European Securities and Markets Authority (ESMA) has temporarily restricted the distribution, marketing and sale of CFDs to retail investors with effect from 01 August 2018. The following restrictions shall apply to retail investors from 01 August 2018:

- **Leverage limits by type of underlying when opening positions:**
 - 30:1 for major currency pairs (USD, EUR, JPY, GBP, CAD, CHF)
 - 20:1 for other currency pairs, gold and significant stock indices
 - 10:1 for commodities (excluding gold) and other stock indices
 - 5:1 for individual shares and other underlyings
 - 2:1 for cryptocurrencies
- **Initial margin protection:** a certain sum is to be paid or deposited prior to the conclusion of a CFD, which serves as collateral and reduced the theoretical investment risk in relation to the invested funds.
- **Margin close-out protection:** in the event of open CFD positions falling below a standardised percentage (50 %) of the original required initial margin, the CFD must be closed out (i.e. the position closed) by the broker at the most favourable conditions for the client. The close-out is not conducted for individual positions, but at trading account level. This retention of collateral on open positions serves the purpose of mitigating the risk of the investor.
- **Negative balance protection:** in certain cases market events may have a slippage effect on pricing. In such a case the automatic margin close-out protection would not be triggered and the clients would owe considerable more than they had originally invested. By the measures ordered by the ESMA a negative balance on the client account is prevented and the total liability of the retail investor restricted, by limiting the maximum losses (including all costs associated with trading) to the total amount of funds in the investor's CFD trading account. As a result the retail investor no longer has a re-margining obligation.
- **Prohibition of Client Incentive Programmes:** retail investors are distracted from the risks of CFD trading by incentives, by being promised bonuses or other incentives. Clients are lured with such incentives and then invest in products like CFDs, even though without bonuses they would probably not invest in such products. Such incentive programmes are now forbidden.

- **Risk warnings:** Providers must include comprehensible and easy to read risk warnings in their advertising and sales materials. These warnings must contain company-specific details about the losses of clients in CFD-trading. By so doing, clients should be in a position to make a well-founded decision.

The measures were published in the Official Journal of the European Union on 01 June 2018 and enter into effect from 02 July 2018 (for binary options) and 01 August 2018 (CFDs). The ESMA and the FMA consider this to be a considerable step towards strengthening investor protection. The measures taken ensure that retail investors for the first time when purchasing CFD are protected against losing more money than they invested, that leverage and other incentives are restricted, and that understandable risk declarations are available.

Link to the ESMA decision:

[https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018X0601\(02\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018X0601(02)&from=EN).

3. Why were the product intervention measures taken on binary options and contracts for difference (CFDs)?

Both binary options as well as contracts for difference are highly complex products, about which often only unclear information is available and which are frequently distributed by means of aggressive marketing.

The decisive issue was that such complex and intransparent products are not suitable for the retail investor market and that private persons have sustained high losses on an ever more frequent basis. Particular concern arose in relation with investor protection as retail investors frequently did not understand the risks involved, and have lost the money that they invested.

4. How long are these measures valid?

The prohibition of the distribution, marketing and sale of binary options to retail investors applies from 02 July 2018 until 30 September 2018.

The restrictions of the distribution, marketing and sale of CFDs to retail investors applies from 01 August 2018 until 31 October 2018.

Both product intervention measures are currently valid for a period of three months. Thereafter the ESMA will review whether the conditions for the measures still prevail. If this is the case, then the measures may be extended.

5. Caution: unauthorised business operations and international investment fraud!

The FMA has also made observations in the area of unauthorised business operations and international fraud, where offers in relation to binary options and CFDs have developed in an adverse way for investors.

Dubious providers frequently act in this area, who target retail investors and by and large offer high-risk, intransparent and leveraged contracts. **Investigations in relation to such providers almost always lead to criminal charges in relation to the suspicion of acts punishable by the courts. The FMA publishes investor warning messages on an ongoing basis, explains to involved parties, and informs foreign sister authorities where head offices are located or where accounts exist.**

The FMA therefore welcomes ESMA's measures, as consumers are therefore protected from the dangers associated with such projects. In particular in the case of binary options it is now clarified that they are no longer allowed to be offered to and sold to such retail investors.

Legal bases

The legal basis can be found in the [Regulation on Markets in Financial Instruments](#) (MiFIR) in Article 42, which introduced uniform product intervention powers for both national supervisory authorities as well as for ESMA and EBA on 03 January 2018.

Furthermore Articles 16 and 17 of the [Regulation on key information documents for packaged retail and insurance-based products](#) (PRIIPs). The national competent authorities and the EIOPA may make use of this authorisation with regard to insurance-based investment products.

For example, in order to assess when a financial or insurance-based investment product raises considerable doubts regarding investor protection, BaFin applies the catalogue of criteria from Article 21 of [Commission Delegated Regulation \(EU\) 2017/567](#) or Article 1 of [Commission Delegated Regulation \(EU\) 2016/1904](#) .

Both catalogues contain a non-exhaustive list of criteria, such as the complexity and transparency of the product, the target client group, risk-return ratio, pricing and sales practices, as well as issuer-related criteria, such as the issuer's financial and business situation.

Links:

- MiFIR Regulation:
<https://eur-lex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:32014R0600&from=EN>.
- PRIIPs Regulation:
<https://eur-lex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:32014R1286&from=EN>.
- Delegated Regulation (EU) 2017/567:
<https://eur-lex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:32017R0567&from=EN>.
- Delegated Regulation (EU) 2016/1904:
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1904&from=EN>