26 July 2019 Regulations No 123

Riga (Min No 37, p.2 of the Meeting of the Board of Financial and Capital Market Commission)

Regulations for Restrictions on the Marketing, Distribution and Sale of Contracts for Differences and Binary Options to Retail Clients

Issued in accordance with Section 7(1) and Section 138(1), Clause 19 of the Law on the Financial Instruments Market 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

**I. General provisions**

1. "Regulations for restrictions on the marketing, distribution and sale of contracts for differences and binary options to retail clients" (hereinafter – the Regulations)shall apply to investment firms and credit institutions registered in Latvia regardless of the client's country of residence and investment firms and credit institutions registered in the European Union Member State and a foreign country providing investment services and ancillary investment services to the residents of Latvia and offering to retail clients a financial contract for differences (hereinafter – CFD) or a binary option contract (hereinafter – BO) transactions, with offering being understood as the marketing, distribution and sale of CFD or BO (hereinafter – the provider).

2. The CFD is a cash-settled financial instrument contract other than the option contract, the purpose of which is to ensure the holder a long or short exposure to fluctuations in the price, level or value of an underlying asset, irrespective of whether it is traded on a trading venue. The CFD shall also include products of rolling spot forex and financial spread bets. The Regulations shall not apply to futures and swaps traded on a regulated market and forward rate contracts not traded on a regulated market.

3. The BO is a cash-settled financial instrument contract, which provides that the cash payment of a fixed amount at the end of the term shall depend on whether one or more events[[1]](#footnote-1)\* related to the price of the underlying asset are occurring at the end of the term of the financial instrument contract (for example, the underlying asset has reached a certain price upon the expiry of the contract).

4. For the purpose of the Regulations:

4.1. excluded non-monetary benefit shall be any non-monetary benefit other than information and research tools, if they relate to the CFD;

4.2. initial margin shall be any payment for the purpose of entering into the CFD, excluding commission, transaction fees and any other related costs;

4.3. initial margin protection shall be the initial margin determined by Annex I;

4.4. margin close-out protection shall mean the closure of one or more of a retail client's open CFDs on terms most favourable to the client in accordance with Sections 128., 128.2 and 128.3 of the Law on the Financial Instruments Market (hereinafter – the LFIM) 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;

4.5. negative balance protection shall be the limit of a retail client's aggregate liability for all CFDs connected to the CFD trading account with a CFD provider to the funds in that CFD trading account;

4.6. a retail client shall be any client that has not been recognised as a professional client in accordance with the requirements of Section 124.1 of LFIM or as an eligible counterparty in accordance with the requirements of Section 124.2 of LFIM;

4.7. other terms used in the Regulations shall conform to the terminology used in the LFIM.

**II. Restrictions on offering the CFD to retail clients**

5. The CFD may be offered to retail clients only in case all of the following conditions are met:

5.1.  the CFD provider shall require the retail client to pay the initial margin protection;

5.2. the CFD provider shall provide the retail client with the margin close-out protection;

5.3.  the CFD provider shall provide the retail client with the negative balance protection;

5.4. the CFD provider shall not directly or indirectly provide the retail client with a payment, monetary or excluded non-monetary benefit in relation to the marketing, distribution and sale of a CFD, other than the realised profits on any CFD provided CFD;

5.5. the CFD provider shall not send directly or indirectly a communication to or publish information accessible by a retail client relating to the marketing, distribution and sale of a CFD unless it includes the appropriate risk warning specified by and complying with the conditions in Annex II.

6. It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the requirements laid down in Paragraph 5, including by acting as a substitute for the CFD provider.

**III. Prohibition on offering the BO to retail clients**

7. The offering of the BO to retail clients shall be prohibited.

8. For the purposes of Paragraph 7 of the Regulations, irrespective of whether it is traded on a trading venue, a binary option is a derivative that meets the following conditions:

8.1. it 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;

8.2.  it shall only provide for payment at its close-out or expiry;

8.3. its payment is limited to a predetermined fixed amount or zero if the underlying of the BO meets or does not meet one or more predetermined conditions.

9. The prohibiton specified in Paragraph 7 of the Regulations shall not apply to:

9.1. the BO for which the lower of the two predetermined fixed amounts is at least equal to the total payment made by a retail client for the binary option, including any commission, transaction fees and other related costs;

9.2. the BO that meets the following conditions:

9.2.1. the term from issuance to maturity is at least 90 calendar days;

9.2.2. a prospectus drawn up and approved in accordance with requirements of Part C of LFIM;

9.2.3. the BO does not expose the provider to market risk throughout the term of the binary option and the provider or any of its group entities do not make a profit or loss from the binary option, other than previously disclosed commission, transaction fees or other related charges.

10. It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the requirements in Paragraph 7, including by acting as a substitute for the binary option provider.

**Transitional provision**

The restrictions laid down in Paragraphs 5 and 7 of the Regulations shall apply from 1 August 2019.

Chairperson of the Financial and Capital Market Commission K. Černaja-Mežmale

Annex 1

Regulations No 123

of the Financial and Capital Market Commission of 26.07.2019

**Initial margin percentage by type of underlying assets**

1.  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.

2. 5 % of the notional value of the CFD when the underlying index, currency pair or commodity is:

2.1. 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);

2.2. a currency pair composed of at least one currency that is not listed in paragraph 1 of this Annex;

2.3. gold.

3. 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 paragraph 2 of this Annex.

4. 50 % of the notional value of the CFD when the underlying is a cryptocurrency.

5. 20 % of the notional value of the CFD when the underlying asset is:

5.1. a share;

5.2. other assets not listed in this Annex.

Annex 2

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**Risk warnings**

Section A

**Risk warning conditions**

1. The risk warning shall be in a layout highlighting its importance, 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 (a 12-month calculation period). For the purposes of the calculation:

6.1. 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;

6.2. any costs relating to the CFDs connected to the CFD trading account shall be included in the calculation, including all charges, fees and commissions;

6.3. the following items shall be excluded from the calculation:

6.3.1. any CFD trading account that did not have an open CFD connected to it within the calculation period;

6.3.2. any profits or losses from products other than CFDs connected to the CFD trading account;

6.3.3.  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 in the format specified in Sections E to G, as appropriate.

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 of *[insert the name of provider]* 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 of *[insert the name of provider]* 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 investor accounts of *[insert the name of provider]* 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.

**The vast majority of retail client accounts lose money when trading in 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**

**The vast majority of retail client accounts lose money when trading in CFDs.**

You should consider whether you can afford to take the high risk of losing your money.

Section G

**Reduced character standard risk warning**

**The vast majority of retail client accounts lose money.**

1. \* The BO differs from other speculative products sold to retail clients, such as the CFD, the BO's initial payment is a predetermined monetary amount that is not directly related to the size of the asset price and the changes in the level or value of the underlying BO asset. [↑](#footnote-ref-1)