

1 August 2019

Communication from the KNF Board on the introduction of additional requirements for offering contracts for differences (CFDs) to retail clients

At its meeting on 1 August 2019, pursuant to the provisions of MiFIR¹, the Board of the Polish Financial Supervision Authority (KNF) unanimously decided to introduce additional requirements for offering contracts for differences (CFDs) to retail clients.

A CFD is a form of financial derivatives trading where the cash settlement depends on fluctuations in the price, level and/or value of the underlying instrument chosen (e.g. currency, shares, index) during the contract term. CFDs essentially use leverage, which allows investors to earn substantial profits but also carries a risk of very large losses that may considerably exceed the amount initially invested.

The restrictions introduced by the KNF Board represent a requirement that a CFD provider must provide retail clients with:

1. initial margin protection (set leverage limits for each type of investment);
2. automatic margin close-out (the CFD provider must close client's most losing positions where the value of deposited funds falls below a certain level);
3. negative balance protection (the CFD provider must make sure that the client will not incur any loss which exceeds the value of deposited funds);
4. access only to those CFD-related materials and advertisements which contain an appropriate risk warning in relation to CFD investments, and
5. the CFD provider must not use any financial or non-financial bonus to encourage clients to invest in CFDs.

The above-mentioned requirements for offering CFDs to retail clients are aimed at reducing their exposure to the risk of substantial losses on investments in the derivatives in question. As regards protection of inexperienced clients, the KNF Board has agreed with the arguments put forward by ESMA (European Securities and Markets Authority).

¹ 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 (OJ L 173, 12.6.2014, p. 84, as amended)

By its decision, the KNF Board has also introduced a category of experienced retail client. In order to be treated as experienced retail client, upon a request made in writing, each of the following requirements must be met:

- 1) over the last 24 months, the retail client has entered into:
 - a) CFD open positions of a nominal value corresponding to the PLN equivalent of at least EUR 50 000 each, at a frequency of at least 10 positions per quarter over four quarters; or
 - b) CFD open positions of a nominal value corresponding to the PLN equivalent of at least EUR 10 000 each, at a frequency of at least 50 positions per quarter over four quarters; or
 - c) CFD open positions of a total nominal value corresponding to the PLN equivalent of at least EUR 2 000 000 each, at a frequency of at least 40 positions per quarter over four quarters;
- 2) the retail client has appropriate knowledge of derivatives, including CFDs, confirmed by:
 - a) appropriate professional certificates, in particular: Investment Adviser, Securities Broker, Chartered Financial Analyst, Financial Risk Manager, Professional Risk Manager, ACI Dealing Certificate, ACI Diploma, or completion of a specialist field of study; or
 - b) completion of at least 50 hours of training in the area of derivatives, including CFDs, confirmed by the relevant certificates or any other form of confirmation issued following verification of knowledge by competent training providers in the last 12 months; or
 - c) confirmation that the client has carried out activities or has performed work under a contract of employment or as part of any other contractual relationship being the basis for the exercise of the relevant function, for at least a year, at a position which requires professional knowledge of transactions in CFDs or other derivatives.

CFDs with higher leverage may be offered to an experienced retail client, subject to the other restrictions. A CFD provider may apply, as a minimum initial margin, 1% of the nominal value of the CFD where the underlying instrument is:

1. a currency pair,
2. one of the following stock market indices:
 - Financial Times Stock Exchange 100 (FTSE 100);
 - Cotation Assistée en Continu 40 (CAC 40);
 - Deutsche Boerse 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);
3. gold.

The decision applies to all CFD providers in Poland, i.e. investment firms, banks, branches of foreign investment firms and credit institutions, and entities operating on a cross-border basis under the freedom to provide services.

The effects of the decision of the KNF Board on the restriction on the offering of CFDs to retail clients for the domestic market of such derivatives will be constantly monitored. To that end, the KNF Board will assess the effects of the decision not later than 12 months after the effective date of the new restrictions and, if necessary, will adopt appropriate adaptation measures.

The full text of the KNF Board's decision was announced in [the Official Journal of the KNF Board](#) on 1 August 2019 under the heading 27 and enters into force on 2 August 2019. The decision will be of a permanent nature.