



## CNMV PROPOSES RESTRICTIONS ON CFD TRADING TO STRENGTHEN RETAIL INVESTOR PROTECTION

28 November 2022

The Spanish Securities Market Commission (CNMV) submits to public consultation a proposal for intervention measures to install additional restrictions on advertising in the marketing, distribution or sale of financial contracts for difference (CFDs) to retail investors, in compliance with the provisions of Article 42 of Regulation (EU) No. 600/2014 on markets and financial instruments (MiFIR).

The initiative, projected in CNMV's 2022 Activity Plan, contemplates measures that seek greater investor protection and would add to those already established in 2019 by the CNMV on the marketing, distribution and sale of such financial instruments. Interested parties can submit their comments until 31 January 2023.

### Supervisory actions

CFDs are complex and high-risk products and, therefore, generally not suitable for retail investors, as the European Securities Markets Supervisor (ESMA), among others, mentioned. The measures set in 2019, which are currently in force, led to an initial reduction in retail investor trading in CFDs, but the CNMV considers that they have had limited effectiveness in terms of investor protection, as they have not been effective:

- In the supervisory actions carried out by the CNMV in recent years, numerous inappropriate practices in the marketing of these instruments have been identified. These include very aggressive and massively disseminated advertising activity aimed at the general public through the internet and social networks with images and messages that give a misleading impression that they are products suitable for any investor.

Such advertising is often followed by direct and insistent contacts with potential clients with equally misleading content, where the assessment of the instrument's suitability for the investor is often delayed until just before the start, and, generally, there are deficiencies regarding the compliance with product governance obligations. A majority of such incidents are attached to entities operating in Spain with passports from other EU member states.

- Deficiencies have also been identified in such type of marketing due to the widespread use of remuneration systems for the commercial network, with own employees as well as those of third parties without authorisation, contrary to the duties of information and acting in the best interests of clients.
- As a result of CNMV's supervisory actions, to date 12 foreign entities providing CFD services without a physical presence in Spain have communicated the termination of their activity in Spain, following the transfer by the CNMV to their competent

supervisor of the malpractices identified in its monitoring work. Additionally, two entities with a location represented by an agent or branch have agreed to close and cease marketing their services in Spain to retail investors regard to these instruments.

- Despite the supervisory actions carried out by the CNMV, according to the information available on the websites of the distributors of said instruments, a high percentage of retail investors, approximately 75%, are still suffering losses on their investments in this instrument.

## Measures of greater scope are studied

Therefore, the CNMV considers that the measures adopted to date have not been sufficiently effective to protect Spanish retail investors, and that this scenario makes it advisable to implement measures of a greater scope on these products, as is the case in other jurisdictions (France, Belgium, the Netherlands and Germany, among others, albeit of different types and scopes). The main measures proposed are related to the following:

- The prohibition of advertising to retailers for said instruments, as well as the additional prohibition of sponsorship and brand advertising of entities whose core business is their distribution.
- Other restrictions on remuneration to the commercial network and other sales techniques that promote the distribution of these products to retail investors, measures that have also been adopted in the past by other European jurisdictions.
- The possibility of extending some of the existing measures to other derivatives in addition to CFDs, as well as, should the above measures be deemed insufficient, a direct prohibition of OTC CFD trading through electronic platforms, which would not extend to instruments traded on trading venues.

The measures, which would be adopted by CNMV Resolution, would apply to the provision of services in Spain, and would therefore include the provision of these services under the freedom to provide them without establishment.

### **The content of the public consultation can be accessed at:**

[Document for consultation](#)

The period established for the interested parties to reply to the public consultation ends **on 31 January 2023**. Observations can be sent to the following mailbox:

[dge.supervision@cnmv.es](mailto:dge.supervision@cnmv.es)

All comments received will be published after the end of the public consultation period. If anyone does not wish their comments, either in full or in part, to be made public, they should expressly state so in their own reply and properly identify, where appropriate, which part they do not wish to be made public. For this purpose, generic confidentiality warnings included in emails will not be considered as an express statement that the comments submitted are not intended to be made available to the public.