Nikolas Stylianou

21 October 2019

ESMA's Temporary Product Intervention Measures Becomes Permanent in Many Countries

In January 2018, the European Securities and Markets Authority (ESMA), Europe's financial regulatory body, imposed temporary restrictions on the marketing, sale and distribution of risky financial products, including CFDs and binary options. Under Article 42 of the MiFIR, the body can impose these temporary restrictions for a period of 3 months, while it reviews the effects and makes a call on further extensions. The measures regarding these instruments were formally introduced in June 2018 and continued to be in effect till August 2019. In the meantime, many national authorities of EU member states have made these measures permanent in their jurisdictions, indicating their growing effectiveness and popularity.

ESMA Measures Previously in Effect

Before we move on to the countries that have adopted the measures as a permanent solution, here's a look at the measures originally introduced by the ESMA for investor protection. On August 1, 2018, regulations regarding the marketing, sale and distribution of CFDs and binary options to retail investors came into effect, which entailed specific leverage restrictions and called upon institutions to provide better investor education on market dynamics and risk factors.

Some of the clauses that were part of these regulations were:

• Leverage limits on opening positions in risky assets, varying accordingly to the level of market volatility. For instance, for major currency pairs, leverage was limited to 30:1, while for cryptocurrencies, it was 2:1.

• Negative balance protection was to be offered by brokers to clients, on a per account basis.

• Margin close-out rule was also put in place, on a per-account basis.

• Standardised risk warnings became mandatory for CFD brokers, across all their platforms, regarding the percentage of traders who lost money while trading these derivatives.

• All marketing materials needed to contain uniform messages and risk disclaimers regarding products, and any form of promotional language that incentivised an investor to become a client of the firm was prohibited.

•Firms could no longer incentivise clients to start trading in an intra-group firm, established in a non-EU jurisdiction.

Countries that Adopted These Measures Permanently

A host of national competent authorities of EU member states have gone on to permanently adopt some of these reforms.

The United Kingdom's Financial Conduct Authority (FCA)

In July 2018, the UK was the first of many member states to permanently impose these restrictions, meant to ensure investment protection. Poor conduct by some market participants and increasing worries regarding consumer protection led to this decision. The FCA adopted the entire framework, without making any changes, except including turbo certificates in the framework. The UK regulator estimated a decrease in annual losses for retail investors of up to £17 million per year.

Germany's Federal Financial Supervisory Authority (BaFIN)

Following in the footsteps of the UK, Germany imposed the rules permanently in December 2018. Here too, the act imposing restrictions on the sale and distribution of CFDs was almost the same as that proposed by the ESMA.

+357 25 752 420 +357 25 752 450 info@ausprime.eu
Room 102, 1st floor, Block B, Steratzias Court, No. 41, Spyrou Kyprianou Avenue,
4003, Mesa Geitonia, Limassol

France's Autorité des Marchés Financiers (AMF)

The French regulator joined the bandwagon in March 2019, limiting the risks for retail investors. It particularly expressed a desire to reduce the growing amount of cold calling by non-EU firms to attract European clients.

Dutch Financial Markets Authority (AFM)

On April 19, 2019, the Dutch authority announced its plans to make the ESMA restrictions permanent. This is the first time ever that the Dutch regulator has made product restrictions, proposed by the ESMA, permanent.

Cyprus Securities and Exchange Commission (CySEC)

The latest regulator to join the list is the CySEC, which decided to impose a permanent ban on the marketing and sale of complex CFDs, effective from October 2019.

In general, it was widely known in the industry that the ESMA wouldn't simply let their measures fizzle out without renewing them, despite the 3-month review gap, mandatory by law. These processes have had a significant impact on internal practices and procedures of European investment firms, making them more accountable to clients. The ESMA has slowly but steadily been calling upon national authorities to adopt these rules and make them permanent.

It remains to be seen how the framework evolves in the post-Brexit era EU, and the way it affects investment firms across borders.

+357 25 752 420 +357 25 752 450 info@ausprime.eu
Room 102, 1st floor, Block B, Steratzias Court, No. 41, Spyrou Kyprianou Avenue,
4003, Mesa Geitonia, Limassol