

ANNOUNCEMENT

CySEC statement in response to ESMA's Opinion on CyNPIMs

In line with Article 43(3) of the Markets in Financial Instruments Regulation ("MiFIR"), CySEC has issued its response to the European Securities and Markets Authority's ("ESMA") Opinion of the National Product Intervention Measures adopted by CySEC, restricting how CFDs are sold to retail consumers.

On 27 September 2019, the Cyprus Securities and Exchange Commission ("CySEC") issued a [Policy Statement](#) ("PS-04-2019"), publishing the rules that restrict the sale, marketing and distribution of contract for differences ("CFDs") in or from Cyprus in line with ESMA's temporary product intervention measures.

On 27 September 2019, ESMA published an [Opinion](#) concluding that overall CySEC's national measures are justified and proportionate, with the exception for CySEC's decision to define the Territorial Scope of Cyprus National Product Intervention Measures ("CyNPIMs").

Taking into account the requests from market participants for further clarity in relation to the cross-border application of CyNPIMs, when Cyprus-based investment firms provide their services to residents of other Member States, CySEC has explicitly defined the territorial scope of CyNPIMs.

CySEC has tailored CyNPIMs in a way that enables incorporation of the content of the National Product Intervention Measures ("NPIMs") taken by other National Competent Authorities ("NCAs"), where firms falling under CySEC's competence market, distribute or sell such CFDs in the territory of another Member State.

Where an entity falling under CySEC's supervision markets, distributes or sells CFDs to a resident of:

- i Cyprus, CyNPIMs will have the content of the ESMA Measures except for the risk warning for new CFD providers¹;

¹ In the case of new CFD providers and CFD providers that have not had any open CFD positions in the last twelve months (**together, 'new CFD providers'**), CySEC will enforce a standardised risk warning – and not a predefined percentage range based on other NCAs' data as prescribed in the ESMA Measures. ESMA has issued a positive opinion on our approach on this.

- ii A Member State where the NCA has introduced NPIMs, CyNPIMs will have the content of the measures taken by the NCA of the respective Member State;
- iii A Member State where the NCA has not introduced NPIMs², CyNPIMs will have the content of the ESMA measures except for the risk warning for new CFD providers;
- iv A third country, CyNPIMs will have the content of the ESMA measures except for the risk warning for new CFD providers.

The MiFID II/MiFIR regime does not provide for the case where NPIMs adopted by different NCAs are not the same. As a consequence, a legal challenge might arise where the measures adopted by the NCA of the Member State in which the firm is authorised differ from the measures adopted by the NCA of the Member State in which the retail client resides. Following a limited number of NCAs across the European Union adopting measures that substantially differ from the ESMA measures, CySEC has adopted a territorial approach in relation to CyNPIMs for the provision of services on a cross-border basis to residents of other Member States. This is to avoid the interpretation and legal risks that might arise from the divergence of rules between European NCAs.

CySEC firmly believes its approach is justified and proportionate and will provide to the residents of the specific Member States the same level of protection afforded to them by the measures introduced by the NCA of their respective Member State. Retail investors located in the limited number of Member States that materially diverge from the ESMA Measures must be made fully aware of the level of protection afforded to them.

CySEC will continue its endeavors to achieve regulatory convergence across the Union through its ESMA participation.

Nicosia, 30 September 2019

² This category also includes Member States where the NCA has issued individual decrees to firms rather than a general decree.