Finansinspektionen's Regulatory Code

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Finansinspektionen's regulations regarding product intervention with regard to contracts for differences (CFDs);

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decided on 18 June 2019.

Finansinspektionen prescribes the following pursuant to Chapter 6, section 1, point 62 of the Securities Market Ordinance (2007:572).

Chapter 1 Scope of the regulations

Section 1 These regulations apply to undertakings providing investment services in accordance with the Securities Market Act (2007:528).

Chapter 2 Definitions

Section 1 In these regulations, the terms and expressions shall have the same meaning as in the Securities Market Act (2007:528) and 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.

In addition, the following terms and expressions shall be defined as follows:

CFD: a contract that refers to price differences and is a derivative other than an option, future, swap or forward rate agreement, the purpose of which is to give 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, and that 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,

initial margin: any payment for the purpose of entering into a CFD, excluding commission, transaction fees and any other related costs,

margin close-out protection: the closure of one or more of a retail client's open CFDs on terms most favourable to the client in accordance with Chapter 9, sections 1 and 3 of the Securities Market Act 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 for all those open CFDs,

negative balance protection: a limit on a retail client's aggregate liability for all CFDs connected to a CFD trading account to the funds in that account,

risk warning: written information warning a retail client of the risks associated with CFDs and that is formulated in accordance with the provisions set out in Chapter 4, *initial margin protection:* the initial margin determined in accordance with *Appendix 1*,

excluded non-monetary benefit: any non-monetary benefit other than, insofar as they relate to CFDs, information and research tools.

Chapter 3 Prohibition of marketing, distribution and sale

Prohibition

Section 1 An undertaking may not market, distribute or sell CFDs to retail clients.

Exemption from the prohibition given certain circumstances

Section 2 The provision set out in section 1 does not apply if an undertaking ensures that

1. the client pays an initial margin protection when entering into a CFD,

2. the client receives margin close-out protection,

3. the client receives negative balance protection,

4. the client does not receive a direct or indirect payment, a monetary or an excluded non-monetary benefit in conjunction with the marketing, distribution or sale of a CFD and may only receive the realised profit from the contract, and

5. communication the undertaking sends directly or indirectly to retail clients or information that the undertaking discloses to retail clients to market, distribute or sell a CFD contains a risk warning formulated in accordance with Chapter 4, sections 1–7.

Chapter 4 Risk warnings

Formulation of a risk warning

Section 1 When sending a communication or disclosing information in accordance with Chapter 3, section 2, the undertaking shall ensure that the risk warning is specified clearly in the text.

The risk warning

– may not have a smaller font size than the other text in the communication or the information that is being disclosed, and

– shall be in the same language as the rest of the text in the communication or the information.

Section 2 If an undertaking has provided in the past twelve months (calculation period) an open CFD linked to a retail client's CFD trading account, the risk warning shall contain specific information about the percentage of its retail clients that lost money on CFDs.

The calculation of the percentage of clients that lost money

Section 3 An undertaking shall calculate a percentage of its retail clients that have lost money on CFDs according to the following:

1. a retail client shall be considered to have lost money on their CFD trading account if the sum of all realised and non-realised net profits on CFDs linked to the trading account during the calculation period is negative.

2. the undertaking shall include all costs associated with a CFD as a cost in the calculation,

3. the undertaking shall exempt the following items from the calculation:

– a CFD trading account that was not open during the calculation period,

– profits and losses from products other than CFDs that are linked to the CFD trading account, and

– deposits or withdrawals of funds from the CFD trading account.

Section 4 An undertaking shall make a calculation in accordance with section 3 every third month, and this calculation shall include the 12 months preceding the date of the calculation.

Undertaking-specific risk warnings

Section 5 An undertaking that during the calculation period has provided an open CFD linked to a retail client's CFD trading account, when issuing a risk warning, shall ensure that the risk warning is formulated in accordance with

1. Point A of *Appendix 2*, if the communication or the disclosed information is provided in a durable medium or a website,

2. Point B of Appendix 2, if the communication or the disclosed information is provided in a medium other than a durable medium or a website, or

3. Point C of Appendix 2, if the standard conditions at an external marketing supplier allow for fewer characters than what is required of the risk warnings in Point A and Point B of Appendix 2, respectively.

Standard risk warnings

Section 6 An undertaking that during the calculation period has provided an open CFD linked to a retail client's CFD trading account, when issuing a risk warning, shall ensure that the risk warning is formulated in accordance with

1. Point D of Appendix 2, if the communication or disclosed information is provided in a durable medium or a website,

2. Point E of Appendix 2, if the communication or the disclosed information is provided in a medium other than a durable medium or a website, or

3. Point F of Appendix 2 if the standard conditions at an external marketing supplier allow fewer characters than what is set out in the risk warnings in Point D and Point E of Appendix 2, respectively.

Use of an abbreviated risk warning

Section 7 If an undertaking uses an abbreviated risk warning in accordance with section 5, point 3 or section 6, point 3, the communication or the disclosed information shall contain a direct link to a website that contains the risk warning in the format set out in section 5, point 1 or section 6, point 1.

These regulations shall enter into force on 1 August 2019.

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Appendix 1

Percentage for the initial margin per type of underlying asset

1. 3.33 per cent of the notional value of a CFD when the underlying currency pair is composed of any two of the following currencies:

– U.S. dollar,
– Euro,
– Japanese yen,
– Pound sterling,
– Canadian dollar, or
– Swiss franc.

2. 5 per cent of the notional value of a CFD when the underlying index, currency pair or commodity is

a) 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 (DAX 30),
– 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),

b) a currency pair composed of at least one currency that is not listed in point 1 above, or

c) gold.

3. 10 per cent 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 point 2.

4. 50 per cent of the notional value of the CFD when the underlying asset is a cryptocurrency.

5. 20 per cent of the notional value of the CFD when the underlying asset is

– a share, or
– not otherwise listed in this Appendix.

Appendix 2

Risk warnings

A. Undertaking-specific risk warning in accordance with Chapter 4, section 5, point 1

CFDs are complex instruments and come with a high risk of losing money rapidly due to leverage. **[*insert percentage per undertaking*] % of retail investor accounts 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.

B. Abbreviated undertaking-specific risk warning in accordance with Chapter 4, section 5, point 2

[*insert percentage per undertaking*] % of retail investor accounts lose money when trading CFDs with this provider. You should consider whether you can afford to take the high risk of losing your money.

C. Restricted-character undertaking-specific risk warning in accordance with Chapter 4, section 5, point 3

[*insert percentage per undertaking*] % of retail CFD accounts lose money.

D. Standard risk warning in accordance with Chapter 4, section 6, point 1

CFDs are complex instruments and come with a high risk of losing money rapidly due to leverage. **Between 74–89% of retail investor accounts lose money when trading CFDs.** You should consider whether you understand how CFDs work and whether you can afford to take the high risk of losing your money.

E. Abbreviated standard risk warning in accordance with Chapter 4, section 6, point 2

Between 74–89% of retail investor accounts lose money when trading CFDs. You should consider whether you can afford to take the high risk of losing your money.

F. Restricted-character standard risk warning in accordance with Chapter 4, section 6, point 3

Between 74–89% of retail CFD accounts lose money.