



EIOPA-18/251  
1 June 2018

## Statement

### **Statement on consumer detriment resulting from policyholder exposure to contracts for differences and binary options**

#### Background

The European Securities and Markets Authority (ESMA) has adopted temporary product intervention measures on the provision of contracts for differences (CFDs) and binary options to retail investors in the EU<sup>1</sup>. Specifically, these measures include a prohibition on the marketing, distribution or sale of binary options and several restrictions on the marketing, distribution or sale of CFDs to retail investors.

ESMA has concluded that some of the features of these products raise significant investor protection concerns, making them inappropriate for the large majority of retail investors. Indeed, analyses by various National Competent Authorities on CFD trading have showed that 74%-89% of retail accounts typically lose money on their investments, with average losses per client ranging from €1,600 to €29,000, while consistent losses on retail clients' accounts have been found in relation to binary options.

EIOPA is supportive of the EU-wide measures taken by ESMA, in particular considering the cross-border nature of financial activities and the need to ensure that retail investors across the European Union are provided with a common minimum level of protection.

#### Risk for policyholders in the insurance sector

There is at this juncture no evidence of direct policyholder exposure to CFDs or binary options, for instance, as sole underlyings of units offered in unit-linked insurance contracts. Moreover, the possibility of such policyholder exposure to CFDs or binary options developing seems not highly probable.

However, EIOPA's experience has been that unexpected and complex risks have increasingly been offered as potential units within unit-linked contract, raising supervisory concerns. This has been reported as a consistent problem by National

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<sup>1</sup> Reference to official notice on ESMA's website.

Competent Authorities in each annual EIOPA's Consumer Trends report. For this reason EIOPA remains cautious on the matter.

### Conclusions

Given potential future risks to policyholders, EIOPA expects insurance undertakings to avoid, as possible direct underlyings of insurance-based investment products, instruments for which ESMA has issued a ban or restriction for the purposes of distribution to retail clients. In general, uses of product intervention powers in one sector should never be circumvented by repackaging the instruments that have been banned or restricted for offer in another sector.

National Competent Authorities can use product intervention powers if there is a significant risk to investor protection, market integrity or financial stability. In addition, EIOPA also possesses, under the PRIIPs Regulation, product intervention powers and responsibilities. These complement powers already granted under EIOPA's founding Regulation.

Within its remit, EIOPA will use the available powers and measures to ensure the integrity, transparency, efficiency, and orderly functioning of financial markets and to ensure that customers' interests are adequately protected throughout the European Union.

Specifically, EIOPA and National Competent Authorities will continue to monitor the market for insurance-based investment products, including those providing direct exposure to complex and risky underlyings, in view of whether other restrictions or bans should be necessary.