Decision No. H-JÉ-III-10/2020. of the Magyar Nemzeti Bank to restrict the marketing, distribution and sale of CFDs to retail clients

The Magyar Nemzeti Bank (head office: 1054 Budapest, Szabadság tér 9., Hungary, Customer Service: 1013 Budapest, Krisztina krt. 39., Hungary) (**MNB**) acting in its capacity determined in Article 48 (3a) of Act CXXXIX of 2013 on the Magyar Nemzeti Bank adopts the following

D e c i s i o n

As of 10 April 2020, the MNB will restrict the marketing, distribution and sale (hereinafter together: Sale) of contracts for difference (CFD) to retail clients, under the condition that Sales shall be conducted only in a way that services providers

I. **require all retail clients to deposit an initial margin – defined on the basis of the type of the underlying asset – of the following minimum degree:**
   1. 3,33 % of the notional value of the CFD when the underlying currency pair is composed of any two of the following currencies: US dollar, Euro, Japanese yen, Pound sterling, Canadian dollar or Swiss franc;
   2. 5 % of the notional value of the CFD when the underlying index, currency pair or commodity is:
      i) any of the following equity indexes: Financial Times Stock Exchange 100 (FTSE 100); Cotation Assistée en Continu 40 (CAC 40); Deutsche Bourse AG German Stock Index 30 (DAX30); 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);
      ii) a currency pair composed of at least one currency that is not listed in point I.1.; or
      iii) gold;
   3. 10 % of the notional value of the CFD when the underlying commodity or equity index is any commodity or equity index other than those listed in point I.2.;
   4. 20 % of the notional value of the CFD when the underlying is:
      i) a share; or
      ii) not otherwise listed in points I.1-3. and I.5.; or
   5. 50 % of the notional value of the CFD when the underlying is a cryptocurrency;

II. **it provides all retail clients with an automatic margin close-out protection in a way that as soon as the amount of funds on the CFD trading account and the unrealized net profit of all open CFD positions related to the given account drop below 50 % of the total initial margin belonging to all open CFD positions, it will close the single or multiple CFD positions opened by the client in line with the legal regulations on the most favourable conclusion for the client, with immediate effect;**

III. **it provides all retail clients with negative balance protection in a way that the client's aggregate liabilities originating from all his CFD transactions related to CFD trading accounts could not exceed the amount of funds available on the CFD trading account at any given point of time;**

IV. **in relation to the Sale of CFDs, it will not provide retail clients – neither directly, nor indirectly – with payment, monetary or excluded non-monetary benefit, other than the profit realized on CFDs;**

V. it will not send any information on the Sale of CFDs to retail clients, either directly, or indirectly, and will not publish such information in a way that it could be accessed by clients, except when the information contains the risk warning according to the requirements defined in the annex to this decision.

The MNB draws service providers' attention to the fact that the above restriction shall apply to any activity that aims at or results in bypassing the requirements specified in points I-V by the service provider or a third person acting on its behalf.

The adopting of this decision did not entail any procedural charges.

The Decision shall be delivered by the MNB in an announcement. The date of communicating the Decision shall be the date of its publication.

The Decision shall be implemented immediately after its publication.

The Decision cannot be appealed, but parties whose rights or legal interests are directly affected by the administrative activity may submit a statement of claim to initiate an administrative lawsuit at the Budapest-Capital Regional Court within 30 (thirty) days of the announcement, referring to a violation of law.

The statement of claim shall be addressed to the Budapest-Capital Regional Court and submitted to the MNB by using the form submission support service. The form submission support service can be accessed at: https://www.mnb.hu/felugyelet/engedelyezes-es-intezmenyfelugyeles/hatarozatok-es-vegzesek-keresese. Legal representation is mandatory in any lawsuit.

The submission of the statement of claim shall not delay the coming into force of the Decision, but if the administrative activity or the maintenance of the resulting situation violates the rights or legal interests of any party, that party may ask for immediate legal protection to prevent a directly threatening disadvantage, temporarily settle the challenged legal relationship, and maintain the status that triggered the legal dispute.

As a main rule, the court shall adjudge the case without hearing. The client may request a hearing in the statement of claim. In case the hearing is not requested, no application for extension of deadline shall be permitted.

Justification

I. Definitions

For the purposes of this Decision:

- '**CFD**' means 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, 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;
- '**excluded non-monetary benefit'** means any non-monetary benefit other than, insofar as they relate to CFDs, information and research tools;
- **'initial margin**' means any payment for the purpose of entering into a CFD, excluding commission, transaction fees and any other related costs;
- initial margin protection: the initial margin specified in point I of this decision;

- ‘**margin close-out protection**' means the closure of one or more of a retail client's open CFDs on terms most favourable to the client in accordance with Articles 24 and 27 of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (MiFID II) 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 protection for all those open CFDs;
- ‘**negative balance protection**' means the limit of a retail client's aggregate liability for all CFDs connected to a CFD trading account with a CFD provider to the funds in that CFD trading account.

II. PRELIMINARIES

With the European Securities and Markets Authority Decision (EU) 2018/796 of 22 May 2018 to temporarily restrict contracts for differences in the European Union (**Decision No. 2018/796**), the European Securities and Markets Authority (**ESMA**) restricted the Sale of CFDs within the European Union for three months, starting on 1 August 2018.

The ESMA renewed the restriction specified in Decision 2018/796

- in the European Securities and Markets Authority Decision (EU) 2018/1636 of 23 October 2018 (**Decision No. 2018/1636**) with effect from 1 November 2018, for three months, in a modified form, then
- in ESMA Decision (EU) 2019/155 of 23 January 2018 (**Decision No. 2019/155**) with effect from 1 February 2019, for three additional months, with the same conditions as specified in Decision 2018/1636, and finally
- in ESMA Decision (EU) 2019/679 of 17 April 2019, with effect from 1 May 2019, with the same conditions as specified in Decision 2018/1636, for three additional months (**Decision No. 2019/679**) (hereinafter together: **Restricting Decisions**).

The ESMA did not prolong the restriction on the Sale of CFDs with a new measure, but still considers that the Sale of financial assets affected by the restriction is an all-European issue.

(…)

V. PRODUCT INTERVENTION INTRODUCED BY THE MNB

Pursuant to Article 42 (1) of the MiFIR regulation, a competent authority may prohibit or restrict the marketing, distribution or sale of certain financial instruments or structured deposits or financial instruments or structured deposits with certain specified features, in or from that Member State, or a certain type of financial activity or practice, if the conditions specified in Article 42 (2) a)-f) of the MiFIR regulation exist.

In accordance with the above points, pursuant to Article 48 (3a) of the MNB Act, the MNB may prohibit or restrict the distribution or sales of certain financial instruments or structured deposits or the performance of certain market actions or behaviours in a decision, if the conditions specified in Article 42 of the MiFIR regulation exist. Instead of the data of persons and organizations subject to Article 39 of the MNB Act as obligors, the Decision includes the scope of financial assets or structured deposits, or certain market actions and behaviours affected by the decision.

In order to ensure that the above measure is justified, pursuant to Article 39 (3) of the MiFIR regulation, the competent authorities shall monitor the market of financial instruments and structured deposits which are marketed, distributed or sold in or from their Member State.

As a result of the monitoring activity specified in Article 39 (3) of the MiFIR regulation and detailed in point II of the justification for this Decision, the MNB did not acquire any information that would refute the investor protection concerns specified in Decision No. 2018/796. In view of all that, as well as the points detailed in point III.1.2. of the justification of this Decision – following the evaluation of the factors and criteria recorded in Article 21 (2) of Regulation 2017/567/EU – the MNB found that the unrestricted Sale of CFDs raised significant concerns from the aspect of investor protection.

In line with the findings of ESMA and its own findings detailed in point III.2.1 of the justification of this Decision – as explained in point III.2.2 of the justification of this Decision – the MNB came to the conclusion that the existing EU and domestic regulatory environment – in spite of the strict enforcement of the requirements of legal regulations – is unable to manage the risks involved in the unrestricted Sale of CFDs in a satisfactory way. In addition, it was found that risks and concerns related to the Sale of CFDs could not be managed better even with an improved supervision and performance of the existing legal regulations.

Based on the above points, the MNB found the restrictions on the Sale of CFDs as defined in the operative part of this Decision necessary and justified, and this measure – pursuant to point III.3.2. and III.5 in the justification of this Decision – is proportionate in the view of the nature of the identified risks and the effects of the measure, and it has no discriminative effect on services or activities extended from other Member States.

Furthermore – pursuant to points III.4 and III.6 of the justification of this Decision – the MNB points out that the measure taken according to this Decision does not mean a serious threat to the regular operation and integrity of agricultural commodity markets, and no other Member State is affected by the measure taken under this Decision, as domestic service providers have a low number of retail clients with residence outside Hungary.

Meeting its obligation defined in Article 42 (3) of the MiFIR regulation, the MNB informed the ESMA before the introduction of the measures defined in the operative part of this Decision, within the deadline and with the contents specified in Article 42 (3) of the MiFIR regulation.

(…)

Budapest, 9 April 2020

Acting on behalf of the Magyar Nemzeti Bank

Dr. Laki Gábor (sgd.)
Director for Capital Markets and Market Surveillance

deputy of

Szeniczey Gergő (sgd.)
Executive Director for Prudential, Consumer Protection Supervision of Capital Markets and Insurers and Market Surveillance

ELECTRONICALLY SIGNED DOCUMENT

Annex to decision No. H-JÉ-III-10/2020.

Risk Warnings

SECTION A

Risk warning conditions

1. The risk warning shall be in a layout ensuring its prominence, in a font size at least equal to the predominant font size and in the same language as that used in the communication or published information.

2. If the communication or published information is in a durable medium or a webpage, the risk warning shall be in the format specified in Section B.

3. If the communication or published information is in a medium other than a durable medium or a webpage, the risk warning shall be in the format specified in Section C.

4. By way of derogation to paragraphs 2 and 3, if the number of characters contained in the risk warning in the format specified in Section B or C exceeds the character limit permitted in the standard terms of a third party marketing provider, the risk warning may instead be in the format specified in Section D.

5. If the risk warning in the format specified in Section D is used, the communication or published information shall also include a direct link to the webpage of the CFD provider containing the risk warning in the format specified in Section B.

6. The risk warning shall include an up-to-date provider-specific loss percentage based on a calculation of the percentage of CFD trading accounts provided to retail clients by the CFD provider that lost money. The calculation shall be performed every three months and cover the 12-month period preceding the date on which it is performed (‘12-month calculation period'). For the purposes of the calculation:
   a) an individual retail client CFD trading account shall be considered to have lost money if the sum of all realised and unrealised net profits on CFDs connected to the CFD trading account during the 12-month calculation period is negative;
   b) any costs relating to the CFDs connected to the CFD trading account shall be included in the calculation, including all charges, fees and commissions;
   c) the following items shall be excluded from the calculation:
      i. any CFD trading account that did not have an open CFD connected to it within the calculation period;
      ii. any profits or losses from products other than CFDs connected to the CFD trading account;
      iii. any deposits or withdrawals of funds from the CFD trading account.

7. By way of derogation from paragraphs 2 to 6, if in the last 12-month calculation period a CFD provider has not provided an open CFD connected to a retail client CFD trading account, that CFD provider shall use the standard risk warning in the format specified in Sections E to G, as appropriate.

SECTION B

Durable medium and webpage provider-specific risk warning

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

SECTION C

Abbreviated provider-specific risk warning

[insert percentage per provider] % 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.

SECTION D

Reduced character provider-specific risk warning

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

SECTION E

Durable medium and webpage standard risk warning

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.

SECTION F

Abbreviated standard risk warning

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.

SECTION G

Reduced character standard risk warning

74-89 % of retail CFD accounts lose money.