FESE AISBL
Avenue de Cortenbergh, 116 B-1000 Brussels
info@fese.eu
Tel.: +32 2 551 01 80 – Fax : +32 2 512 49 05

FESE Response to ESMA Call for evidence: Potential product intervention measures on contracts for differences and binary options to retail clients

Introductory remarks

The Federation of European Securities Exchanges (FESE) represents 35 exchanges in equities, bonds, derivatives and commodities through 20 Full Members from 29 countries, as well as 1 Affiliate Member and 1 Observer Member. FESE represents public Regulated Markets, which provide both institutional and retail investors with transparent and neutral price-formation.

At the end of 2016, FESE members had 8,982 companies listed on their markets, of which 6% are foreign companies contributing towards the European integration and providing broad and liquid access to Europe's capital markets. Many of our members also organise specialised markets that allow small and medium sized companies across Europe to access the capital markets; 1,291 companies were listed in these specialised markets/segments in equity, increasing choice for investors and issuers.

FESE is registered in the European Union Transparency Register with number 71488206456-23.

Response to questions:

Question A: Do you think that ESMA has adequately identified the instruments in the scope of its possible measures (paragraphs 3 and 5 above)?

FESE generally agrees with the elements proposed by ESMA to identify CFDs and binary options.

However, we would like to point out that the definitions, in particular in the case of CFDs, are quite broad and could unwittingly capture financial instruments which ESMA did not intend to subject to additional investor protection measures.

This might especially be the case for securitised derivatives, which fall under the general definition of transferable securities under MiFID II Article 4.1(44): "(c) *any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures*".

While it appears that it is not ESMA's intention to include securitised derivatives, in the absence of more specific definitions in European legislation, FESE would recommend clarifying that instruments considered as securitised derivatives under MiFID II/MiFIR instrument reference data that are traded on a trading venue are not under the scope of the restrictions outlined in the call for evidence.

We believe there are a number of elements specific to this product class which would justify this approach:

- Securitised derivatives are traded on regulated trading venues with the associated levels of supervision and market surveillance, in contrast with CFDs which are generally traded over-the-counter;
- In contrast with CFDs, securitised derivatives are issued only after publication of a prospectus;
- Securitised derivatives are also subject to the PRIIPS Regulation and the publication of a Key

Information Document for investors which highlights the level of risk and the cost associated with these products;

- To comply with their risk management processes and their supervisions, banks proposing securitised derivatives, notably in the case of warrants and certificates, hedge the risk created by these instruments – in contrast with CFDs issuers where hedging is not systematic. Furthermore, due to non-hedging of client positions, the CFD-Provider may directly benefit from a losing trade which would be a conflict of interests that issuers of securitised derivatives never face. Ceteris paribus, issuer default risk is therefore considerably higher for investors when investing in CFDs than when investing in securitised derivatives, creating a different credit risk profile between these two different kinds of products.

Question B: What impact do you consider that the introduction of leverage limits on the basis described above (applying to retail clients only) would have on your business? Please describe and explain any one-off or ongoing costs or benefits.

Question C: What impact do you consider that the introduction of a margin close-out rule on a per position basis (applying to retail clients only) would have on your business? Please describe and explain any one-off or ongoing costs or benefits.

Question D: What impact do you consider that the introduction of negative balance protection on a per account basis (applying to retail clients only) would have on your business? Please describe and explain any one-off or ongoing costs or benefits.

Question E: What impact do you consider that a restriction on incentivisation of trading (applying to retail clients only) would have on your business? Please describe and explain any one-off or ongoing costs or benefits.

Question F: What impact do you consider that a standardised risk warning (applying to retail clients only) would have on your business? Please describe and explain any one-off or ongoing costs or benefits.

Question G: Please provide evidence on the proportion of retail clients that use these products for hedging purposes and how the suggested measures will affect them.

Question H: What impact do you consider that a prohibition on providing binary options to retail clients would have on your business? Please describe and explain any one-off or ongoing costs or benefits.