

Regulation no. 11/2018
on the application of some provisions of art. 104 of Law no. 126/2018 on
financial instrument markets

Under the provisions of Art. 1 par. (2), art. 2 par. (1) lett. a) and d), art. 6 par. (2) and art. 14 of the Government Emergency Ordinance no. 93/2012 on the establishment, organisation and operation of the Financial Supervisory Authority, approved with amendments and completions by Law no. 113/2013, as subsequently amended and supplemented,

Considering the provisions of art. 104 par. (2), (5) let. b) point (ii) and (6) let. d) and e) and art. 280 par. (1) of the Law no. 126/2018 on the financial instruments markets,

Pursuant to the deliberations of the Board of the Financial Supervisory Authority of 25.09.2018,

the Financial Supervisory Authority hereby issues this Regulation:

Art. 1. - This regulation contains provisions for the application of the stipulations of art. 104 of Law no. 126/2018 on the financial instruments markets, hereinafter referred to as *Law no. 126/2018*.

Art. 2. - (1) The terms, abbreviations and phrases used in this regulation have the meaning provided by Law no. 126/2018.

(2) For the purpose of this Regulation, the terms "closing a position on a CFD", "a CFD" and "that CFD" in the definition of the phrase "margin close-out protection", mentioned in art. 104 par. (6) let. e) of Law no. 126/2018, refers to all open positions on CFDs with the same characteristics, referring to a retail customer or consumer.

Art. 3. - In applying the provisions of art. 104 par. (2) and (6) let. d) of Law no. 126/2018, the leverage impact of opening a position on behalf of a retail client is limited to:

a) 30: 1, representing the equivalent of an initial margin of protection of 3.33% of the notional amount of the CFD when the currency pair of the underlying asset is composed of any two of the following currencies: the US dollar, the euro, the Japanese yen, the sterling pound, the Canadian dollar or the Swiss franc;

b) 20: 1, representing the equivalent of an initial margin of protection of 5% of the notional value of the CFD when the index, currency pair or commodity asset is:

(i) any of the following indices of equity: Financial Times Stock Exchange 100 (FTSE 100); Cotation Assistée en Continuüm 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 not referred to in (a) or

(iii) gold;

c) 10: 1, representing the equivalent of an initial margin of protection of 10% of the notional value of the CFD when the commodity index or the capital title of the underlying asset is a commodity index or any capital title index , other than those referred to in b);

d) 2: 1, representing the equivalent of an initial margin of protection of 50% of the notional value of the CFD where the underlying asset is a cryptocurrency; or

e) 5: 1, representing the equivalent of an initial margin of protection of 20% of the notional value of the CFD when the underlying asset is:

(i) a share; or

(ii) any other underlying asset not provided for in this article.

Art. 4. - (1) In the application of art. 104 par. (5) let. b) point (ii) of Law no. 126/2018, the CFD Dealer / Seller and any other person involved in the marketing, sale or distribution of CFDs shall ensure that:

(a) the risk warning has an aspect to ensure that it is highlighted in relation to the communication or information published, has a font size at least equal to the predominant font size used in the published communication or information and is written in the same language as that used in the published communication or information;

b) if the communication or information published is on a durable medium or on a web page, the risk warning shall comply with the format specified in Annex 1;

c) if the communication or information published is on a medium other than a durable medium or on a web page, the risk warning shall comply with the format given in Annex 2;

d) The risk warning includes an updated provider-specific loss based on the calculation of the percentage of CFDs trading accounts provided to retail customers by the CFDs that have lost money.

(2) The calculation provided for in par. (1) let. (d) shall be carried out every three months and shall cover the 12-month period preceding the date on which it is carried out, known as the '*12-month calculation period*'. For the purposes of the calculation, the following aspects are considered:

a) an individual retail client CFD trading account is considered to have lost money if the sum of all achieved and unachieved net profits on CFDs linked to the CFDs trading account during the 12-month calculation period is negative ;

b) any costs related to CFDs linked to the CFD trading account will be included in the calculation, including all expenses, fees and commissions;

c) the following are excluded from the calculation:

(i) any CFDs trading account that did not have a CFD open to it during the calculation period;

(ii) any profit or loss from products other than CFDs linked to the CFDs trading account;

(iii) any deposit or withdrawal of funds from the CFD trading account.

(3) By way of exception from the provisions of paragraph (1) let. b) - d) and par. (2) if, in the last 12-month calculation period, a CFD provider did not provide an open CFD linked to a retail client CFD account, that CFD supplier uses the warning risk standard set out in Annex no. 3 or in Annex no. 4, as appropriate.

Art. 5 - Non-compliance with the provisions of this Regulation shall be sanctioned in accordance with Title X of Law no. 126/2018.

Art. 6 - Annexes no. 1-4 are part of this regulation.

Art. 7 - This Regulation shall be published in the Official Jurnal of Romania, Part I, in the Bulletin and on the website of the Financial Supervisory Authority and shall enter into force on the date of its publication in the Official Jurnal of Romania.

The Chairman of the Financial Supervisory Authority,
Leonardo Badea

București, 25.09.2018

Nr. 11

Annex no. 1

Supplier-specific risk warning on a durable medium and a web page

CFDs are complex tools and have a high risk of losing money quickly due to the leverage effect.

***[insert percent for each provider]*% of retail investors' accounts lose money when trading CFDs with this provider.**

You should consider your understanding of the way in which CFDs work and if you can afford to take the high risk of losing your money.

Annex no. 2

Synthesized alert on supplier-specific risks

***[insert percent for each provider]*% of retail investors' accounts lose money when trading CFDs with this provider.**

You should consider if you can afford to take the high risk of losing your money.

Annex no. 3

Standard risk warning to be used on a durable medium or a web page

CFDs are complex tools and have a high risk of losing money quickly due to the leverage effect.

Between 74-89% of retail investors' accounts lose money when trading CFDs.

You should consider if you understand the way CFDs work and if you can afford to take the high risk of losing your money.

Standard Synthesized Risk Warning

Between 74-89% of retail investors' accounts lose money when trading CFDs.
You should consider if you can afford to take the high risk of losing your money.