

9 March 2026

Circular on ESMA Public Statement: Identifying Derivatives within the Scope of CFDs National Product Intervention Measures

Background

The European Securities and Markets Authority (ESMA), together with National Competent Authorities (NCAs), has observed an increased offering of derivatives, often marketed as perpetual futures or perpetual contracts, that provide leveraged exposure to underlying values, including crypto-assets such as Bitcoin or Ethereum. ESMA has issued a [Public Statement](#) on 24 February 2026 to remind firms that such financial instruments are likely to fall within the scope of the permanent national product intervention measures on Contracts for Differences (CFDs).

Scope

National product intervention measures on CFDs have been adopted by NCAs, reflecting the original temporary measures adopted by ESMA in 2018 (ESMA Decision 2018/796).

Derivatives that meet the definition of a CFD are subject to measures including:

- Leverage limits;
- Mandatory risk warning;
- Margin close-out requirements;
- Negative balance protection;
- Prohibition of monetary and non-monetary benefits.

A derivative that provides exposure to an underlying value which is not exclusively settled physically would likely fall within the scope of the product intervention measures on CFDs, unless it classifies as one of the products excluded by the definition in the ESMA Decision. Certain characteristics are not relevant to this assessment, including whether the product is traded on a trading venue, the presence of additional features such as a funding rate mechanism, or voluntary safeguards such as negative balance protection or 'insurance funds'.

Target Audience

This circular is addressed to all investment firms that market, distribute or offer derivatives to retail clients in the EU, irrespective of the commercial name of such products.

Way Forward

Investment firms must conduct a careful legal analysis of these products and their functionality, in order to check whether they may fall within the scope of application of product intervention measures. The analysis should be made on the basis of the specific product characteristics, irrespective of the commercial name provided by firms (e.g. “perpetual futures”).

Firms must conduct this analysis while adhering to the overarching obligation to act honestly, fairly and professionally in accordance with the best interests of clients.

In addition to assessing the application of product intervention measures, investment firms should ensure compliance with key investor protection requirements under MiFID II, particularly relevant for leveraged products.

Application of Certain Investor Protection Requirements*Requirements on Product Governance*

Given the particularly complex and risky nature of these products, a very careful assessment of the target market should be performed. This assessment should consider key risk factors, including those linked to leverage and margin trading. This is expected to result in a narrow target market and a distribution strategy that is consistent with such target market. In particular, paragraphs 26 and 58 to 60 of the [ESMA Guidelines on MiFID II product governance requirements](#) are particularly relevant.

Investment firms should therefore carefully design their approach when marketing these products. In the view of ESMA, certain initiatives should not be considered to be compliant with the product governance rules. For instance, mass marketing campaigns, initiatives aimed at inexperienced investors, or emails and pop-ups to all clients of a firm that state that such products are now offered and investors should “get started now” should not be considered to be consistent with a narrow target market.

Requirements on Appropriateness

As derivatives are complex financial instruments, an appropriateness assessment needs to be carried out where non-advised services are provided.

Requirements on Conflicts of Interest

Firms should take appropriate steps to identify and to prevent or manage conflicts of interest related to the offering of derivatives such as perpetual futures/contracts. A prominent conflict of interest arises where these derivatives are issued by a group entity or traded on a venue belonging to the group, which may result in the firm of the group to push these products to their clients.

PRIIPs

Derivatives such as so-called perpetual futures/contracts are packaged investment products. As a consequence, the Regulation (EU) No 1286/2014 (PRIIPs Regulation) applies, and firms need to prepare a Key Information Document (KID) when distributing these products to retail clients.

Contacts

Should you have any queries regarding the above, please do not hesitate to contact us via: csuinvestments@mfsa.mt.