

Notice No : **SFA 04-N15**

Issue Date : **5 October 2018**

NOTICE ON RISK FACT SHEET FOR CONTRACTS FOR DIFFERENCES

1 This Notice is issued pursuant to section 101 of the Securities and Futures Act (Cap. 289) (the “Act”).

2 This Notice shall apply to –

- (a) a CMS licence holder; and
- (b) an exempt financial institution.

3 For the avoidance of doubt, this Notice does not replace or override any existing legislative provisions or written directions issued under the Act or the Financial Advisers Act (Cap. 110) in respect of advertisement or risk disclosure.

DEFINITIONS

4 For the purposes of this Notice –

“contracts for differences” means any over-the-counter derivatives contract which is traded on a margin basis, the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in –

- (a) the value or amount of one or more underlying things;
- (b) the value or price of any group of underlying things; or
- (c) an index of one or more underlying things;

and which does not involve the actual taking or physical delivery of any of the underlying things;

“CMS licence holder” means a person who is –

- (a) a holder of a capital markets services licence that is granted under section 86 of the Act to carry on business in the regulated activity of dealing in capital markets products; and
- (b) which deals in contracts for differences for, by arrangement with, or on behalf of, a customer;

“customer”, in relation to a CMS licence holder or an exempt financial institution, means:

- (a) a person on whose behalf the CMS licence holder or exempt financial institution, as the case may be, carries on or will carry on any regulated activity; or
- (b) any other person with whom the CMS licence holder, or exempt financial institution, as the case may be, as principal, enters or will enter into transactions for the sale and purchase of capital markets products,

but does not include a person who is an accredited investor, expert investor or institutional investor;

“exempt financial institution” means a person who is –

- (a) exempted under section 99(1)(a), (b) or (c) of the Act from the requirement to hold a capital markets services licence to carry on business in the regulated activity of dealing in capital markets products; and
- (b) deals in contracts for differences for, by arrangement with, or on behalf of, a customer;

“existing CFD dealer” means a person (including a previously regulated person) who –

- (a) immediately before 8 October 2018, had been carrying on the business of dealing in contracts for differences for, by arrangement with, or on behalf of, a customer; and
- (b) on or after 8 October 2018, is, or becomes, a CMS licence holder or exempt financial institution; and

“over-the-counter derivatives contract” means a derivatives contract which is not an exchange-traded derivatives contract;

“previously regulated person” means a person who, immediately before 8 October 2018, is –

- (a) a holder of a capital markets services licence under section 86 of the Act; or
- (b) exempted under section 99(1)(a), (b) or (c) of the Act from the requirement to hold a capital markets services licence to carry on business in respect of any regulated activity; and

“specified date”, means –

- (a) in relation to an existing CFD dealer who is –

- i. a previously regulated person; or
- ii. not a previously regulated person and becomes an CMS licence holder or exempt financial institution before 8 October 2019,

8 October 2019; or

- (b) in relation to an existing CFD dealer who is not a previously regulated person and becomes a CMS licence holder or exempt financial institution on or after 8 October 2019, the date the existing CFD dealer is so licensed or exempted, as the case may be.

5 The expressions used in this Notice shall, except where expressly defined in this Notice or where the context otherwise requires, have the same meanings as in section 2 and section 4A of the Act.

REQUIREMENTS ON RISK FACT SHEET

6 Subject to paragraph 7, a CMS licence holder or an exempt financial institution must not open a trading account for a customer to transact in contracts for differences unless the CMS licence holder or the exempt financial institution, as the case may be, –

- (a) furnishes the customer with a Risk Fact Sheet in accordance with the format as set out in the Annex; and
- (b) receives from the customer an acknowledgement in writing, signed and dated by the customer, that he has received and understood the nature and contents of the Risk Fact Sheet.

7 Paragraph 6 does not apply to a CMS licence holder or an exempt financial institution, which is an existing CFD dealer, in relation to any trading account opened by it prior to, and which remains open as at, 8 October 2019.

8 In the case of a trading account which has been opened by an existing CFD dealer for a customer prior to 8 October 2019, and which remains open as at 8 October 2019, the existing CFD dealer must, before the customer transacts in a contract for differences using that trading account for the first time on or after the specified date –

- (a) furnish the customer with a Risk Fact Sheet in accordance with the format as set out in the Annex; and

- (b) receive from the customer an acknowledgement signed and dated by the customer that he has received and understood the nature and contents of the Risk Fact Sheet.

9 A CMS licence holder or an exempt financial institution, as the case may be, must prepare every Risk Fact Sheet referred to in paragraphs 6 and 8 in accordance with the requirements set out in this Notice. The Risk Fact Sheet must:

- (a) clearly set out the required key risks and information in accordance with the format as set out in the Annex.
- (b) include a prominent warning that contracts for differences involves the risk of losing substantially more than the customer's initial margin;
- (c) be presented in a question and answer format, and in clear, plain and simple language that the customer can easily understand. Where technical terms are unavoidable, a glossary of no longer than one A-4 size page should be attached to the Risk Fact Sheet to explain such technical terms; and
- (d) not be longer than three A-4 size pages, including any diagram or numerical illustration, but excluding the customer's acknowledgement and the glossary referred to in sub-paragraph (c). Information in the Risk Fact Sheet (including footnotes) shall be presented in a font size of at least 10-point Times New Roman.

10 A CMS licence holder or an exempt financial institution must not –

- (a) include in the Risk Fact Sheet any statement or information promoting contracts for differences;
- (b) include in the Risk Fact Sheet any statement or information that is false or misleading;
- (c) omit any information from any part of the Risk Fact Sheet which would result in that part of the Risk Fact Sheet being construed as false or misleading; or
- (d) include in the Risk Fact Sheet any disclaimer or qualification that is inconsistent with the contents and information in the Risk Fact Sheet.

11 A CMS licence holder or an exempt financial institution must maintain records of the customer's acknowledgement referred to in paragraphs 6(b) and 8(b) for a period of not less than 5 years.

12 This Notice shall take effect on 8 October 2018.

Annex to the Notice

Risk Fact Sheet for Contracts for Differences

Prepared on: [DD/MM/YY]

1. This Risk Fact Sheet is provided to you in accordance with Notice SFA N04-Nxxx. It highlights the common risks of trading in Contracts for Differences (CFDs) and complements the trading agreement and associated risk disclosures furnished by *[the firm]*.
2. This Risk Fact Sheet does not disclose all the risks of trading in CFDs. It is important to read the trading agreement and associated risk disclosures before deciding whether to trade in CFDs. You should also carefully consider whether trading in CFDs is appropriate for you in the light of your experience, objectives, financial resources and other relevant circumstances. If you do not have a copy of the trading agreement and associated risk disclosures, please contact *[the firm]* to request for a copy. You should not trade in CFDs if you do not understand the product or are not comfortable with the accompanying risks.

Q.1 What is my potential loss when I trade on margin in CFDs?

[Explain how margin is computed, and highlight to the customer that he or she can lose more than the initial margin amount deposited with the CFD dealer. Illustrate with a worked example.]

Q.2 What will happen if I do not have enough margin to cover my losses?

[Explain when and how the margin call will be made and the firm's policy and procedures to close out the customer's position, especially any automatic close-outs without notice.]

Q.3 How is the [CFD] quoted?

[Explain how the [CFD] bid-ask prices are quoted based on the firm's business model and offering. Explain the potential conflicts of interest that may arise from the pricing model.]

Q.4 Can my order be executed at a price that is less favourable than the price quoted on the trading system, or the price that I have submitted?

[Explain if the customer's trades may be executed at a price worse than the order entered by the customer, as provided for in the trading agreement, and the circumstances under which this may happen, e.g. stop-loss orders.]

Q.5 Will my order be manually executed? If so, under what circumstances does the firm rely on manual execution?

[Explain if the customer's order can be manually executed, and the circumstances under which this may happen. If applicable, highlight the risk of deviation between the customer's order price and executed price.]

Q.6 Where are my margins kept and maintained? Can the firm use my margins for its own purposes?

[State and explain that margins are kept in segregated trust accounts.]

Q.7 What will happen to my margins if [*the firm*] becomes insolvent? Will I be able to get back my moneys or other assets?

[Highlight the counterparty risk to the customer and the implications on the recovery of the customer's money or other assets in the event of the insolvency of the counterparty.]

Q.8 Under what circumstances can [*the firm*] close my position or void my order?

[Explain all the situations where the firm has the right to close out or void the customer's position without consent. Make reference to the applicable paragraphs in the agreement.]

Q.9 What are the commissions, fees and other charges that I have or may have to pay?

[State and explain the various fees, commission and charges imposed on the customer. Explain with a worked example.]

Q.10 What happens when trading in the underlying share or asset is suspended or halted? How can I exit my position and will I suffer losses?

[Explain the firm's policy and procedures in dealing with situations when the underlying asset of the contract for differences is suspended or halted, and how the customer can exit the position.]

ACKNOWLEDGEMENT OF RECEIPT OF THIS RISK DISCLOSURE DOCUMENT

This acknowledges that I/we have received a copy of the Risk Disclosure Document and understand its contents.

Name of customer : _____ Signature of customer : _____

Designation* : _____

Corporation Name* : _____

*For corporations only