
FROM : Cyprus Investments Firms
TO : Cyprus Securities and Exchange Commission
DATE : April 8, 2015
CIRCULAR NO : C065
SUBJECT : Granting trading benefits to clients

Following [Circular](#) with number CI144-2014-02 in relation to the above subject, the Cyprus Securities and Exchange Commission (the "CySEC") wishes to inform the Cyprus Investment Firms ('CIFs') about the following:

1. It has been observed that CIFs are granting trading benefits (e.g. welcome bonus) to their clients under conditions and are following such practices, which do not seem to be consistent with the spirit and the letter of the Investment Services and Activities and Regulated Markets Law of 2007, as in force ("the Law") and Directives DI144-2007-01 of 2012 for the authorisation and operating conditions of CIFs ('the Directive 1') and DI144-2007-02 of 2012 for the professional competence of CIFs ('the Directive 2').

In particular, these conditions and practices do not seem to be consistent with:

- i. Article 36 of the Law (Conduct of business obligations when providing services to clients).
 - ii. Part VI of Directive 1 (Safeguarding of clients assets).
 - iii. Part III (Provision of information to clients) and Part IV (Assessment of suitability and appropriateness).
2. Examples of conditions / practices that do not seem to be consistent with the spirit and the letter of the above provisions, which are not exhaustive, are:
 - i. No explanation, or insufficient explanation of the conditions of a trading benefit granted to a client in a clear and understandable way

It has been observed that the trading benefit conditions are not explained, or are not sufficiently explained, to the client in a clear and understandable way.

Before the granting of a trading benefit, the CIF must explain to the client, in a clear and understandable way, the trading benefit conditions, using, *inter alia*, simple examples, so that the client is able to make investment decisions based on accurate and adequate information. Emphasis should be given to the fact whether the trading benefit and the

profits generated using the trading benefit may be withdrawn, or not, upon the fulfillment of the conditions.

ii. Granting trading benefit to all clients without exemption and without their consent/acceptance

It has been observed that a trading benefit is granted to all clients without exemption and without their consent/acceptance.

The CIF must grant a trading benefit only to those clients who have passed the 'suitability test' or the 'appropriateness test' (where applicable) as it is provided under article 36(1)(c) and (d) of the Law.

In addition, the CIF must obtain client's consent/acceptance, either in written form or in other equivalent mean, before granting a trading benefit.

It is noted that the acceptance by default of a trading benefit cannot be considered as equivalent mean of client's consent/acceptance.

iii. Setting short timeframe for fulfilling the trading benefit conditions

Where a trading benefit is granted under conditions and in particular, when it is linked with the trading volume generated by the client, it has been observed that the timeframe set for fulfilling the trading benefit conditions is too short, which makes it impossible to achieve these. Therefore, there is pressure/incentive to clients to conduct a large number of transactions in a short period of time in order to fulfill the trading benefit conditions.

In case of setting a time frame, this must not act as a 'pressure measure' but must be reasonable under each situation circumstances and commensurate with the capability to fulfill the trading benefit conditions.

iv. Modification of the trading benefit conditions without appropriate and in advance information of the client

It has been observed that the trading benefit conditions are modified without appropriate and in advance information of the clients.

In case of modifying the trading benefit conditions, the CIF must inform appropriately and in advance the clients to whom a trading benefit has been granted. In addition, the CIF must give its clients the option either to continue using the trading benefit, or to cancel it without any cost and without to be considered that the trading benefit conditions are not fulfilled.

v. Allocation of profits/losses to the client

In case of a withdrawal request of funds, especially before fulfilling the trading benefit conditions, it has been observed that the trading benefit is cancelled along with all, or part of, the profits generated. Unlike in the case of losses, these are attributed to the client.

It is provided that all profits and losses generated using clients' funds are allocated to clients and in no case, the CIF may keep the profits.

As far as the profits and losses generated using trading benefits are concerned, the CIF must fully inform the client about the applicable treatment/allocation of these profits/losses, before the granting of the trading benefit, as it is mentioned in point 2(i) above.

The CIF must establish and implement arrangements that enable the compliance with the above. In case a CIF cannot distinguish the profits/losses generated using clients' funds and using a trading benefit, then the CIF must allocate all profits/losses generated using both (clients' funds and trading benefit) to the client.

vi. Client information on available for withdrawal funds

It has been observed that clients are not aware, at all times, on their funds that are available for withdrawal because these are not segregated from the trading benefits that cannot be withdrawn.

The CIF must establish and implement arrangement that enable clients to be aware, at all times, on their funds that are available for withdrawal.

vii. High charges in case of funds withdrawal

It has been observed that high charges are set in the event of funds withdrawal from clients.

The CIF must inform its clients fully and in advance for the charges applied for funds withdrawal. It is provided that charges must be reasonable, proportionate and in accordance with the regular commercial charges applied by credit institutions.

3. The entire above mentioned are also applied when granting an additional trading benefit to existing clients.
4. The CIF must maintain in clients' records all the evidence supporting the implementation of this circular.
5. CIFs that are granting trading benefits to their clients, are kindly requested to review immediately their procedures/arrangements in relation to the granting of trading benefits and take corrective measures in order to comply with this circular as the above mentioned conditions/practices do not seem to be consistent with the spirit and the letter of the Law and Directives.

CySEC pays particular attention to investors' protection and professional competence of CIFs and therefore, it will deplete its rigor regarding sanctions when it identifies attitudes (conditions/practices) that are not in line with the above.

Yours sincerely,

Demetra Kalogerou
Chairman of the Cyprus Securities and Exchange Commission