OANDA
OANDA EUROPE LIMITED
TOWER 42, FLOOR 9A
25 OLD BROAD ST
LONDON EC2N 1HQ
UNITED KINGDOM

CFD Requirements Consultation
Asset Management Supervision Division
Central Bank of Ireland
New Wapping Street
North Wall Quay
Dublin 1
IRELAND

9th March 2017

Feedback on CFD Requirements Consultation

Dear Sir

We are very supportive of measures to increase the protection of retail investors, and actions to deal with:-

- Firms operating illegally or fraudulently;
- Firms offering cross-border services from EEA countries with less stringent regulation/ less enforcement;
- Firms not sufficiently adhering to existing regulations;
- Firms competing on margin levels and providing egregious levels of leverage; and
- Indiscriminate mass marketing of highly leveraged derivatives to inappropriate audiences.

1. **Which of the options outlined in this paper do you consider will most effectively and proportionately address the investor protection risks associated with the sale or distribution of CFDs to retail clients? Please give reasons for your answer.**
   Option 2, albeit with slightly improved leverage limits perhaps default to 50:1 with appropriate clients being able to request 100:1.

   Option 1 ignores the fact that some retail clients wish to benefit from 'leverage' and enjoy the access to market that CFDs provide, and removing their access to these products would shift their trading activities offshore where they would suffer from far less consumer protection. Clients look globally for products, and the world is a very small place with the internet and limiting something in Ireland would not force a change in client behaviour but simply push it offshore.

   Offshore or illegal operators would flood Irish residents with online advertising (which it is impractical/ impossible to enforce against) which does not adhere to the CBI requirements, leading clients away from firms who adhere to CBI regulation and protect their best interests and towards firms over which the CBI has no jurisdiction.

   We absolutely agree that egregious levels of leverage should be prohibited, however, very small leverage limits would create offshore regulatory arbitrage and would disadvantage Irish clients,

OANDA EUROPE LIMITED
TOWER 42, FLOOR 9A
25 OLD BROAD ST
LONDON EC2N 1HQ
UNITED KINGDOM

as the ability to trade at a higher leverage, for example, would be attractive and would encourage them to trade offshore.
It would be good for consumers to be more effectively warned about the dangers or lack of protection when dealing with overseas firms. Additionally, the proactive banning of incoming EEA firms who do not act in clients' best interests.

Finally, there are a number of UK based firms who with BREXIT in mind are looking for a EU jurisdiction in which to seek regulation and transfer their existing and future EU business – and thereby bring employment opportunities and revenue into Ireland. Seeking regulation in Ireland is the logical solution, given:- language, time zone, legal system, and regulatory similarities. Accordingly, some synergy between the UK and Irish approach to regulation of the CFD and Forex sector would aid this process.

2. **In relation to Option 2:**
   a) **Do you agree with the proposal to restrict leverage to 25:1 for retail clients trading CFDs? Please give reasons for your answer.**
   We absolutely agree that egregious levels of leverage should be prohibited, however, very small leverage limits would create offshore regulatory arbitrage and would disadvantage Irish clients, as the ability to trade at a higher leverage, for example, would be attractive and would encourage them to trade offshore.
   A margin limit will prevent firms competing on leverage and offering egregious levels of leverage which can lead firms to churn clients. Egregious levels of leverage (over 200:1), in conjunction with close out monitors, can cause a higher probability of loss on an account.
   But it is important that it is set at the right level. We feel that the right level would be 10:1 for single equities and default 50:1 (with appropriate clients being able to request 100:1) for all other instruments, to avoid over complexity for clients.

   b) **Do you agree with the proposal that retail clients trading CFDs should not be at risk of potentially limitless losses and that firms offering CFDs should be required to put in place negative balance protection on a per position basis? Please give reasons for your answer.**
   Yes.
   Clients should be assessed based on their understanding which is a combination of knowledge and trading experience. Firms should assess client understanding using the appropriateness assessment – with best practice enforced and inappropriate clients prohibited from trading. Retail clients with adequate albeit lower levels of understanding of the risks involved should be afforded extra protection when trading. This "extra protection" could take the form of a Controlled/ Limited Risk Account, where each position/ trade has a guaranteed stop, ensuring maximum losses are capped per position/ trade and cannot exceed deposits. Sensible minimum stop distances would need to be applied, and no overcharging for guaranteed stop protection.

OANDA EUROPE LIMITED
TOWER 42, FLOOR 9A
25 OLD BROAD ST
LONDON EC2N 1HQ
UNITED KINGDOM

Once clients have gained further understanding through a combination of knowledge and practical experience, they may no longer require the highest levels of protection previously afforded to them and should be able to opt for a 'standard' account type.

Retail clients want to benefit from using leverage, and leverage limits are not the best way to protect clients with lower understanding, and at the same time would diminish one of the key features and advantages which clients demand and so 'push' them offshore.
A Controlled/ Limited Risk Account is a better way to protect these clients than low leverage, as maximum losses are known and capped at the amount the client deposits for each trade and clients cannot lose all the funds on their account and forced closure of all trades as a result of one position/ trade being severally impacted by sudden unexpected adverse market movement.

c) **Do you agree with the proposal to prohibit all bonus promotions and trading incentives in relation to CFD client accounts? Please give reasons for your answer.**

Yes.
Absolutely - bonuses designed to encourage clients to start or re-start trading should be prohibited.

d) **Do you agree with the proposal to require firms offering CFDs to retail consumers to provide a standardised risk warning to clients disclosing the percentage of active retail CFD clients who suffered a loss of equity during the previous quarter and over the previous 12-month period? Please give reasons for your answer.**

Yes.
A standardised risk warning and quarterly disclosure of clients' p&l, would ensure that clients are consistently made aware of the high risk nature of CFDs, with a realistic view of the likelihood of profit. However to ensure consistency an industry wide clients' p&l figure would be better, and would ensure that all factors in calculating this figure are dealt with in a uniform manner across the industry. Additionally, consideration should be given to proportionate size of such text on mobile devices.

3. **Are there further measures which the Central Bank should consider as part of its analysis? Please give reasons for your answer.**

   Controlled/ Limited Risk Account, where each position/ trade has a guaranteed stop, ensuring maximum losses are capped per position/ trade and cannot exceed deposits.
   See above.

4. **In relation to the options outlined in this paper, are there any detrimental effects on investors or the markets or unintended consequences that you consider should be taken into account by the Central Bank? Please give reasons for your answer.**

   Pushing clients offshore and pushing away potential new investment in Ireland, by discouraging UK regulated firms from seeking authorisation in Ireland.

OANDA

OANDA EUROPE LIMITED
TOWER 42, FLOOR 9A
25 OLD BROAD ST
LONDON EC2N 1HQ
UNITED KINGDOM

5. What do you consider will be the likely effect of the options outlined in this paper on investors and market participants who may hold, use or benefit from CFDs? Please give reasons for your answer.

We are very supportive of measures to increase the protection of retail investors, however, strongly believe that they should be proportionate and tailored to this niche industry.

We consider that the following measures would provide the necessary level of consumer protection, whilst ensuring that Ireland remains attractive as an alternative location for firms to base their EU activities:

- Prohibit bonuses;
- Improve and increase disclosures;
- Implement a default 50:1 leverage limit which appropriate clients may opt to increase to 100:1; and
- Make Controlled/ Limited Risk accounts mandatory for those with poor and low levels of product understanding.

More extreme measures would push clients offshore, where they would suffer from far less consumer protection, and encourage firms to look at other countries for regulation to operate in the EU market.

Yours sincerely

Hazelle Anderson
Compliance Director & MLRO
OANDA Europe Limited