

FREQUENTLY-ASKED QUESTIONS

Guidelines on Contracts for Difference

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1. GENERAL

1.1 What is a contract for difference (CFD)?

A CFD is a leveraged over-the-counter derivatives contract that tracks the price movement of an underlying instrument. An investor who enters into such a contract with a CFD provider gains exposure to an underlying instrument whereby differences between the closing and the opening value will be settled through cash payments.

Unlike options or futures contracts, a CFD does not have an expiry date and an investor's position can be closed by making a 'reverse' trade with the CFD provider.

1.2 Would the offering of CFD in Malaysia by a CFD provider constitute a regulated activity?

A CFD falls under the definition of 'derivatives' under the *Capital Markets and Services Act 2007* (CMSA). Thus, any person who is in the business of offering CFD is carrying out the regulated activity of 'dealing in derivatives'. Please refer to Schedule 2 of the CMSA for the complete interpretation of the regulated activity of 'dealing in derivatives'.

2. PROVIDER

2.1 Who can offer CFD?

Entities who wish to offer CFD will be required to hold a Capital Markets Services Licence (CMSL) for dealing in derivatives or dealing in derivatives restricted to CFD, and comply with the requirements as specified in the *Licensing Handbook*.

Existing licensed intermediaries holding a CMSL for dealing in derivatives are allowed to offer CFD with prior notification to the SC. Other licensed intermediaries who wish to offer CFD must apply to the SC for variation of their existing CMSL to add on the required regulated activity.

2.2 How does one make an application for a licence?

A new applicant must complete the relevant forms as specified in the *Licensing Handbook* and submit the application to the SC's Authorisation and Licensing Department.

An application by existing licensed intermediaries for a licence variation to add on the regulated activity of dealing in derivatives must be made online to the SC via the Electronic Application system (EASy).

Detailed forms and application procedures are available on the SC website.

2.3 What are the financial requirements for a CMSL holder who wishes to offer CFD?

The financial requirements are set out in Paragraph 4.04 of the *Licensing Handbook*.

Once licensed, the CMSL holder must maintain at least the minimum financial requirement throughout the validity of its licence.

2.4 Are there any examination requirements relating to the offering of CFD?

In applying for a CMSL, the following key persons in the applicant must take the examinations as set out in the *Licensing Handbook*:

- Licensed director;
- Key management;
- Compliance officer; and
- CMSRL holders.

However, the SC may consider exempting the examination requirement if an applicant is able to demonstrate that he has met the relevant experience requirements as set out in the *Licensing Handbook*.

In respect of an existing CMSL holder for dealing in derivatives who wish to offer CFD, its licensed director, key management, compliance officer and CMSRL holders will not be required to re-sit the examinations.

2.5 Is there a specific arrangement on how a CFD provider is to maintain records for CFD trades with clients, and other trades?

The CFD provider can decide on the method of record keeping, provided that the records for CFD trades with clients and other trades can be produced when requested by the SC.

2.6 What does the statement 'transaction entered into between the CFD provider and the entity that provides the white label solutions must be separated, and must not involve the client's transaction' as stated in paragraph 4.11 of the Guidelines mean?

The CFD provider must always act as principal to the client and segregate its own assets from client's assets. Thus, any transactions entered into between the CFD provider and other entities must remain separated and recorded as such from those trades the CFD provider enter into with its clients.

2.7 Can a CFD provider (who is also a Trading Participant) place all its clients' assets into a single segregated account?

A separate account must be maintained for purposes of CFD trades with clients and should not be co-mingled with such clients' other trades e.g. futures contracts.

2.8 Are CFD providers required to contribute to the Capital Market Compensation Fund?

The Capital Market Compensation Fund provides an avenue for recourse for individual investors in the event a licensed holder fails to pay amounts owing to its investors. Thus, licensed intermediaries offering CFD will be required to contribute to the Capital Market Compensation Fund.

New licensed intermediaries will be required to contribute RM30,000 upon being licensed and thereafter RM5,000 on each licence anniversary date.

For an existing licensed intermediary who is a –

- (a) holder of a CMSL for dealing in securities or dealing in derivatives, it will be required to contribute RM5,000 on each licence anniversary date, in addition to the contribution currently made under its existing licence;
- (b) holder of a CMSL for other regulated activities, it will be required to contribute RM30,000 upon varying its licence and thereafter RM5,000 on each licence anniversary date, in addition to the contribution currently made under its existing licence.

2.9 How should periodic reports be submitted to the SC, as required under Chapter 4 of the Guidelines?

All periodic reports under Chapter 4 of the Guidelines shall be submitted electronically to the SC via the SC Common Reporting Platform (ComRep).

Please refer to the SC website for an Excel-based filing preparation tool and user manuals.

(Link: <https://www.sc.com.my/analytics/common-reporting-platform-xbrl>)

2.10 Is a CFD provider required to obtain approval from Bank Negara Malaysia (BNM)?

A CFD provider may require approval from BNM depending on their targeted investor types (i.e., resident and/or non-resident) and the currency of denomination of their CFD. CFD providers should ensure compliance to requirements under the Foreign Exchange Policy Notices issued by BNM.

3. MARKETING AND EDUCATION

3.1 In the educational programme, what other information should be covered aside from the areas set out in the Guidelines?

In addition to the education requirements as stipulated under paragraph 5.11 of the Guidelines, CFD providers should compare the features of CFD with other similar investment products such as futures, shares and warrants when explaining the features of the CFD product, in accordance with the *Guidelines on Advertising for Capital Market Products and Related Services*.

4. DISCLOSURE DOCUMENT AND FEES

4.1 What is the process to register a disclosure document and lodge a Product Highlights Sheet (PHS) for CFD?

The disclosure document is considered registered once it is deposited with the SC. The PHS is considered lodged when it is deposited with the SC. Both the disclosure document and the PHS are to be deposited together with relevant documentation in accordance with the procedure specified in Chapter 6 of the Guidelines.

Depositing the PHS and disclosure document to the SC does not mean that the SC has verified or endorsed the product or the CFD provider in any way. In addition, it is the responsibility of the CFD provider to ensure that the PHS and disclosure document are in full compliance with the Guidelines and all relevant guidelines issued by the SC before depositing the same with the SC.

4.2 Is the CFD provider required to prepare a different set of disclosure document and PHS for CFD based on different underlying instruments?

A CFD provider can choose to—

- (a) prepare a single set of disclosure document and PHS for CFD with different underlying instruments; or
- (b) prepare separate sets of disclosure document and PHS for each CFD with a different underlying instrument.

Should the CFD provider choose to prepare a single set of disclosure document and PHS as in (a) above, the CFD provider must ensure that specific and distinguishable information attributable to each particular type of underlying instrument (such as the specific features and risks associated with the different underlying instrument) is disclosed to enable the investor to make an informed decision.

4.3 What are the applicable fees for the lodgement of PHS and registration of disclosure document under this framework?

The relevant fees for the lodgement and registration of PHS and disclosure document respectively are provided under the *Capital Markets and Services (Fees) Regulations 2012*.

5. PRODUCT PARAMETERS

5.1 For a CFD where the underlying instrument is a share, what happens if there is a corporate exercise on the underlying share?

A corporate exercise involving dividend payment, bonus issue or rights issue may impact an investor's CFD holdings or obligations. The investor may be required to take further action arising from a corporate exercise.

For example, in the event of a rights issue, an investor holding a long CFD position may be given the opportunity to trade the CFD arising from the rights issue. Alternatively, an investor may be required to close his open CFD position before the ex-date of the entitlement for the rights issue.

A CFD Provider is required to explain the impact of a corporate exercise on an investor's CFD holdings or obligations in the disclosure document.

5.2 Shares are one of the permitted underlying instruments for CFD. Would a Depository Receipt be considered as a share?

No. 'Shares' refers to the issued share capital of a corporation and does not include Depository Receipts

5.3 Where the underlying instrument is a commodity derivative, they must be listed on Bursa Derivatives or a "Specified Exchange". What exchanges are considered as a "Specified Exchange"?

"Specified Exchange" has the same meaning given in the CMSA, where it is defined to mean a person or body that operates a derivatives market outside Malaysia and is specified as a Specified Exchange by Bursa Malaysia Derivatives Berhad.

Please refer to Bursa Malaysia Derivatives' Trading Participants' Directives and Guidance on Bursa Malaysia website for the list of Specified Exchanges.. (Link: https://www.bursamalaysia.com/regulation/derivatives/rules_of_bursa_malaysia_derivatives)

6. INVESTORS

6.1 Who can invest in a CFD offered by a CFD provider?

Currently, CFD can only be traded by sophisticated investors (i.e., any person who is determined to be a sophisticated investor under the *Guidelines on Categories of Sophisticated Investors*). CFD is a complex leveraged product, and investors are advised to fully understand the risks associated with CFD before trading them.

6.2 What information should investors expect to receive from a CFD provider?

Licensed intermediaries offering CFD are required to provide potential clients the Product Highlights Sheet and any other disclosure documents on the CFD. They are also required to obtain acknowledgement that the client has received the said documents and understand the risks associated with trading in CFD as stated in the risk statement.

6.3 What is the purpose of the risk statement?

The risk statement serves to ensure potential clients are aware and understand the risks involved in trading CFD.

6.4 What happens when there is a complaint or dispute regarding the investment?

A CFD provider must have in place processes for complaints handling or dispute resolution. Such information must also be made accessible to all investors.