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FINANCIAL MARKET PROFESSIONALS

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IOSCO CONSULTATION
Report on Retail OTC Leveraged Products

AMAFI comments

Association française des marchés financiers (AMAFI) is the trade organisation working at national, European and international levels to represent financial market participants in France. It mainly acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI has more than 140 members operating for their own account or for clients in equities, fixed-income products and derivatives. Nearly one-third of its members are subsidiaries or branches of non-French institutions.

AMAFI welcomes the opportunity to comment on IOSCO proposed policy measures to protect investor of OTC leveraged products as detailed in the Report titled "*Retail OTC Leveraged Products*" ("the Report").

For the avoidance of any doubt, AMAFI wishes to first stress out that it fully supports the objective to protect the less sophisticated clients from presumably not fully compliant entities or people that market and or sell such highly risky and speculative products to them. When many retail investors suffer from great losses, it harms confidence and trust in all investments in financial markets. It is detrimental at a time when markets have to play a greater role in financing the economy, especially for markets participants like AMAFI members. Therefore, AMAFI does support the objective of policy measures to protect retail investors in this particular context.

General Remarks

Above all, AMAFI is indeed aware that there is a real and serious issue in marketing these highly risky products to inexperienced retail investors and approves the idea to propose an effective solution especially at an international level.

AMAFI fully endorses IOSCO's acknowledgement that cross-border marketing or sale of those products notably by unlicensed entities is one of the main problems, if not *the* main problem. It seems to us as well that the CFDs and Binary Options market is by far dominated by non-regulated trading platforms which illegally offer their services to retail investors on a cross-border basis, in the absence of any authorisation and supervision whatsoever. In that perspective, actions taken in France, notably by providing request power to the AMF against entities that provide investment services online without authorization and fines for advertising or marketing intermediaries that would not comply with marketing restrictions, is worth mentioning.

In that perspective, AMAFI supports as well measure 1 of the IOSCO Report as a requirement for firms offering the relevant products to retail investors to be licensed and regardless of where the end-investor is located. On this point, we believe however that such measure, to be effective, should be completed with a commitment from national authorities of relevant IOSCO members' jurisdictions to closely supervise and carry out enforcement missions even on the cross-border activities carried out by entities established in their respective territories.

Once again, AMAFI does not question the reality of the issue and the need to resolve it - or at least reduce it - as efficiently as possible. Nevertheless, it is important to ensure that any policy measure does not call into question other types of products that are not CFDs, rolling spot forex contracts or binary options. Indeed, some other financial instruments could be seen as OTC leveraged product and be rightfully sold to retail investors since those other instruments do not present the same risks and mechanisms of CFDs, rolling spot forex contracts or binary options. In that context, AMAFI would like to insist on the necessity to ensure that definitions of the targeted products are sufficiently precise and well designed to avoid any risk to capture, directly or indirectly any other financial instruments. It would certainly help if IOSCO would add in the Report that those targeted products specifically exclude any other financial instruments such as securities, structured securities, investment funds and all derivatives financial instruments that are not the "relevant products" as targeted in the Report.

COMMENTS ON PROPOSED POLICY MEASURES

Measure 1: Requirement for firms offering the relevant products to retail investors to be licensed

As mentioned in the "General remarks", AMAFI fully supports this proposal including for entities which plan to market and/or sale those products "*regardless of where the end-investor is located*". We would suggest adding that IOSCO members may wish to consider appropriate enforcement approaches that can be adopted alongside this measure and that can help to mitigate the risk of unlicensed entities illegally offering these products on a cross-border basis.

Measure 2: Requirement for firms to incorporate a prescribed minimum margin requirement for retail investor

AMAFI agrees with the fact that any measure of this kind should indeed take into account the sophistication and experience of the client. All retail clients do not have the same level of sophistication or experience. Furthermore, they do not have the same risk tolerance or the same capacity (or willingness) to bear losses. Such criteria should as well be taken into account. In that context, please see our comment below on Measure 8.

Measure 3: Negative balance protection

AMAFI is not opposed to the idea to limit potential losses of retail clients to 100% of the deposited or invested funds since the limit is set at 100% and not lower. Indeed, and more generally speaking, AMAFI wonders about the opportunity to take policy measure that prevents a client, even a retail one, to bear losses which could be less than his or her initial investment. We would like to outline that a lot of products may potentially turn into losses of initial amount or capital invested by the client. However, performance – especially in the long run – often equals with risks. Deciding for retail investors that they should not take more than *i.e.* X% of loss would prohibit them from having access to high performing products. Of course, depending of his profile, any retail investor should not be considered compatible with any product – especially if it is a highly risky product. But it seems difficult to set a pre determined limit of the losses he should be willing to take on one product without taking into account his whole financial situation or portfolio and his own decision or wishes in that matter.

Measure 4: Prescribed disclosures setting out the total costs of the product

AMAFI does not have any remark on this proposed measure as – as mentioned by IOSCO – MiFID 2 already requires this type of disclosure for EU investment firms.

<u>Measure 5</u>: Disclosure of investor profit and loss ratios

AMAFI supports the idea of a risk warning but to oblige to calculate those statistics from their own data might be difficult to implement or at least with sufficient legal security. Moreover, since the methodologies for calculating those statistics cannot be fully harmonized, it will be impossible for retail investors to compare the results and, therefore call into question the positive effect of such measure. That's why, instead of requiring to disclose profit and loss ratios, we would very much favour a standardised narrative instead of "*set out specific instructions to firms for calculating the profit-loss ratio*", based on the example of comprehensive alert inspired from EU PRIIPs Regulation added in the marketing communication of the product –, such as "*be aware that this product is very risky and that you can lose a lot of money*", much simpler and less costly to implement and should have the exact same benefit on investors.

<u>Measure 6</u>: Adoption of fair pricing methodology and use of externally verifiable price sources

AMAFI is more mixed on this proposed policy measure. On one hand, AMAFI supports the principle that investment firms should have a fair pricing methodology. On the other hand, one can anticipate that depending on the relevant jurisdiction, the notion of "fair" will not necessarily be the same, which again question the appropriateness of that measure. Also, AMAFI is not in favour to disclose this methodology to retail investor as those investors does not have the necessary skills to understand it. We think that the cost disclosure as proposed in Measure 5 is more appropriate for the benefit of investors.

<u>Measure 7</u>: Enhanced disclosures about order execution quality

AMAFI does not have any remark on this proposed measure as – as mentioned by IOSCO – MiFID 2 already requires this disclosure for EU investment entities.

<u>Measure 8:</u> A ban or restrictions on certain forms of marketing and sales techniques for the relevant products

AMAFI supports this proposed policy measure as it correctly and effectively address the issue at stake like explained in our general remarks.

AMAFI also welcomes IOSCO's position which considers that in European Union MiFID 2 Products Governance allows, for each product, to target investor that are compatible with the characteristics of it. Indeed, Products Governance requirements have taken into consideration the fact that under the terminology "retail investors" there is a great granularity in this range of category of investors: those not informed ("basic investors") or wanting to take very little capital risk on the one hand and those very sophisticated ("advanced investors"), able of bear losses and wanting diversified and performing portfolios on the other hand. However, the measures developed here place all retail investors on the same level without making any distinction, for example with regard to the leverage limits. Such regulatory approach is relevant as well for measure 9 in our view.

<u>Measure 9</u>: A ban or restriction on the sale and/or distribution of the relevant products by intermediaries

AMAFI may consider such measure but wonders if the issue at stake could be fully explained by a lack of bans of those products rather than a lack of supervision of the current regulatory environment?

In anyways, a ban could only be effective if there is a guarantee that everyone everywhere will comply with it. It can always raise the risk of unlicensed entities offering the product illegally. It is therefore necessary to add to those measures a commitment from national authorities of relevant IOSCO members' jurisdictions to closely supervise and carry out enforcement missions even on the cross-border activities.