

Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)  
Graurheindorfer Str. 108  
53117 Bonn  
Deutschland/Germany

VIA E-MAIL

Amsterdam, 25 March 2022

**Subject: FIA EPTA response on the BaFin Consultation on a planned General Administrative Act regarding Futures with additional payment obligations**

The FIA European Principal Traders Association (FIA EPTA) appreciates the opportunity to respond and feed into the BaFin's consultation on a planned General Administrative Act regarding Futures with additional payment obligations<sup>1</sup>.

FIA EPTA represents 26 independent European Principal Trading Firms (PTFs) which deal on own account, using their own money for their own risk, to provide liquidity and immediate risk transfer in exchange-traded and centrally-cleared markets for a wide range of financial instruments, including shares, options, futures, bonds and ETFs. FIA EPTA's members are authorised as MiFID II investment firms in the Czech Republic, Germany, Ireland, The Netherlands, and the UK.

Our members are independent market makers and providers of liquidity and risk transfer on trading venues and to end-investors across Europe. Market making and liquidity provision (also referred to as principal trading or dealing on own account) is a distinct activity that is undertaken by non-systemic investment firms rather than banks, in a highly dispersed and varied ecosystem of independent Principal Trading Firms. These firms operate in an innovative and competitive fashion leading to a vibrant, dynamic and diverse ecosystem which massively reduces interconnectedness and increases substitutability. This fundamentally reduces systemic risk whilst improving market quality and lowering costs for retail and institutional investors alike.

FIA EPTA members consider that the current proposal by BaFin will create a restriction on the marketing, distribution and sale of futures to retail clients that is misplaced and does not benefit retail end-investors.

---

<sup>1</sup> BaFin Consultation on a planned General Administrative Act regarding Futures with additional payment obligations:  
[https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Aufsichtsrecht/Verfuegung/vf\\_220203\\_anhoerung\\_all\\_gvfg\\_Futures\\_en.html](https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Aufsichtsrecht/Verfuegung/vf_220203_anhoerung_all_gvfg_Futures_en.html).

Futures are CCP-cleared products which are traded on regulated markets in a transparent manner, where there are high levels of competition to ensure prices which are fair and reflective of all available market information.

FIA EPTA members would like to emphasise that we value and support the objective by BaFin to prioritise investor protection. We agree that it is of the utmost importance to ensure that financial markets are transparent and safe for retail investors. However, as said, we do not consider that banning listed futures trading for retail investors, as now proposed by BaFin, will contribute to this objective, and in our view rather the opposite.

The review undertaken by BaFin seems to predominantly focus on the speculative use of futures and does not take into account that futures are often used as “insurance products”, to reduce risk within an investor’s portfolio by hedging certain investment exposures. FIA EPTA members believe that retail investors should have a clear understanding of the risks and probabilities related to these types of products. Improvements should be made on the transparency, information and education around these products without shielding retail investors entirely from these kinds of products.

The key aspect which BaFin seems to target in the proposal is the potential for excessive leverage for retail traders which could cause financial ruin. We note, however, that a restriction of futures trading for retail investors does not remove this possibility. These risks remain present in other products where leverage and margin are used to trade financial products (e.g., warrants and CFDs which have much less, or no, useful characteristics as risk management products and which also are not centrally cleared and lack transparency). Simply targeting futures does not address the more fundamental point whether the risk present in an individual investor's portfolio is beyond their means.

In this regard, FIA EPTA members observe, that trading in the structured product markets is materially much more detrimental to retail investors. The closed market structure in these products is causing retail investors to lose millions of Euros, as evidenced in FIA EPTA’s research paper<sup>2</sup>: *Higher cost, higher risk, the impact of the closed market structure on the European warrants market: price analysis and recommendations*. This research, based on quantitative market data analysis, found that retail investors, who trade extensively on the warrants markets, are paying too much and face increased risk due to the lack of transparency and central clearing which characterise these markets.

The research by FIA EPTA does not stand alone, there have been a number of studies that came to a similar conclusion. Research by Oliver Entrop, Michael McKenzie, et al. showed how retail investors are losing when trading on this market as the issuing banks charge excessive premiums given the closed market structure and lack of competition.<sup>3</sup>

---

<sup>2</sup> FIA EPTA, *Higher cost, higher risk, the impact of the closed market structure on the European warrants market: price analysis and recommendations*, June 2020, <https://www.fia.org/epta/resources/higher-cost-higher-risk>.

<sup>3</sup> Entrop, O., McKenzie, M., Wilkens, M. et al. The performance of individual investors in structured financial products. *Rev Quant Finan Acc* 46, 569–604 (2016). <https://doi.org/10.1007/s11156-014-0479-8>.

FIA EPTA members believe that this overpricing as well as the lack of transparency and the exposure to counterparty risk due to the absence of central clearing in the warrants markets cause significantly more risk to retail investor protection than listed futures. We would encourage BaFin, therefore, to reconsider its current proposal and to refocus its efforts on product segments where investor protection risk (as well as the rationale for product intervention) is significantly greater.

We would welcome the opportunity to speak directly with BaFin on the issues raised in our response or to provide further background as required.

Kind regards,

**/s/ Mark Spanbroek**

Mark Spanbroek  
Chairman  
FIA European Principal Traders Association (FIA EPTA)