Before the Arbiter for Financial Services

Case ASF 081/2025

PB

('the Complainant')

vs

IFH Capital Trader Limited

(C 63585) ('IFH Capital',

'the Company', 'Tradit' or

'the Service Provider')

Sitting of 18 August 2025

The Arbiter,

Having seen the **Complaint** made against *IFH Capital Trader Limited* ('IFH' or 'the Service Provider') relating to the Complainant's online trading investment account held with IFH.

The Complaint relates to the money the Complainant claimed he lost through the trading undertaken on the online trading platform of the Service Provider, which platform he claimed had high rollover costs and enabled the loss of his deposited money with ease.

He also questioned the regulatory status of the Company, his contractual relationship, whether his money was actually invested, and any arrangements between the Company and the educational platform which led him to start trading and lose money which seemed a real scam.

The Complaint[1]

The Complainant explained that he invested his money in the *Tradit* platform, which is a platform connected to IFH Capital. The trades were done through Edutrading, a company that provides online trading courses.[2, 3]

He noted that things went well initially, as he made some profits on his investments, with even an exorbitant one of almost Eur 4,000 (involving an equity position on Solar Edge Technologies). The Complainant explained that after such profits, a consultant made him open a position on the Nasdaq. He noted that within a few days, this position turned significantly negative, which he tried to make up for by adding other funds and open other positions. The negative position continued. He noted that within around four months, he deposited Eur 13,000 in his account.

The Complainant explained that at the beginning of April (2025), the positions that were due to roll over (for around Eur 4,000), coupled with the significant negative open positions, led to the closure of his positions with him losing all the money he had deposited and invested.

He questioned whether IFH Capital is actually authorised and regulated to operate.

The Complainant explained that he contacted Consob about the matter who informed him that this was a scam. He pointed out that IFH Capital is however listed on Consob's website (as an authorised investment firm).[4]

The Complainant queried whether his money was actually invested in the stock market and whether there was some sort of collaboration between Edutrading and IFH Capital that make people believe they are investing money when they might be dividing the invested capital between them.

He pointed out that he did not sign any contract with the Company but only sent a scanned copy of his passport.

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[1] Complaint Form on Page (P). 1 - 5 with extensive supporting documentation on P. 6 - 201
[2] https://edutrading.com/it/
[3] https://www.mytradit.com
[4] https://www.consob.it/web/area-pubblica/imprese-investimento-senza-succursale

The Complainant held the Service Provider responsible for the high rollover costs charged, for the ease with which he ended up losing the deposited money and given the apparent scam that lured him with the apparent profits.

Remedy requested

The Complainant requested the return of the amount deposited with the Company of Eur 13,000. He provided the following breakdown of deposits made with the Company as listed in Table A below:[5]

Table A

Date	***Amount***
29/11/2024	€200
18/12/2024	€500
18/12/2024	€300
06/02/2025	€500
12/02/2025	€500
12/02/2025	€500
17/02/2025	€1,000
17/02/2025	€500
24/02/2025	€2,000
25/02/2025	€2,000
28/02/2025	€1,000
03/03/2025	€1,000
03/03/2025	€1,000
03/03/2025	€1,000
17/03/2025	€1,000
Total	**€13,000**

[5] P. 3

Having considered in its entirety the Service Provider's reply,[6]

Where, in essence, the Service Provider explained and submitted the following:

Regulatory status

- That it is a private limited liability company incorporated under the laws of Malta, bearing registration number C 63585. The Company operates under the trading name *Tradit* and delivers its services via its online trading platform, *www.mytradit.com*.

  The Company is fully authorised and regulated by the Malta Financial Services Authority (MFSA) as a Category 2 Investment Services Licence Holder (Licence Code: GMCP), pursuant to the Investment Services Act (Chapter 370 of the Laws of Malta). This regulatory status authorises the Company to provide specified investment services across the European Economic Area (EEA) under the passporting regime established by MiFID II (Directive 2014/65/EU).

- That it is duly authorised to provide cross-border investment services in Italy, and its passporting rights are formally notified and approved by the MFSA; and publicly verifiable through the official registers of both the MFSA and the Commissione Nazionale per le Società e la Borsa (CONSOB) as per Exhibits A and B to its reply.[7]

- That with reference to the claimed feedback received by the Complainant from CONSOB, it emphasized that the Company is authorised to provide its services in Italy on a cross-border basis, and there is no restriction or suspension of its passporting rights. Any such suggestion to the contrary is incorrect and not supported by the official registers of either the MFSA or CONSOB.

  It noted that indeed, the Complainant himself acknowledges that the company is present on the CONSOB register of passported financial services firms.

[6] P. 209 - 216
[7] P. 218 - 220

Business model and client funds

- That with respect to the Complainant's query whether his money was invested in the stock market, the Company clarified that it operates exclusively as a Straight Through Processing ('STP') Contracts for Difference ('CFD') broker. The Service Provider noted that it is not a stockbroker, does not engage in proprietary trading, and does not invest client funds directly in underlying assets such as equities or shares.

  It explained that under this model:

  - The Company does not operate a dealing desk and does not take positions against its clients.
  - All client orders are routed to regulated third-party liquidity providers, who execute CFD transactions on an over-the-counter (OTC) basis.
  - CFDs are derivative instruments that track the price movements of underlying assets (e.g., equities, Forex, commodities), but do not involve the actual purchase or ownership of those underlying assets.

  It clarified that any client exposure to stock price movements through their platform was accordingly via CFD contracts, not through the purchase of actual shares or securities on an exchange.

  In addition, it was further pointed out that:

  - The Company does not provide portfolio management or discretionary account services.
  - The Company does not provide investment advice or recommendations.
  - Client funds are not invested on their behalf in any actual stock market or financial instrument, nor managed with the intention to generate returns on their capital.

  It further explained that the core elements of its business model are clearly defined and disclosed in the Service Agreement accepted by each client during the onboarding process. Relevant provisions include: Section (7.b) which defines the scope of services to include the execution of CFD trades, foreign exchange services, and safekeeping/collateral management.

Section (7.f), in turn, confirms that the Company does not provide investment advice, and that clients are solely responsible for their own trading decisions.

The Company further submitted that clients are advised and contractually obligated to carefully read all governing legal documentation prior to initiating services. This includes the Service Agreement and accompanying legal notices which collectively govern the relationship and clarify the scope and limitations of the services provided. It further includes KIDs, which clearly outline the nature of CFDs, how they operate in easy-to-understand terms as required by regulation, the high-risk nature of the instruments, and the costs and charges associated with the trading activity on the account.

The Company further submitted that the Complainant's engagement with the platform and acceptance of the Service Agreement constitute an explicit acknowledgement and contractual agreement to these terms, including having read and understood the relevant KIDs as per Exhibit C of its reply.[8]

Client Onboarding, Acceptance of Legal Agreements & Risk Disclosures

- IFH Capital submitted that the Complainant's assertion that no contractual relationship was established with the Company where he stated, *'I did not sign any contract but only sent a scanned copy of my passport'*, is factually and legally incorrect.

  It pointed out that comprehensive onboarding records maintained by the Company confirm that the Complainant explicitly accepted all applicable legal agreements and disclosures prior to being granted access to the trading platform. The Company further noted that as a licensed investment services provider regulated by MFSA, it implements a stringent Know Your Customer (KYC) and client onboarding framework in line with:

  - the Investment Services Act (Cap. 370, Laws of Malta),
  - the EU Anti-Money Laundering Directive (AMLD), and

[8] P. 221 - 291

- the Markets in Financial Instruments Directive II (MiFID II).

It further submitted that the onboarding process is structured to ensure full legal compliance and informed consent. Specifically, the Complainant initiated registration on the Company's platform on 29 November 2024 and completed the following actions:

- Uploaded a copy of a valid government-issued passport for identity verification;
- Submitted proof of residence;
- Provided documentation confirming ownership of the payment instrument used (card);
- Electronically accepted, via system timestamp and checkbox authentication, the following legally binding agreements and disclosures: Client Service Agreement; General Terms & Conditions; Order Execution Policy; Conflicts of Interest Policy; Client Categorization Policy; Risk Disclosure Statement; Investor Compensation Scheme Notice; Privacy Policy; KIDs CFD.
- The Company explained that this acceptance mechanism complies with Regulation (EU) No 910/2014 (eIDAS), which governs the legal effect of electronic signatures and electronic contracts within the European Union. Each acceptance is timestamped and recorded in the Company's internal systems, creating a verifiable audit trail. This effectively constitutes signature of the contract as per Exhibit D to its reply enclosing Electronic Signature Logs.[9]

It submitted that the documentation which the Complainant provided is, furthermore, more than simply a copy of his passport and clearly indicated an understanding of the registration process. Copies of all documentation submitted (with credit card details blacked out) were submitted as Exhibit E to its reply.[10]

[9] P. 292
[10] P. 293

- It further submitted that at no stage was the Complainant permitted to access trading functionality until all required KYC documentation was verified and the contractual agreements were formally accepted. This onboarding sequence is not only a matter of internal policy, but a regulatory obligation under applicable EU and Maltese law.

  Moreover, all agreements remained available to the Complainant at all times through the secure client portal. The Complainant had ample opportunity to download, review, and seek independent advice on the terms and conditions prior to initiating any trading activity.

Risk Awareness and Educational Measures

- The Company noted that following successful onboarding, the Complainant was introduced to the platform environment and the trading of Contracts for Difference (CFDs) through a controlled risk-mitigation phase. Specifically, the Company offered the Complainant up to five (5) fully protected educational trading positions, which are designed to:

  - Facilitate hands-on familiarity with the trading platform;
  - Demonstrate order placement, execution, and closure mechanisms;
  - Reinforce the high-risk nature of CFD trading through practical exposure without financial loss.

  The Company explained that the Complainant actively engaged with and completed this introductory phase, thereby demonstrating operational understanding of the platform and the derivative nature of the financial instruments offered as per Exhibit F to its reply which enclosed the Educational Trading Records).[11]

Absence of Affiliation with Third-Party Entities or Unauthorised Individuals

- Reference was made to the Complainant's allegation that a third-party entity, *Edutrading*, which purportedly offers online trading courses, was involved in facilitating or influencing investment activity through the

[11] P. 299

Company's trading platform (as asserted in both the first and fifth paragraph of his complaint).

- It was noted that the Complainant further claims that an individual referred to as *"Vittorio"* acted as a consultant and may have participated in the execution of trading decisions on the Complainant's behalf - as the Complainant stated that *'[…] the "consultant", a certain Vittorio made me open a position on the Nasdaq'*).[12]

  The Company unequivocally denies any form of affiliation, partnership, collaboration, or commercial relationship - whether formal or informal - with *Edutrading*, *'Vittorio'*, or any other unregulated trading education providers or unauthorised individuals. It submitted that it has no familiarity with a company called *Edutrading* and does not employ, nor has it ever employed or been associated with, any individuals by the name of *Vittorio*.

  It explained that its business model has already been amply described, and reiterated that it provides solely an execution-only investment service via its trading platform in full compliance with the Markets in Financial Instruments Directive II (MiFID II). The Company submitted that, in strict accordance with its regulatory obligations and license conditions:

  - It does not provide or endorse investment advice, portfolio management, or educational or training services;
  - It does not enter into referral or commission-sharing arrangements with third-party educators or consultants;
  - It does not authorise any third party to access, manage, or trade on client accounts;
  - It does not permit any form of external account handling or delegated trading.

  The Service Provider further explained that each client is issued a unique set of secure login credentials which are strictly personal and non-transferable. Client access to the platform is governed by robust authentication protocols, and trading functionality is limited to actions

[12] P. 212

initiated solely by the authenticated account holder. It further explained that its access logs conclusively demonstrate that all trading activity on the Complainant's account was executed through verified login sessions, with no evidence of third-party access or unauthorised intervention. Clients are at their discretion to provide their access details to their third-party advisors, however, this is not within its control or responsibility, nor would the Company be aware of any such third-party access granted by clients by sharing their personal login details.

It also explained that its customer service function is expressly limited to onboarding support, Know Your Customer (KYC) and Anti-Money Laundering (AML) verification, and general technical assistance. No employee or representative of the Company is authorised to provide investment recommendations, trading advice, or engage in the execution of trades on behalf of clients. All customer service calls are recorded and monitored, and following a thorough review of all calls with the Complainant, it confirms that no advice of any nature was ever given to the Complainant by any of its staff members.

The Service Provider further submitted that any engagement between the Complainant and third-party service providers—including, but not limited to, *Edutrading* - was undertaken solely at the Complainant's discretion and falls entirely outside the scope, control, and responsibility of the Company. The Company rejects all liability for any representations, advice, or conduct attributable to third parties not expressly authorized.

Client Deposits, Withdrawals, and Trading Activity

- As to the Complainant's concerns regarding the origin of trading losses and the nature of activity on his account, the Company provided the following detailed summary based on authenticated internal records and platform data for the Complainant's Account Number as per Exhibit G to its reply: [13]
  - Deposits: €13,000 across 15 transactions from 29.11.2024 to 17.03.2025.
  - Withdrawals: €300 on 17.02.2025.

[13] P. 300

Trading Summary

- • Total Number of Trades Executed: 50
    - Total Net Result: (€9,694.80) (Net Loss)[14]
    - Number of Profitable Trades: 26 (52%)
    - Number of Unprofitable Trades: 24 (48%)
    - Average Profit/Loss per Trade: (€193.90)

Instruments Traded

- The Complainant executed trades across a diversified portfolio, including:
    - Currency Pairs: AUDCHF, AUDCAD, AUDJPY, CADJPY, EURUSD
    - Commodities: GOLD, SILVER, COCOA, CL
    - Equity Indices: NSDQ, SP
    - Equities: SolarEdge Technologies Inc., BITA USTech
    - Volatility Indices: VIX

    The total notional volume traded across all instruments amounted to approximately 853,277.57 units.

Notable Profitable Trades

- The account exhibited several materially profitable trades during the period, including:
    - SolarEdge Technologies Inc.: +€3,929.73 (19 February 2025)
    - CL 22/04/2025 (Crude Oil): +€1,932.45 (20 March 2025)
    - Aurum10ct: +€3,924.79 (21 March 2025)

[14] In its reply, the Company indicated various figures as denominated in $. The correct denomination is in Euros, €. The figures are updated and reflected accordingly in their correct denomination.

Significant Losing Trades

- The account also recorded certain substantial losses, most notably:
  - NSDQ 20/06/2025 (Nasdaq Index): -€12,939.99 (2 April 2025)
  - Aurum10ct: -€6,799.56 (2 April 2025)
  - SolarEdge Technologies Inc.: -€1,920.49 (2 April 2025)

Observations and Analytical Context

- The Company explained that the Complainant's trading activity reflects a balanced and engaged pattern typical of self-directed CFD trading. With over half of the trades resulting in profit (52%), the performance indicates active strategic participation rather than indiscriminate or passively loss-generating behaviour.

  The overall net loss of €9,694.80 is primarily attributable to a limited number of high-exposure losing trades, particularly towards the latter part of the trading period. The Company noted that this outcome is consistent with the nature of leveraged CFD instruments, where individual trade outcomes can vary significantly based on market conditions and the size of open positions. It pointed out that it is essential to underscore that the account also generated notable profits on several trades, reflecting a dynamic trading strategy that, while exposed to risk, did yield positive outcomes at various stages. These profits substantiate the absence of systemic platform errors or irregularities.

  As an execution-only STP broker, the Company does not intervene in client trading decisions or influence market outcomes. All client orders are routed directly to regulated liquidity providers, ensuring transparent, conflict-free execution in accordance with its regulatory obligations under MiFID II.

Transparent Pricing and Fees

- With reference to the Complainant's allegation that excessive rollover (swap) fees contributed materially to the losses incurred on the trading account, it confirmed that all the fees and charges applied to the

Complainant's account were transparent, contractually disclosed, and consistent with prevailing industry standards.

The Company submitted that the Complainant was aware of the costs and charges by virtue of executing the client agreement, including confirmation of having read and understood the KIDs which clearly outlined costs and charges as well as the trading fee details.

It further submitted that it maintains a clear and publicly available fee structure, which encompasses:

- Bid-ask spreads;
- Overnight rollover (swap) fees;
- Currency Conversion Fee
- Inactivity charges (where applicable); and
- Leverage parameters and margin requirements.

The Company noted that this information is published and regularly updated on its official website to reflect changes in market conditions and regulatory developments. The full schedule of trading fees is accessible at all times via the following link: *https://www.mytradit.com/trading-conditions*.

It submitted that clients are contractually bound by the Client Service Agreement and Terms & Conditions which explicitly require them to review the applicable trading conditions and fee schedules prior to executing trades.

It further noted that these agreements, accepted electronically during the onboarding process, clearly outline the Complainant's obligation to remain informed of current costs associated with trading. All fees imposed on the Complainant's account were:

- Displayed transparently on the trading platform prior to execution;
- Applied automatically based on real-time market data, position size, and instrument type;

- In full alignment with standard pricing models for Contracts for Difference (CFDs) and leveraged foreign exchange products.

The Company also pointed out that it does not impose any hidden fees, undisclosed commissions or non-contractual charges. All costs are derived from pre-defined parameters and are applied equally to all clients based on objective criteria.

It submitted that the Complainant's trading losses resulted from adverse market movements and personal trading decisions, not from any impropriety in the application of fees. All costs incurred were fair, fully disclosed, and implemented in accordance with contractual terms and standard market practices.

Allegations of Collusion

- Reference was made to paragraph 5 of the complaint, where the Complainant alleges collusion between the Company and *'Edutrading'*, and where he suggested that the Company *'make[s] people believe they are investing money while in reality [they are] dividing up the invested money'*.[15] The Service Provider noted that as amply expressed in its submissions, this is categorically untrue and strongly opposes any such allegations.

Service Provider's concluding remarks

- The Company submitted that it has acted fully in compliance with all applicable regulatory requirements and contractual obligations throughout its engagement with the Complainant. It reiterated that it maintains a clear and transparent business model as an execution-only STP CFD broker, operating under the strict oversight of the MFSA and in line with MiFID II standards.

  The Service Provider further submitted that it demonstrated that there is no affiliation or commercial relationship with any third-party entities such as *Edutrading* or any individual named *'Vittorio'*, and that all trading

[15] P. 216

decisions on the Complainant's account were made exclusively by the Complainant using secure, personal login credentials.

It maintained that its records of communication confirm that the Complainant's concerns regarding *Edutrading* and the fees charged - which the Complainant considered excessive - were addressed promptly and transparently through formal correspondence.

Furthermore, all fees and charges applied to the Complainant's account are consistent with industry standards, fully disclosed prior to trading, and supported by clear contractual agreements. The trading losses incurred reflect the inherent risks of leveraged CFD trading and the Complainant's own trading choices, rather than any wrongdoing, irregularity, or unauthorised conduct by the Company.

Based on the foregoing and evidence provided, the Company finds no legal or contractual basis to entertain any request for refund or compensation in this matter.

The Company remarked that it remains committed to upholding the highest standards of regulatory compliance, transparency, and client protection, and trusts that its response clarifies the matters raised in the complaint.

The Merits of the Case

The Arbiter will decide the Complaint by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case.[16]

The Arbiter is considering all pleas raised relating to the merits of the case together to avoid repetition and to expedite the decision as he is obliged to do in terms of Chapter 555[17] which stipulates that he should deal with complaints in '*an economical and expeditious manner*'.

[16] Cap. 555, Art. 19(3)(b)
[17] Art. 19(3)(d)

Background

Background about the Complainant

The Complainant, an Italian national born in May 1988, is a retail client based in Italy.[18]

During the hearing of 23 June 2025, an official of the Service Provider, confirmed *inter alia* that *'he was categorised as retail'*.[19]

The monthly salary of the Complainant deposited into his account with Postepay (during the period January to March 2025) was in the range of Eur 1,221 to Eur 1,752 monthly as emerging from the official statement of Postepay.[20] Further details regarding the Complainant's profile and background are considered further on in this decision.

Background about IFH Capital Trader Limited and the services offered

The Company is an investment firm based in Malta and licensed (since June 2014), by the Malta Financial Services Authority ('MFSA') to provide investment services to clients.[21,22] The Company is also authorised by MFSA to passport its investment services activities to a number of EU countries, including Italy, under the EU Freedom of Services regime under MiFID.[23]

The investment services for which the Company is licensed include the service of *'Reception and Transmission of Orders'* for retail clients in relation to a range of investment instruments including Contract for Difference ('CFDs').[24]

As outlined in the Investment Services Agreement dated September 2024 issued by *Tradit* (this being the *'trade name of IFH Capital Trader Ltd'*),[25] the services offered by the Company under the said agreement include:

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[18] P. 1 & 293
[19] P. 313
[20] P. 122 - 127
[21] *IFH Capital Trader Limited* (originally named as '*Gamma Webtrader Ltd'* and then *'Gamma Capital Trader Ltd'*), was incorporated in Malta in January 2014 with registration number C 63585 as per the records held with the Malta Business Registry (MBR) - https://register.mbr.mt/app/query/search_for_company
[22] https://www.mfsa.mt/financial-services-register/
[23] *Ibid.*
[24] *Ibid.*
[25] P. 131

> *'Reception and Transmission and Execution of Orders, via the Platform, in the Financial Instruments of CFDs (on various Underlying Assets such as Spot Forex, equities, precious metals, and any other Underlying Assets available by the Company from time to time) and/or equities'*.[26]

A Contract for Difference (CFDs) is described as *'an arrangement made in financial derivatives trading where the differences in the settlement between the open and closing trade prices are cash-settled. There's no delivery of physical goods or securities with CFDs … CFDs are essentially used by investors to make price bets as to whether the price of the underlying asset or security will rise or fall.'*[27]

They are specific investment instruments that carry high risk as described in more detail in the next section.

Nature of investment instruments traded – Contracts for Differences ('CFDs')

Appendix V, *'Risk Disclosure and Warnings Notice'* of the Company's Investment Services Agreement describes CFDs as follows:

> *'CFDs are complex instruments and come with a high risk of losing money rapidly due to leverage.*
>
> ***Between 74-89% of retail investor accounts lose money when trading with CFDs.***
>
> *You should consider whether you understand how CFDs work, and whether you can afford to take the high risk of losing your money'*.[28]

A similar disclaimer and risk warning is also prominently posted on the Company's webpage at www.icapitaltrader.com which states as follows:

> ***'Disclaimer and Risk Warning***
>
> *"Contract for Differences" (CFDs) are complex financial products that are traded with leverage and carry a high level of risk which can result in the loss of your invested capital.* ***Between 74-89% of retail investor accounts lose money when trading with CFDs.*** *As a result, CFDs may not be suitable*

[26] P. 144 & 234
[27] https://www.investopedia.com/terms/c/contractfordifferences.asp
[28] P. 199 & 289

for all investors and you should ensure that you understand the risks involved and seek independent financial advice, if necessary. You should not risk more than you are prepared to lose. Past performance of CFDs is not a reliable indicator of future results. Future forecasts do not constitute a reliable indicator of future performance. IFH Capital Trader Ltd operates the brand Tradit (www.mytradit.com).' [29]

Various Key Information Documents outlining the features of the CFDs are also posted on the Company's *'brand website'* at www.mytradit.com, which further outline the risks and particular features of these products.[30]

Deposits to, Withdrawals from and Trades undertaken

The deposits made to the Complainant's trading account held with the Service Provider over the period November 2024 to March 2025, amount to Eur 13,000 as summarised in Table A above. The payments listed in the said table correspond with the payments made by the Complainant to IFH Capital as reflected in the official statement issued from the Complainant's card account held with Postepay of Posteitaliane as well as the transactions trading report issued by the Service Provider.[31]

A withdrawal of Eur 300 was done by the Complainant from his trading account on 17 -February 2025.[32]

A list of all the closed investment positions on the Complainant's trading account was provided by the Service Provider.[33] These involved around fifty trades, buy or sell positions in different currency pairs, equity, Gold, Cocoa and indexes, which occurred over the four-month period between December 2024 and March 2025.

The total loss amounting from these trades was indicated by the Company as Eur 9,694.80.[34]

[29] https://www.icapitaltrader.com/
[30] https://www.mytradit.com/documentation/
[31] P. 122 - 127 & P. 301
[32] P. 123, 301 & 309
[33] P. 303 - 306
[34] P. 300 & 306

The Service Provider further indicated that there was a bonus or spread discount on the Complainant's account for the amount of Eur 976.97 and *'Total Rollover Fees'* charged of Eur 3,987.87.[35]

It is noted that with respect to margin calls, the Service Provider explained the following during the proceedings of this case:

> *'[The Complainant] received multiple margin calls over the course of his trading activity, due to the account's margin level falling below 1%, which is the minimum required to maintain open positions. On February 4, 2025, the account was subject to a forced liquidation when margin requirements could no longer be met.*
>
> *These actions were automated and carried out in accordance with the platform's internal risk management protocols, which are designed to comply with regulatory obligations. Under the ESMA guidelines, trading platforms are required to monitor clients' margin levels and act promptly to limit risk – including issuing margin calls and liquidating positions when necessary …'.*[36]

A history of the margin calls resulting on the Complainant's trading account was summarised in the Service Provider's reply of 27 June 2025.[37]

Further Observations & Conclusion

It is not disputed that the Complainant has suffered a material loss on his trading account. The loss and expenses experienced on his deposited funds over a very short period of time involved trading losses of close to Eur 9,700 and the net fees incurred of around Eur 3,000 which together total Eur 12,700.[38]

This reflects the balance from the total deposit of Eur 13,000 less the withdrawal of Eur 300.

The capital deposited into the Complainant's trading account was thus reduced by 98% over a four-month period between 29 November 2024 to 17 March 2025.

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[35] P. 300 & 315
[36] P. 315
[37] P. 316
[38] Total Rollover Fees of Eur 3,987.87 and bonus/spread discounts of Eur 976.97 - P. 315

The key issue relating to this Complaint does not involve certain aspects raised by the Complainant about: the regulatory status of the Company; the rollover costs; the existence or otherwise of a contractual relationship between the parties; whether the trades were actually undertaken; or whether there was any arrangement between the Service Provider and the external third-party who was 'guiding' or 'advising' the Complainant. Throughout the proceedings of this case no satisfactory evidence has emerged which suggests any noteworthy issue arising with respect to these matters for the purpose of this Complaint.

The key issue is rather linked to the aspect raised regarding the ease with which the Complainant lost his money through the Service Provider's online trading platform.

The Arbiter considers that this issue is the result of, and closely linked to, the issue of whether the onboarding process was respectful of the Service Provider's obligations to ensure that the retail investor satisfied the 'appropriateness' test required by the regulations. Having also considered certain submissions made by the Service Provider in its reply to the Complaint as highlighted below, the Arbiter therefore interprets the Complaint to include any deficiencies in the onboarding process, and he shall consider this matter in detail in his decision.

It is noted that in its reply to the Complaint, the Company submitted *inter alia* that:

> *'it implements a stringent Know Your Customer (KYC) and client onboarding framework in line with [regulatory requirements]'*.[39]

The Service Provider further submitted that following the Complainant's onboarding, *'the Complainant was introduced to the platform environment and the trading of Contracts for Differences (CFDs) through a controlled risk-mitigation phase'* where the Complainant *'… actively engaged with and completed this introductory phase, thereby demonstrating operational understanding of the platform and the derivative nature of the financial instruments'*.[40]

The Service Provider also maintained that it is committed to upholding the highest standards, including on *'client protection'*, but the *'The trading losses*

[39] P. 211
[40] P. 212

incurred reflect the inherent risks of leveraged CFD trading and the Complainant's own trading choices, rather than any wrongdoing, irregularity, or unauthorized conduct by the Company'.[41]

When considering the Complainant's profile and applicable requirements, the Arbiter, however, deems that material shortfalls do arise in the Company's conduct with respect to the Complainant's case. The shortfalls relate to the Company's client onboarding framework and consumer protection measures. This is particularly so with respect to the appropriateness assessment undertaken in the Complainant's regard involving the Company's services and trading in CFD products. Such conclusion is based taking into account various factors, including the following:

Regulatory obligations

As an investment firm licensed by the MFSA, the Service Provider is subject to *Conduct of Business Rules* and *Investment Services Rules for Investment Services Providers* issued by the MFSA.

Apart from its general obligation to *'act honestly, fairly, professionally in accordance with the best interests of its Clients'*,[42] the Company is subject to various specific requirements as outlined in the said rules and highlighted below.

Given that the Company is a MiFID firm, reference is also made to the various communications and directions issued by the *European Securities and Markets Authority* (ESMA) over the years with respect to this area of business which are also relevant and applicable to the Company's particular activities.

(i) Target market

It is noted that Rule 2.3 of the MFSA's Conduct of Business Rulebook provides that:[43]

> *'2.3 For certain particularly complex and risky Products, such as contracts for difference ("CFD") and other Products with similar features, Manufacturers should perform a very careful target market*

[41] P. 216
[42] For example, Rule 3.2 and Rule 4.1.5 of the MFSA's Conduct of Business Rules.
[43] Version 15 - *'Issued 20 December 2017 Last Revised 10 December 2024'*

assessment, resulting in a significantly reduced target market or no compatible target market at all …'.

The Key Information Documents issued by the Service Provider in respect of CFDs involving different underlying assets indeed provide that:[44]

'PRODUCT INTENDED INVESTOR:

Trading in this product is not appropriate for everyone. This product is intended for Retail Investors who:

- *have sufficient knowledge and experience in trading with leveraged products;*
- *want to generally gain short term exposures to financial instruments/markets;*
- *are trading with money which they can afford to lose;*
- *have a diversified investment and savings portfolio;*
- *have a high risk tolerance; and*
- *understand the impact of and risks associated with margin trading.'* [45]

(ii) The Appropriateness Test

Section 4, *'Assessment of Client's Suitability and Appropriateness'* of the MFSA's Conduct of Business Rulebook, is particularly relevant to the case in question. Rule 4.4.39 and 4.4.41 regarding the requirement applicable to the Company to undertake an Appropriateness Assessment in respect of its clients provides the following:

'R.4.4.39 When providing the Service other than Advice or Portfolio Management, a Regulated Person shall ask the Client to provide information regarding his knowledge and experience in the field relevant to the specific type of Financial Instrument or Service offered or demanded so as to enable the Regulated Person to

[44] https://www.mytradit.com/documentation/
[45] https://www.mytradit.com/documentation/

assess whether the Service or Product envisaged is appropriate for the Client.

In carrying out this appropriateness assessment, the Regulated Person shall, when providing non-advised services, comply with all the applicable requirements contained in this Chapter 4, as well as with Appendix 6 to this Chapter which implements the ESMA Guidelines on certain aspects of the MIFID II appropriateness and execution requirements. The provisions of the said Appendix 6 shall apply as from 12 October 2022.'

…

R.4.4.41 Regulated Persons, shall determine whether that Client has the necessary experience and knowledge in order to understand the risks involved in relation to the Financial Instrument or Service offered or demanded when assessing whether a Service, other than Advice or Portfolio Management, is appropriate for a Client.

…'.

The following provisions on Complex Products and on the assessment of appropriateness are also particularly noted:

'R.4.4.52 Before providing a Service to a Client with respect to a complex Financial Instrument, the Regulated Person shall consider whether that complex Financial Instrument is to be provided to such Client on an advisory or on a non-advisory basis (subject to an appropriateness test), and shall only provide Services to Clients on the basis of this consideration …'

…

'Provisions Common to the Assessment of Suitability and Appropriateness

R.4.4.55 Regulated Persons shall ensure that the information regarding the Client's knowledge and experience in the investment field includes, the following, to the extent appropriate to the nature of the Client, the nature and extent of the Service to be provided and *to the type of Financial Instrument or transaction envisaged, including their complexity and risks involved:*

(a) the type of Service, or Financial Instrument with which the Client is familiar;

(b) the nature, volume, frequency of the Client's transactions in the relevant Financial Instrument and the period over which they have been carried out; and

(c) the level of education, profession or relevant former profession of the Client.

…

Suitability and Appropriateness Assessment Tools/Questionnaires

R.4.4.59 A Regulated Person assessing a Client's knowledge and experience with respect to a Financial Instrument, shall ensure that:

(a) the Client understands the particular features of the Financial Instrument, especially in the case of complex Financial Instruments. This should entail clear answers from specific questions presented to the Client about the Financial Instrument features in order to confirm that the Client is effectively aware of the features and risks of the Financial Instrument in question.

…

G.4.4.30 A 'tick-box' approach should not be used either to collect Client information or to assess suitability or appropriateness.

G.4.4.31 An appropriateness test should be particularly rigorous if a Regulated Person is offering more complex Financial Instruments to less experienced Clients who may be less likely to understand the risks.

…'.

(iii) Feedback from ESMA

It is noted that ESMA has been issuing feedback regarding the provision of CFDs to retail investors and guiding investment firms accordingly on this area for various years now. Reference is, for example, made to ESMA's detailed *'Questions and Answers Relating to the provision of CFDs and other speculative products to retail investors under MiFID'*.[46] The said document outlines *inter alia* that:

> *'ESMA has developed Q&As dedicated to the topic of the provision of CFDs, binary options and rolling spot forex to retail clients under MiFID as this is an area in which many competent authorities have serious concerns about the protection of investors and where there is a considerable degree of cross-border activity across Europe.'*[47]

With respect to the assessment of appropriateness, the ESMA document outlined the following:

> *'Section 4: The assessment of appropriateness when offering CFDs or other speculative products to retail investors*
>
> 1. *Due to the nature of CFDs and other speculative products, they are more difficult to understand and are appropriate only for experienced retail investors. This is reflected in the requirement to assess appropriateness as part of the account opening process, where such products are not sold with investment advice. Firms offering CFDs or other speculative products to retail clients without advice are required by Article 19(5) of MiFID to seek information from a client or potential client about his or her knowledge and experience (i.e. ability) to understand the risks involved with the product or service. The objective of this obligation is to enable the firm to determine whether the product or service is appropriate for the client. Article 37 of the MiFID Implementing Directive sets out a non-exhaustive list of information that the firm will need to ask the client in order to evaluate his or her knowledge and*

[46] Versions dated 11 October 2016 [ESMA/2016/1165] and 31 March 2017 [ESMA35-36-794]

[47] https://www.esma.europa.eu/sites/default/files/library/2016-1165_qa_relating_to_the_provision_of_cfds_and_other_speculative_products_to_retail_investors_under_mifid.pdf
https://www.esma.europa.eu/sites/default/files/library/esma35-36-794_qa_on_cfds_and_other_speculative_products_mifid.pdf

experience, and also provides that the precise components should vary according to the nature of the client, the nature and the extent of the service to be provided, and the type of product or transaction envisaged.

2. ***It is important that firms offering these products to retail investors adopt robust processes to assess the knowledge and experience of retail clients and potential retail clients, to check whether they understand the risks involved and to determine whether CFDs or other speculative products are appropriate for them**.'*[48]

The ESMA Q&A document provides further valuable feedback to investment firms, for example, on the type of information that should be gathered in the appropriateness assessment and the actions to be taken by firms. Relevant extracts of this document are included as an Annex to this decision for ease of reference.

Complainant's Profile and Failure of the Appropriateness Test

According to the Appropriateness Test completed during the onboarding process,[49] the Complainant provided certain key information to the Service Provider which should have triggered further probing by the Service Provider and adequate intervention given the particular circumstances of this case.

It is noted that, as part of the appropriateness test, the Complainant indicated an annual income not exceeding Eur 20,000 with savings and investments less than Eur 50,000.[50]

His level of education was indicated of being only up to high school (*'scuola superiore'*), with his employment specified as a self-employed (*'Lavoratore Autonomo'*) in the Building and Construction industry (*'Edilizia e Costruzioni'*).[51]

His *'Experience trading CFDs or leveraged products'* was listed as being less than one year (*'Meno di 1 anno'*), with the Complainant indicating that he had no *'Professional experience in financial services'*.[52]

[48] P. 40 of ESMA's Q&A- Emphasis added by the Arbiter
[49] P. 316
[50] P. 318
[51] *Ibid.*
[52] *Ibid.*

It is furthermore noted that as part of the Appropriateness Test, the Service Provider asked the Complainant a number of questions to which the Complainant either answered wrongly or indicated a lack or low level of understanding of these products.

In reply to the question, *'If the share price of Google goes up, the price of a Google CFD will:'*, the Complainant just answered *'Sale',* which is not an adequate reply.

In reply to another question, as to *'What could be the risk of trading with CFD'*, the Complainant replied *'Sicuro, con un rischio molto basso'*.[53] This reply clearly contrasted with the high-risk nature of CFD trading and did not reflect the understanding of the significant risks arising with such trading.

It is further noted that, in reply to the question *'What is your desired risk appetite when investing in CFDs?'*, the Complainant replied *'Medio-Basso rischio'*.[54] This again contrasts with the high-risk nature of CFD investing.

The *'Planned trading amount per year'* was indicated as *'Meno di €10.000'*.[55] As to the question, *'What is your yearly disposable income (total income minus all expenses)?'*, the Complainant again indicated *'Meno di €10.000'*.[56]

The low level of disposable income, the Complainant's profile (with basic education, no relevant work experience and lack, or very limited, experience in trading with leveraged products) coupled with the replies he provided to the questions forming part of the assessment, should have reasonably prompted the Company to outrightly question the appropriateness of the service offered to the client and his intention to trade in CFDs.

It is evident that the Complainant did not satisfy the target market for which the offered CFDs were intended, as he did not have sufficient and the necessary knowledge and experience in trading with leveraged products, was not trading with money he afforded to lose and did not understand the particular features and risks involved in relation to the CFDs and the services offered by the Company.

[53] *Ibid.*
[54] P. 319
[55] P. 318
[56] P. 319

The Arbiter has no comfort either that the introduction of the Complainant to the Company's *'controlled risk-mitigation phase'* that it described in its submissions was sufficient and adequate in the circumstances. It has not been substantiated nor emerged that this phase reasonably demonstrated the Complainant's understanding of the nature of CFDs and the trading activities in relation to these speculative products.

Despite the mentioned factors, the Company did not intervene, did not warn the Complainant that he did not satisfy the appropriateness test nor did it stop him from proceeding with taking its services as should have reasonably been done in the circumstances and in the Complainant's best interests. Instead, it onboarded the Complainant with ease and without warning that he did not satisfy the appropriateness test, and against his best interests, allowed him to trade in CFDs where he lost more than his indicated yearly disposable income within just a few months, leading to his Complaint regarding the ease with which he lost his money.

<u>Conclusion</u>

Whilst details about the risky nature of CFDs was disclosed by the Service Provider (through disclosure in the client agreement, website disclaimers and key information documents to the client), this is, however, just one aspect of its obligations.

The Complainant seemed to have failed to give due notice to such warnings and accordingly should also carry an appropriate share of the loss he incurred motivated by greed of high returns without due sensitivity to the risks involved. Such sharing of losses would be a deterrent against the risks of moral hazard motivating novice investors to take undue risks and possible high returns but expecting equally possible high losses to be blamed on others.

On its own, however, Complainant's irresponsibility does not exonerate the Company from its other key obligations involving the appropriateness test, which the Company should have adequately addressed and acted upon.

The level of income, academic and employment background, very limited (if at all) experience in trading CFDs or leveraged products on their own and even more so collectively, already pointed towards the Complainant being a vulnerable client, which the Company failed to protect.

The clear material failings by the Service Provider in the assessment of appropriateness ultimately enabled the significant losses and damages suffered by Complainant.

Decision

For the reasons amply stated in this decision, the Arbiter considers the Complaint to be fair, equitable and reasonable in the particular circumstances and substantive merits of the case,[57] and is accepting it in so far as it is compatible with this decision.

Given the identified shortcomings outlined earlier, the Arbiter concludes that it is fair, equitable and reasonable in the particular circumstances and substantive merits of the case to award the Complainant compensation equivalent to 50% of the net loss (inclusive of fees) resulting in the capital deposited into his trading account.

Therefore, in accordance with Article 26(3)(c)(iv) of Chapter 555 of the Laws of Malta, the Arbiter orders IFH Capital Trader Limited to pay the amount of EUR 6,350 (six thousand, three hundred and fifty Euros) as compensation to the Complainant for the reasons stated in this decision.

With interest at the rate of 2.15% p.a.[58] from the date of this decision till the date of payment.[59]

Each party is to bear its own costs of these proceedings.

Alfred Mifsud
Arbiter for Financial Services

[57] Cap. 555, Article 19(3)(b)

[58] Equivalent to the current Main Refinancing Operations (MRO) interest rate set by the European Central Bank.

[59] It is to be noted that in case this decision is appealed, should this decision be confirmed on appeal, the interest is to be calculated from the date of this decision.

<u>Information Note related to the Arbiter's decision</u>

Right of Appeal

The Arbiter's Decision is legally binding on the parties, subject only to the right of an appeal regulated by article 27 of the Arbiter for Financial Services Act (Cap. 555) ('the Act') to the Court of Appeal (Inferior Jurisdiction), not later than twenty (20) days from the date of notification of the Decision or, in the event of a request for clarification or correction of the Decision requested in terms of article 26(4) of the Act, from the date of notification of such interpretation or clarification or correction as provided for under article 27(3) of the Act.

Any requests for clarification of the award or requests to correct any errors in computation or clerical or typographical or similar errors requested in terms of article 26(4) of the Act, are to be filed with the Arbiter, with a copy to the other party, within fifteen (15) days from notification of the Decision in terms of the said article.

In accordance with established practice, the Arbiter's Decision will be uploaded on the OAFS website on expiration of the period for appeal. Personal details of the Complainant(s) will be anonymised in terms of article 11(1)(f) of the Act.

Annex

Extract from ESMA's Questions and Answers – Relating to the provision of CFDs and other speculative products to retail investors under MiFID[60]

'Question 1 [last update 25 July 2016]: What information should be gathered by firms to assess the appropriateness of CFDs and other speculative products for retail clients?

Answer 1:

1. NCAs should pay particular attention to the assessment of appropriateness when a firm offers CFDs or other speculative products to retail investors, given that **these are complex products that are not appropriate for a majority of retail investors**.[61] First of all, it is important that the assessment of appropriateness is introduced to the potential client in an objective manner. The test should be presented as assessing the client's financial experience and knowledge with a view to determining whether specific financial products are appropriate. **The test is therefore in the client's interest, and should be presented as such, rather than a 'tick box' exercise**.

2. In order to be able to assess the appropriateness of CFDs or other speculative products for retail investors, **firms should ensure that the information collected about the client's knowledge and experience is sufficiently detailed and granular, including covering the specific product to be traded and the relevant underlying asset class**. **The more complex or risky the instrument is, the more detailed the information collected by a firm should be in order to be able to correctly assess the appropriateness of the product for a retail investor, especially when there may be no face-to-face contact with the client**, as is common in this sector (i.e. in an online or telephone sales environment).

3. **Firms in this sector typically seek information about the knowledge and experience of clients or potential clients by asking questions, usually in the form of a questionnaire**. The questionnaire may be completed directly by the client or potential client (e.g. in an online environment, on a webpage). Alternatively, a sales representative may ask a client or potential client to answer questions, e.g. on the telephone or face-to-face. **The answers provided to the questions asked are then used by the firm as a basis to ascertain the client or potential client's knowledge or experience to understand the risks of CFDs or other speculative products**.

[60] https://www.esma.europa.eu/sites/default/files/library/2016-1165_qa_relating_to_the_provision_of_cfds_and_other_speculative_products_to_retail_investors_under_mifid.pdf
https://www.esma.europa.eu/sites/default/files/library/esma35-36-794_qa_on_cfds_and_other_speculative_products_mifid.pdf
Emphasis (in bold) made in certain parts of this extract is added by the Arbiter as particularly relevant to the case under consideration.
[61] This Q&A should be read in conjunction with ESMA's supervisory briefing on appropriateness (ESMA/2012/851).

4. When a firm uses a questionnaire to collect information that is used to establish knowledge and experience, the firm should include different types of questions depending upon the precise characteristics of the product(s) at stake, and the responses provided by the client. **Firms offering CFDs or other speculative products should therefore ask specific questions to identify relevant experience and knowledge of the retail client of both the underlying asset and market, and types of speculative financial instruments that will be offered to the client**. For example, the questions designed to ascertain a retail investor's knowledge and experience, to trade in binary options (which are not usually leveraged products, but do require an understanding of probabilities) should be different from the questions designed to assess a retail investor's knowledge and experience to trade in CFDs, which incorporate the element of leverage.

5. **Bad practices that have been observed** in this sector of the market include:

   a. Asking overly broad questions (e.g. asking questions about knowledge and experience in trading financial instruments in general, not specific to the speculative products to be traded);

   b. Asking questions that are overly reliant on the investor's self-assessment of his or her knowledge and experience, without sufficient information gathering to allow the firm to independently assess whether the responses provided can be regarded as accurate;

   c. At the extreme, using binary (yes/no) questions (e.g. "do you understand the risks associated with trading CFDs?") without collecting any/sufficient supplementary information; and

   d. **Using information that is not relevant to the assessment of appropriateness or that does not necessarily demonstrate the client's knowledge and experience** of the product or service as the basis for concluding that the product or service is appropriate for the client, such as:

      i. the client possessing certain personal characteristics (home ownership/ disposable income/a certain value of assets under management);

      ii. the client having opened a 'demo' or training account without ascertaining whether the demo or training account has ever been used or has actually enhanced their knowledge of the products/services offered; or

      iii. **allowing incorrect** or 'don't know' **answers to contribute towards the demonstration of knowledge or experience**.

6. Some **good practice examples** include:

   a. The use of questions that test the client's understanding of the key characteristics of the product or service (e.g. through the use of multiple choice questions), rather than relying on the client's self-assessment of knowledge and experience;

b. When a scoring metric is used to assess appropriateness, only relevant criteria is entered into the metric, i.e., answers that demonstrate actual knowledge and experience that is specific to the type of financial products envisaged, while **incorrect answers** or 'don't know' are **given zero scoring or are included in the scoring metric in a manner that reduces the likelihood of the products or services being assessed as appropriate**;

c. When a scoring metric is used, the **answers to more pertinent questions are weighted more heavily**, e.g.:

   i. **more weighting is given to the demonstration of actual trading experience than the demonstration of theoretical knowledge**;

   ii. **trading experience in CFDs or other speculative products over a longer period is weighted more heavily** than a relevant trading experience a shorter period;

   iii. **length of trading experience is not considered in isolation, but is instead scored also on trading volume with higher activity levels weighted more heavily**; and

d. The questions and possible answers (where multiple choice questions are used) are displayed in a randomised order, so that the content of the appropriateness assessment appears in a different order each time the test is taken.

7. NCAs should ensure that, when a firm determines the appropriateness of CFDs or other speculative products for a retail client, **a 'pass' is consistent with a client demonstrating the requisite knowledge and experience to understand the risks involved and to make informed investment decisions**.

8. NCAs should also pay close attention to the way that information is presented to retail clients and potential retail clients when they complete an appropriateness test, both when the client completes the assessment directly, or when the client provides information to a sales representative. The client should not be prompted to complete the appropriateness test in such a way as to influence its likely outcome, to allow for the 'gaming' of the appropriateness test, or to support or encourage the possibility for the client to not provide the necessary information.

Experience

9. **In the context of CFDs and other speculative products, the information to be collected to determine the experience of clients should include the following, inter alia**:

   a. **Information about the client's previous experience of trading relevant financial instruments**:

      i. **For CFDs:**

1. **Previous trading in CFDs or similar speculative instruments such as rolling spot FX; and**
2. **Previous trading in other derivative instruments traded with margin, such as futures or options.**

ii. For binary options: previous trading in binary options or other similar products.

b. **Information about how often and/in what volumes the client has traded in each relevant instrument, e.g. within the last 12, 24, 36 months (None, 1-5, 6-10, more than 10, etc), the value of the trades carried out (X €, y €, etc) and, where relevant, the common level of leverage of previous trades**.

c. **Information about the client's professional experience**, e.g. whether the client has worked in a financial services firm in a role that is relevant to trading in OTC leveraged financial instruments (e.g. for at least one year, within the last 3 years etc.).

Knowledge

10. **In order to be specific enough to enable the firm to assess correctly the appropriateness of a product for a given retail client, questions about the client's knowledge should assess his or her understanding of at least the key risk areas for each product that will be offered, such as**:

a. **The characteristics of the product, including its nature as a derivative product and the relevant underlying assets**;

b. **The characteristics of the underlying asset, including the main market factors that determine its price**;

c. **The implications of the OTC character of the product**, including that there is counterparty risk and the client will remain in a principal-to-principal contract once they have opened a position (i.e. they will have to close their position with the same counterparty);

d. **For CFDs and rolling spot forex, the concept, effects and risks of leveraged trading, both in a normal trading environment and in stressed market conditions**;

e. **For CFDs and rolling spot forex, how negative price movement in the underlying can potentially lead to a margin call and the subsequent triggering of an automated margin close-out of positions**;

f. Where relevant, the effect of different types of orders, in particular, where relevant, stop-loss orders (including explanation of the difference between an ordinary and guaranteed stop loss);

g. For binary options, the application of probability theory and the asymmetric risk/return profile of the instruments.

11. **The assessment of knowledge should also take into account information about academic or professional experience that may demonstrate knowledge relevant to trading in CFDs or other speculative products**. **Information requested about educational qualifications should be sufficiently granular. Firms should not count general education, courses or qualifications in non-financial service-related topics as relevant knowledge for trading in CFDs or other speculative products**.

12. NCAs should pay particular attention to how firms take into account information about a client or potential client's use of 'demo' or training (i.e. not real-life) trading accounts. **The use of demo accounts should only be counted as contributing towards the demonstration of knowledge if a firm can demonstrate that: (a) the client has actually used that demo account for a sufficiently long period of time and has carried out a number of trades in relevant instruments; and (b) the client has acquired sufficient knowledge of the products that will be accessible to him on the live platform as a result of the use of such a demo account. Where a client or potential client indicates that he/she has a demo account, <u>the firm should nonetheless assess and evidence that the client has sufficient knowledge and experience based on their understanding of the key features and risks of the products/services offered</u>**, as noted in the preceding paragraphs.

Question 2 [last update 25 July 2016]: What action should a firm take where the assessment of appropriateness indicates that a CFD or another speculative product is not appropriate for a client, but the client wishes to proceed with the transaction?

Answer 2:

13. **Taking into account the complex nature of CFDs and other speculative products and the best interests of the client, in cases where the assessment of appropriateness indicates that the product or service is not appropriate for a retail client or where insufficient information is available to assess appropriateness, the best practice would be for the firm to not allow the client to proceed**. ESMA (CESR)'s MiFID Q&A dated 9 July 2009[62] states that **if a client wishes to proceed with a transaction after the client has been given a warning, it is for the investment firm to decide whether to do so, having regard to the circumstances of the case**.[63] The same Q&A also notes that in such cases, it may be prudent for the investment firm to ask the client or potential client to confirm in a durable medium his or her intention to proceed with the service.

[62] CESR/09-697.

[63] Taking into account the best interests of the client, this may also include a firm offering CFDs or other speculative products to retail clients, considering any additional information it has about the client before determining whether to allow the client to proceed or not (regarding this topic, see Section 4 Question 3).

…

Question 3 [last update 25 July 2016]: In addition to information collected to establish the knowledge and experience of the client, how should a firm offering CFDs or other speculative products consider other information that may be available relating to the client's situation?

Answer 3:

17. **Apart from the collection of information about knowledge and experience that is required for the assessment of appropriateness, it may be common for firms in this sector to collect other information about their clients, for example during the client on-boarding process or as part of the firm's internal assessment of credit risk (in particular due to the characteristics of products such as CFDs that incorporate the use of leverage). This may include information related, among other things, to the client's personal or financial situation**.[64]

18. **Where the appropriateness assessment indicates that CFDs or other speculative products are not appropriate for a client, and the client has been warned accordingly but nonetheless wishes to proceed, it would be good practice for a firm, in acting in the best interest of the client, to consider any additional information it has about the client before it decides whether or not to allow the client to proceed**. <u>**NCAs may reasonably expect the firm to not permit a prospective client to proceed if, for example, the firm is in possession of information that indicates potential vulnerability, e.g. due to the client's age and/or financial situation**</u>.

19. **In the case that a retail client wishes to proceed with a transaction and the firm has not determined that the client should not continue (having taken into account the results of the appropriateness test, the best interests of the client and the circumstances of the case), the firm could nonetheless consider whether the product or service to be offered to the client should be adapted based on the information gathered as part of the assessment of appropriateness. For example, if a client has demonstrated limited or no actual experience of trading in CFDs or other speculative products compared to their indicated knowledge of the product, whether or not the client passed the appropriateness test, it may be in the client's best interest, if the firm chooses to allow the client to proceed in such a situation, to limit the level of leverage available to that client and/or to limit the sum that the client can invest, in any one transaction for a period of time (e.g. in their first 12 months of trading).**

20. A firm offering CFDs or other speculative products to retail clients without investment advice should not, however, use any additional information collected about the client's

[64] Although it may be good practice for the firm to use such information where it is available to them (as discussed in this Q&A), it should be noted that this does not imply that firms are required to collect such additional information (e.g. about the client's financial situation), or that an assessment of suitability is required, unless the products are sold with investment advice.

situation to count as a demonstration of knowledge and experience for the purposes of artificially "passing" the appropriateness test.[65] For example, the service or product should not be considered more appropriate for a wealthier client than for a less wealthy client, given that the financial position of the client does not indicate any particular knowledge or experience relevant to the product or service being offered.

21. A firm would not be meeting its MiFID obligations if it uses any information it has obtained about its clients, to act in a manner that is not in the clients' best interests, for example targeting wealthier clients to encourage them to place higher deposits in their trading accounts or to make bigger trades.

[65] Section 4, Question 1 discusses the content of the appropriateness test in more detail.