

07 February 2018

## Luther represents the CFD Association in its statement in response to the Call of Evidence of ESMA

**Frankfurt am Main – Luther Rechtsanwaltsgesellschaft represents the association of financial service providers specialising in CFD and foreign exchange trading in Germany in its statement in the context of the consultation (Call for Evidence) launched by the European Securities and Market Authority (ESMA). For the first time in the history of the European Union, ESMA wants to make use of a newly created product intervention right and restrict the distribution of CFDs to private clients.**

With the Regulation on Markets in Financial Instruments applying from 3 January 2018, European law provides for the first time for a product intervention right on the part of ESMA. ESMA may, under certain conditions, prohibit or restrict the marketing, distribution or sale of certain financial instruments in the Member States of the European Union if there are serious concerns about investor protection. In a consultation paper published on 18 January 2018, the Authority proposes to restrict the distribution of Contracts for Differences (CFDs) to retail clients and discusses potential measures.

The CFD Association, an association of twelve leading providers for CFD trading in Germany, represents a significant part of the German market and has participated in the consultation with a 20-page statement. The statement was drafted by Luther Rechtsanwaltsgesellschaft.

Raphael Neustadt, Managing Director of the CFD Association, commented: "We have mandated Luther because of their great expertise in financial instruments. The main objective of the CFD Association is investor protection. Concerns about investor protection arise only from unregulated or Cypriot providers, against whom 98 percent of all complaints are directed. The supervisory authorities are called upon to take action against these providers. Regulating financial contracts for differences is inappropriate and unnecessary. Financial contracts for differences are not complex financial instruments. They have been around for about 30 years. In addition, the average CFD investor is not a typical private investor, but has extensive trading experience."

"Some of the measures proposed by ESMA are threatening the existence of CFD providers and brokers and, therefore, are not covered by a temporary contingency power," said Ingo Wegerich, partner of Luther Rechtsanwaltsgesellschaft in banking and capital markets. "In addition, ESMA does not currently have any information on the impact of the MiFID II investor protection rules and the Regulation on key information documents for packaged retail investment products, which must be taken into account. Any exercise of discretion is therefore flawed. We also see the product intervention measures as an encroachment on the economic freedom of private investors to act. The planned measures would place CFDs at a disproportionate disadvantage compared to similar financial instruments." A restriction could additionally lead to investors turning to unregulated providers outside the EU.

The statement can be viewed via the following link on the website of the CFD Association:

*[http://www.cfdverband.de/wp-content/uploads/2018/02/Final-2018-02-05-Response\\_Contracts-for-Difference-Verband\\_ESMA-Call-for-Evidence\\_final.pdf](http://www.cfdverband.de/wp-content/uploads/2018/02/Final-2018-02-05-Response_Contracts-for-Difference-Verband_ESMA-Call-for-Evidence_final.pdf)*

### **Luther: Competence in the financial sector**

In its practice area Banking and Capital Markets, Luther advises banks and other financial institutions, issuing houses, securities service providers and (listed) companies at national and international level on the full range of banking, finance and capital market law.

Ingo Wegerich advises banks and issuers on capital market and derivative transactions. He specialises in the preparation of a wide range of issuance programmes, amongst other things. In view of the

current changes at European level, he advises market participants on the implementation of the European financial market directives and regulations MiFID II, EMIR, PRIIPs, the Market Abuse Regulation and the Prospectus Regulation.

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**Brief profile of Luther**

Luther is a leading German commercial law firm that offers comprehensive legal and tax services. The full-service law firm employs more than 350 lawyers and tax advisors and is represented at 10 German economic centres and at important investment locations and financial centres in Europe and Asia with international offices in Brussels, London, Luxembourg, Shanghai, Singapore and Yangon. Our clients are medium-sized enterprises and large corporations, as well as the public sector.

Luther works closely with other commercial law firms in all the prevailing jurisdictions worldwide. On the Continent, Luther is part of a group of independent leading law firms who have worked together for many years on joint cross-border projects.

Luther Rechtsanwaltsgesellschaft mbH is a law firm with a business approach: our innovative awareness aspires us to provide our clients with customised legal advice that addresses individual needs and delivers the greatest possible economic benefit.

Our lawyers and tax advisors have a solid understanding of interdisciplinary matters and a wealth of experience in collaborating on complex tasks. Further information is available at: [www.luther-lawfirm.com](http://www.luther-lawfirm.com)

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