



THIS TEXT IS A TRANSLATION OF THE DECISION IN DUTCH. IN CASE OF DIFFERENCES THE DECISION IN DUTCH PREVAILS.

Decision dated 30 June 2021, to restrict the marketing, distribution or sale of turbos to retail clients in The Netherlands in accordance with Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 and the Financial Supervision Act (**Decision on restrictions on turbos**).

The Dutch Authority for the Financial Markets, having regard to

Article 42 of Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012;

Article 21 of the Commission Delegated Regulation (EU) 2017/567 of 18 May 2016 supplementing Regulation (EU) No. 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions;

Article 1:77f of the Financial Supervision Act; and

Article 2, first paragraph, opening lines and part m, of the EU Financial Markets Regulations (Implementation) Decree,

decides:

Article 1

### **Definitions**

For the purpose of application of this decision, the terms below are defined as follows:

1. “**retail client**”: the non-professional investor;
2. “**turbo**”: a marketable bond that has a stop-loss feature and whose value is derived from an underlying value and the financing of the underlying value or another marketable debt instrument that has a stop-loss feature and whose value is derived from an underlying value and the financing of the underlying value;
3. “**excluded non-monetary benefit**”: any non-monetary benefit other than, insofar as they relate to turbos, information and research tools;
4. “**notional value**”: the product of the last-known price of the underlying value multiplied by the number of whole units or the number of fractions of units of the underlying value to which the turbo relates;
5. “**leverage**”: the quotient of the notional value of the turbo divided by the difference between the financing level of the turbo and notional value of the turbo;
6. “**maximum leverage**”: the maximum leverage as determined in Annex I;
7. “**offering**”: marketing, distributing or selling;
8. “**provider**”: the investment firm that offers; and
9. “**NCA**” (national competent authority): the authority, designated by each Member State in accordance with Article 67 of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets for financial instruments, amending Directive 2002/92/EC and Directive 2011/61/EU.

## Article 2

### **Restrictions on turbos in respect of retail clients**

The marketing, distribution or sale of turbos to retail clients in The Netherlands is restricted to circumstances where at least all of the following conditions are met:

1. the turbo provider does not issue an offer price for a turbo if the leverage of the turbo exceeds the maximum leverage (“leverage cap”);
2. the turbo provider does not directly or indirectly provide the retail client with a payment, monetary or excluded non-monetary benefit in relation to the marketing, distribution or sale of a turbo, other than the price of the turbo sold by the retail client or the payment of the residual value on settlement of the turbo; and
3. the turbo provider does not send directly or indirectly a communication to or publish information accessible by a retail client relating to the marketing, distribution or sale of a turbo unless it includes the appropriate risk warning specified by and complying with the conditions in Annex II.

## Article 3

### **Prohibition of participating in circumvention activities and duty of notification if leverage cap is exceeded**

1. It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the requirements in Article 2, including by acting as a substitute for the turbo provider.
2. If a provider of a specific turbo observes that another provider of that same specific turbo fails to comply with the first paragraph of Article 2, the first-mentioned turbo provider shall notify the other provider of that same specific turbo and the NCA of this as soon as possible.

## Article 4

### **Entry into force**

This decision enters into force on 1 October 2021.

Done in Amsterdam on 30 June 2021

## **Annex I**

### **MAXIMUM LEVERAGE, BY TYPE OF UNDERLYING**

- a) 30 when the underlying currency pair is composed of any two of the following currencies: US dollar, Euro, Japanese yen, Pound sterling, Canadian dollar or Swiss franc;
- b) 20 when the underlying index, currency pair or commodity is:
  - i. any of the following equity indices: Financial Times Stock Exchange 100 (FTSE 100); Cotation Assistée en Continu 40 (CAC 40); Deutsche Bourse AG German Stock Index 30 (DAX30); Dow Jones Industrial Average (DJIA); Standard & Poors 500 (S&P 500); NASDAQ Composite Index (NASDAQ), NASDAQ 100 Index (NASDAQ 100); Nikkei Index (Nikkei 225); Standard & Poors/Australian Securities Exchange 200 (ASX 200); EURO STOXX 50 Index (EURO STOXX 50);
  - ii. a currency pair composed of at least one currency that is not listed in point (a) above; or
  - iii. gold;
- c) 10 when the underlying commodity or equity index is a commodity or any equity index other than those listed in point (b) above;
- d) 2 when the underlying asset is a cryptocurrency; or
- e) 5 when the underlying asset is:
  - i. a share; or
  - ii. not otherwise listed in this Article.

## **Annex II**

### **Risk warnings**

#### **SECTION A**

##### **Risk warning conditions**

1. The risk warning shall be in a layout ensuring its prominence in the communication or published information, in a font size at least equal to the predominant font size in the communication or published information and in the same language as that used in the communication or published information.
2. If the communication or published information is in a durable medium or a webpage, the risk warning shall be in the format specified in Section B.
3. If the communication or information is in a medium other than a durable medium or a webpage, the risk warning shall be in the format specified in Section C.
4. The risk warning shall include an up-to-date, provider-specific loss percentage based on a calculation of the percentage of retail clients that have lost money in trading in turbos at the specific provider. The calculation shall be performed every 3 months and cover the 12-month period preceding the date on which it is performed ('12-month calculation period'). For the purposes of the calculation:
  - a) an individual retail client shall be considered to have lost money if the sum of all realised net profits on turbos of that client during the 12-month calculation period is negative; and
  - b) any costs relating to the turbos shall be included in the calculation, including all charges, fees and commissions;
5. By way of derogation from paragraphs 1), 2) and 3), a turbo provider who does not distribute turbos and also does not have the transaction details of retail clients of the turbos offered by it shall use the standard risk warning specified in Sections D and E, as appropriate.
6. If the communication or published information is drawn up in a language other than the Dutch language, the provider shall display a translation of the risk warning in the other language. The translation must be a faithful rendering of the risk warning in the Dutch language.

## **SECTION B**

### **Durable medium and webpage provider-specific risk warning**

Turbos are complex instruments and come with a high risk of losing money rapidly due to leverage. [insert percentage per provider] % of retail investor accounts lose money when trading turbos with this provider. You should consider whether you understand how turbos work and whether you can afford to take the high risk of losing your money.

## **SECTION C**

### **Abbreviated provider-specific risk warning**

[insert percentage per provider] % of retail investor accounts lose money when trading turbos with this provider. You should consider whether you can afford to take the high risk of losing your money.

## **SECTION D**

### **Durable medium and webpage standard risk warning**

Turbos are complex instruments and come with a high risk of losing money rapidly due to leverage. 7 out of 10 retail investor accounts lose money when trading turbos. You should consider whether you understand how turbos work and whether you can afford to take the high risk of losing your money.

## **SECTION E**

### **Abbreviated standard risk warning**

7 out of 10 retail investor accounts lose money when trading turbos. You should consider whether you can afford to take the high risk of losing your money.

## Explanation

### 1. Introduction

- 1) Turbos - also referred to by names such as “boosters”, “speeders”, “sprinters”, or other names - are leveraged products that respond to a price change of the underlying value. Turbos are inherently risky and complex products and are often traded speculatively.
- 2) As early as 2013, the Dutch Authority for the Financial Markets (**AFM**) published the results of its review of leveraged products.<sup>1</sup> The AFM concluded on the basis of the review that there are failings in the way in which turbos are offered. The AFM presented the results of the review to a number of providers<sup>2</sup> of turbos and asked them to come up with solutions for the failings identified. These turbo providers announced that they would introduce measures as from 1 October 2013 that would improve the protection of investors.<sup>3</sup> In addition, in 2016, turbo providers also introduced a measure to restrict the leverage of turbos to a maximum of 50.<sup>4</sup>
- 3) The European Securities and Markets Authority (**ESMA**) and the AFM imposed restrictions, in 2018<sup>5</sup> and 2019<sup>6</sup> respectively, on the marketing, distribution and sale of *contracts for differences* (**CFDs**), because CFDs give rise to significant investor protection concerns. Both supervisory authorities noted in their measure that they will closely monitor whether similar detrimental consequences develop for retail clients in connection with the offering of turbos as with CFDs, and that they will act if necessary.
- 4) The AFM examined the transaction data for turbos, and published the results of the review in March 2020.<sup>7</sup> The principal conclusion is that turbos are generally traded with similar results to CFDs. The AFM asked the turbo industry to share solutions for the risks of turbos for retail clients with the AFM.
- 5) Various turbo providers and interest groups have responded to the AFM's request. The AFM also received responses from a number of private individuals. The solutions put forward in the responses diverge widely. They vary from ‘do nothing’ to a general prohibition of turbos. Another proposal was for restrictions to be imposed on turbos, by the AFM or by the turbo providers

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<sup>1</sup> ‘Aanbieders beloven betere bescherming beleggers bij risicovolle hefboomproducten’, 3 September 2013, <https://www.afm.nl/nl-nl/nieuws/2013/sep/hefboomproducten>.

<sup>2</sup> See article 1 of this decision for the definition of ‘provider’. This definition of ‘provider’ includes, among others, investment firms that recommend, distribute or issue turbos, and investment firms that trade in turbos for their own account. This definition differs from the definition of ‘provider’ in Article 1:1 of the Financial Supervision Act.

<sup>3</sup> ‘Aanbieders beloven betere bescherming beleggers bij risicovolle hefboomproducten’, 3 September 2013, <https://www.afm.nl/nl-nl/nieuws/2013/sep/hefboomproducten>.

<sup>4</sup> ‘AFM positief over aanvullende maatregel voor hefboomproducten’, 12 January 2016, <https://www.afm.nl/nl-nl/nieuws/2016/jan/aanvullende-maatregel-hefboomproducten>.

<sup>5</sup> ‘ESMA adopts final product intervention measures on CFDs and binary options’, 1 June 2018, <https://www.esma.europa.eu/press-news/esma-news/esma-adopts-final-product-intervention-measures-cfds-and-binary-options>.

<sup>6</sup> ‘AFM verbiedt binaire opties en beperkt verkoop CFD’s’, 18 April 2019, <https://www.afm.nl/nl-nl/nieuws/2019/apr/binaire-opties-cfds-interventies>.

<sup>7</sup> ‘Turbobelegger verliest gemiddeld veel geld, AFM roept turbo-industrie op risico’s te verminderen’, 3 March 2020, <https://www.afm.nl/nl-nl/nieuws/2020/mrt/turbos-risico>.

themselves. Also, some of the distributors of turbos stated in their responses what changes they had already implemented or intended to implement with regard to the distribution of turbos.

- 6) Based on the present situation, the AFM concludes that turbos give rise to significant investor protection concerns. The AFM therefore considers it necessary to restrict the marketing, distribution or sale of turbos to retail clients in the Netherlands in accordance with Article 42 of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (**MiFIR**) and Article 1:77f of the Financial Supervision Act (**Wft**). In this decision, the AFM took into account the solutions proposed by the market that it received in response to its request.
- 7) In order to remove any doubt, the terminology and definitions in this decision – unless explicitly stated otherwise – have the same meaning as in the Wft, Regulation 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets for financial instruments and amending Directives 2002/92/EC and 2011/61/EU (**MiFID II**) and MiFIR.
- 8) The present AFM decision satisfies the conditions set out in Article 42 MiFIR. The AFM explains this as follows in this decision:
  - Chapter 2 describes the scope of this decision.
  - Chapter 3 describes the basis for AFM's conclusion that the conditions of Article 42, second paragraph, MiFIR have been satisfied.
    - Paragraph 3.1 describes the existence of a significant cause for concern about investor protection (Article 42, second paragraph, under a, point i, MiFIR).
    - Paragraph 3.2 describes the applicable, existing requirements on the basis of Union law and that do not and cannot remove the concern about investor protection (Article 42, second paragraph, under b, MiFIR).
    - Paragraph 3.3 describes the proportionality of this decision (Article 42, second paragraph, under c, MiFIR).
    - Paragraph 3.4 describes the AFM's consultation of the NCAs in other Member States that may be significantly affected by this decision (Article 42, second paragraph, under d, MiFIR).
    - Paragraph 3.5 describes the absence of a discriminatory effect on services and activities that are provided from another Member State (Article 42, second paragraph, under e, MiFIR).
    - Paragraph 3.6 describes the AFM's consultation with the public body competent for the oversight, administration and regulation of the physical agricultural markets (Article 42, second paragraph, under f, MiFIR).
  - Chapter 4 describes the manner in which the AFM has notified all other NCAs and ESMA of the present measure (Article 42, third paragraph, MiFIR).
  - Chapter 5 describes the manner of publication of the notification of the present decision (Article 42, fifth paragraph, MiFIR).

## 2. Scope of application

- 9) This decision relates to all types of turbos regardless of their designation, term or manner of settlement that are within the scope of the definition in Article 1 of this decision. Examples of names of types of turbos that are within the scope of application of this decision are “BEST”, “Boosters”, “Classic”, “Limited”, “Turbo24”, and “XL” turbos.
- 10) The restrictions pursuant to this decision apply both to investment firms with their registered office in the Netherlands and to investment firms with their registered office in another Member State that provide investment services in the Netherlands via a branch office or the freedom to provide services with a European Passport. The restrictions do not apply to investment firms with their registered office in the Netherlands that offer turbos in another Member State. The restrictions will apply for an indefinite period. The AFM will revoke the restrictions as soon as the conditions of Article 42, second paragraph, MiFIR, no longer apply.
- 11) This decision applies to investment firms that have been granted a licence pursuant to MiFID II and credit institutions that have been granted a licence pursuant to Directive 2013/36/EU of the European Parliament and of the Council (Capital Requirements Directive) when providing investment services and/or performing investment activities, and market operators including any trading venues they operate.<sup>8</sup>

## 3. The conditions for restrictions (Article 42, second paragraph, MiFIR)

- 12) Article 42, second paragraph, MiFIR, includes the conditions for implementing product intervention on the basis of Article 42 MiFIR and Article 1:77f Wft. The above-mentioned articles authorise the AFM to restrict the marketing, distribution or sale of turbos if it concludes on reasonable grounds that all conditions of the second paragraph of Article 42 MiFIR have been satisfied. This chapter includes the AFM’s substantiation of the present decision in which the AFM explains for each condition why it concludes that this condition has been satisfied.

### 3.1 Significant cause for concern about investor protection (Article 42, second paragraph, under a, point i, MiFIR)

- 13) The first condition that is imposed by Article 42, second paragraph, under a, MiFIR is that the AFM concluded on reasonable grounds that turbos constitute a significant cause for concern regarding investor protection. In order to determine whether there is a significant cause for concern regarding investor protection, the AFM assessed the criteria and factors listed in Article 21, second paragraph, under (a) up to and including (v), Delegated Regulation (EU) 2017/567 of 18 May 2016 (**Delegated Regulation**). Taking into account all criteria and factors, the AFM concludes that there is a significant cause for concern regarding investor protection. The AFM explains this below on the basis of the relevant criteria and factors.

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<sup>8</sup> See Article 1, second paragraph, MiFIR



### 3.1.1 The degree of complexity, transparency and the specific features or components of turbos (Article 21, second paragraph, under (a), (d) and (e), Delegated Regulation)

- 14) Turbos are complex structured products, typically traded on a trading venue. Some features of turbos are the underlying value, the financing level and the stop-loss level.
- 15) Turbos enable the retail client to invest, *long* or *short*, in the underlying value. A turbo does not give the retail client any direct entitlement to the underlying value. Owing to the lack of a direct entitlement, the retail client is exposed to the credit risk that the issuer will fail to meet its obligations with regard to the turbo. There is no such credit risk if the retail client invests directly in the underlying value.
- 16) The retail investor can cash in on the indirect entitlement to the underlying value by selling the turbo. In practice, with turbos, the retail client will trade (virtually) exclusively with a single counterparty, which is often also referred to as *liquidity provider* or *market maker*. As a rule, this counterparty is the issuer of the turbo itself or a party that has made arrangements with the issuer on trading in turbos. These arrangements are not clear for the retail client. The retail client is dependent on this counterparty for the pricing. In principle, the counterparty is free to determine the bid and offer price, as well as the volume of the turbos requested and offered at its discretion. There is no such dependence on a single counterparty in order to be able to trade, nor the associated liquidity risk, if the retail client invests directly in the underlying value.
- 17) A provision may apply with turbos to the effect that the issuer reserves the right to terminate the turbo. If the issuer makes use of this right, the turbo is terminated and its value, if any, is paid out, without the retail client having any influence on this. There is no such termination risk if the retail client invests directly in the underlying value.
- 18) Another situation in which the turbo is terminated is when the built-in stop-loss of the turbo is triggered. This happens when the price of the underlying value reaches the stop-loss level. This feature contributes to the complexity of turbos. This product feature can wrongly give retail clients the impression that the stop-loss guarantees order execution at the stop-loss level. However, stop-loss levels for turbos do not guarantee any specific level of protection; instead, they solely commence the settlement process, with the settlement value of the turbo still to be specifically determined by the issuer. The price that the client receives for the turbo upon settlement may therefore differ from the price at which the stop-loss was set. A stop-loss is not a unique feature of turbos, but owing to the leverage, the value of the turbo becomes more sensitive to price changes of the underlying value, which increases the risk of sudden losses in the stop-loss order execution with turbos. This means that the use of a stop-loss with turbos is not sufficient to mitigate the concerns about the protection of investors.
- 19) The leverage of turbos arises from the financing structure that is used. For a turbo long, for instance, the issuer will provide the financing, up to the financing level, for buying the underlying value. The retail client will not pay the full acquisition price of the underlying value, but only the portion of the acquisition price that exceeds the financing level. This means that the notional

value<sup>9</sup> of the turbo exceeds the (net) value of the turbo. Owing to the use of the leverage, the price risk of turbos exceeds the price risk of a direct investment in the underlying value.

- 20) The leverage can be considered to be the principal feature of turbos. Generally speaking, leverage increases the possible gains, but also the possible losses for retail clients. In the review published in 2013, the AFM concluded that certain turbos with a high leverage offer investors an undesirably low prospect of realising a positive return. The AFM's review published in 2020 revealed that the leverage of turbos can reach 100 and higher. It also showed that the application of a higher leverage increases the risk of a larger loss to a greater extent than the 'risk' of a larger gain. The average return of a transaction in turbos is -1.7% for leverage levels up to 30. This average return decreases to -8.6% for leverage levels exceeding 100.<sup>10</sup>
- 21) Besides the greater price risk owing to the leverage, the financing structure of turbos also entails financing costs. The financing costs depend on the financing level and the interest rate of the financing<sup>11</sup>. The issuer charges financing costs by adjusting the financing level of the turbo. As a result, the value of the turbo decreases over time *ceteris paribus*. This procedure in effect means that the financing costs are added to the financing already provided, creating a snowball effect. The longer the term of the turbo, the greater the financing costs per unit of time will therefore be. Although the retail clients themselves are not borrowing money when buying a turbo, the retail clients do bear the costs of the financing structure of the turbo. That is because the financing costs will reduce the return of the turbo. Also, the issuer can change the level of the interest rate for the financing structure. There is no such interest rate risk if the retail client invests directly in the underlying value.
- 22) In addition to the financing costs, the transaction costs also reduce the return on turbos. As stated earlier, the retail client is dependent on a single fixed counterparty for trading in turbos. The way in which this counterparty determines the bid and offer prices is not transparent for the retail client. As a rule, the difference between the bid and offer price of a turbo is greater than the difference in bid and offer prices of the underlying value. The spread costs derived from that difference are accordingly greater than for the underlying value.
- 23) Additionally, the costs charged by the distributor for buying and selling turbos are also part of the transaction costs. This can be a fixed amount or a percentage of the transaction value or a combination of both. Some distributors do not charge any costs for buying and selling (certain) turbos. In that case it is often not transparent for the retail client whether the distributor itself bears the costs for providing this service, or whether the distributor receives payments in another manner for buying and selling turbos, for instance by selling the order flows for turbos to a third party.
- 24) The BEST, or Barrier Equals Strike turbos, are a special category of turbos. The defining feature of BEST turbos is that the financing level is equal to the stop-loss level. A BEST turbo is terminated without any value if the price of the underlying value reaches the stop-loss level. For (all) turbos, the financing level is adjusted (daily) by the financing costs. For BEST turbos, this

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<sup>9</sup> See Article 1 of this decision.

<sup>10</sup> 'Nederlandse turbomarkt in beeld', February 2020, [https://www.afm.nl/~/\\_profmedia/files/onderwerpen/turbo/afm-turbos-factsheet-ned.pdf?la=nl-NL](https://www.afm.nl/~/_profmedia/files/onderwerpen/turbo/afm-turbos-factsheet-ned.pdf?la=nl-NL), see graph 1.

<sup>11</sup> The interest rate is typically a benchmark interest rate increased with a margin, e.g. euribor + 3%.

adjustment means that the stop-loss level is also adjusted (daily). Therefore, BEST turbos are even more complex and involve higher risks than other types of turbos.

- 25) With BEST turbos, the issuer is exposed to the risk that the price of the underlying value suddenly 'plummets' further when the stop-loss level is reached. As a result, the issuer may incur a price loss with the positions it has entered into in connection with issuing the turbo. The issuer will usually hedge this risk. The costs of hedging this risk are charged as part of the price of the turbo, and are also referred to as the *gap risk premium*. Determining the level of the gap risk premium is complex. The gap risk premium depends on numerous factors, such as the financing level, the price, the volatility and the liquidity of the underlying value, and other market conditions. Viewed from the perspective of the retail client, this complexity is further increased due to the fact that the gap risk premium is not charged separately but as part of the total price of the turbo. It is therefore not transparent for the retail client to what extent the gap risk premium contributes to the total price of the turbo. It is virtually impossible for the retail client to assess whether the gap risk premium is in line with the risk incurred by the issuer.
- 26) Because the financing level is equal to the stop-loss level, BEST turbos enable the retail client to invest on the basis of (extremely) high leverage levels. The popularity of the BEST turbos contributes substantially to the use of high leverage levels and the associated losses for turbos. Analysis by the AFM has established that BEST turbos account for 76% of all turbos traded. If the price of the underlying value reaches the stop-loss level, the BEST turbo is settled at no value. It is immaterial in that connection whether the price rebounds in a direction that is beneficial for the retail client after the stop-loss level was reached. Analysis by the AFM has shown that 6% of all turbo transactions result in a total loss of the amount invested.<sup>12</sup> This total loss percentage can be attributed (virtually) in full to BEST turbos, as other types of turbos do, as a rule, pay out a residual value after executing the stop-loss.
- 27) Another feature that is connected with the leverage of turbos is their short term. The combination of high leverage levels that are offered to retail clients, the volatility of certain underlying values and the transaction fees that affect the return of the investment can lead to rapid changes in a retail client's investment position. As a result, retail clients are forced to act swiftly to maintain control of their risk position. The AFM has established that 56% of turbos traded have a term of 24 hours or less.<sup>13</sup> Only 5% of turbos traded have a term of 720 hours or more. The AFM recognises that these kinds of short holding periods of positions for retail clients also occur with other financial instruments such as, for instance, shares and bonds. However, while the short holding period of positions is often only secondary in the case of other financial instruments, it is a predominant feature of turbos.
- 28) Another important aspect of the complexity of turbos is that the retail client must, in addition to the features of turbos described above, also understand the specific features of the underlying value in order to take a well-considered investment decision. On the basis of the two following examples, the AFM illustrates the way in which the interaction between the turbo and the underlying value contributes to the overall complexity.

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<sup>12</sup> AFM 2020 review: 'Quantitative analysis of turbos distributed to retail clients in the Netherlands', February 2020, <https://www.afm.nl/~/-/profmedia/files/onderwerpen/turbo/afm-turbos-report-eng.pdf?la=nl-NL>, see figure 5, page 13.

<sup>13</sup> AFM 2020 review, see table 5, page 23.

- 29) With FX trading, clients speculate on one currency against another. If neither of the two currencies is the currency in which the turbo is traded, any return for the client will depend on the measures the client takes to assess the price movements of the three currencies. This means that the investor must have extensive knowledge of all currencies concerned to be able to successfully understand the complexity of this kind of currency trading.
- 30) With some underlying values, such as indices, it is possible to trade in the turbo outside the official trading hours of the underlying value concerned. In that case, the underlying value itself cannot be used to determine the value of the turbo; instead, it is derived from a different reference value. For a proper estimate of the price, the retail client must therefore not only possess knowledge of the underlying value itself, but also of any derivative instruments that are used as a reference value. These derivative instruments are generally designed for the professional market rather than the retail market.
- 31) The AFM concludes from the above that the combination of features and risks of turbos and the costs and associated fees that are charged for trading in turbos are complex, involve high risks and are not very transparent for retail clients. Retail clients usually do not have the in-depth knowledge that is necessary to successfully understand the complexity of this combination. This confirms that a significant investor protection concern exists in respect of turbos.

### **3.1.2 The size of potential detrimental consequences and the degree of disparity between the expected return or profit for investors and the risk of loss in relation to turbos (Article 21, second paragraph, under (b) and (f), Delegated Regulation)**

- 32) Based on the review published in 2020, the AFM estimates that there are 35,000 retail clients in the Netherlands who trade in turbos.<sup>14</sup> The average return achieved by retail clients on trading in turbos is negative: - €2,680. In total, the estimated negative result is €94 million over a period of thirteen months. Of the total number of retail clients, 68% lost money on trading in turbos. In addition, the data reveal a correlation between the return achieved and the leverage of the turbo. The higher the leverage, the more negative the average return achieved. It is also clear from the data that the more frequent retail clients trade in turbos, the higher the losses become. This indicates that possessing more experience in trading in turbos does not lead to better results.
- 33) The aforementioned (loss) figures confirm that a significant investor protection concern exists in respect of turbos.

### **3.1.3 The type of clients involved and the degree of innovation of turbos (Article 21, second paragraph, under (c) and (i), Delegated Regulation)**

- 34) Turbos are marketed on a large scale and distributed and sold to retail clients. The financial threshold for purchasing turbos is low. Clients can already purchase turbos with a small amount of money (€100 for example). The threshold is lowered further due to the fact that no transaction fees are charged for trading in turbos in some cases. Partly for that reason, turbos are accessible for a

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<sup>14</sup> This number does not include distributors who commenced their activities in the Dutch market in the second half of 2019 or later. The total number of retail clients trading in turbos will therefore be higher.

wide public. The notion of wide accessibility is reinforced by the fact that some turbo providers also offer widely purchased (basic) products, such as current accounts and savings accounts, and their brand name is therefore recognized by a wide public.

- 35) Retail clients with turbos invest indirectly in the underlying value. This means that turbos more readily allow a wider public to trade in certain underlying values, such as futures and certain commodities, which would otherwise not have been available to part of the public. Although a broader offer of investment options can be a good thing, such underlying values are by their nature geared predominantly to the professional market and are accordingly less compatible with retail clients. The leverage of turbos also enables retail clients to trade larger positions in the underlying value, which would not have been possible for the retail client in question without the leverage.
- 36) The AFM has established that some providers, partly due to the product governance rules of MiFID II<sup>15</sup>, make buying turbos less accessible for the general public by making turbos less easy to find within the product range. Conversely, the AFM has found that other providers prominently advertise turbos on their website. Turbos are also promoted in a convenient manner via readily accessible events that are described by terms such as ‘game’ or ‘competition’, and that draw attention to the element of play in trading in turbos. This contrasts with the high risks involved in and the complex nature of turbos.
- 37) Further, the application of technology contributes to the wide accessibility and ready availability of turbos. Some distributors, for instance, offer the option of issuing orders for turbos via apps. This means that constraints of place and time for trading in turbos are eased for retail clients. While ease of use can offer added value, this is all the more perilous in the case of turbos as it has become clear that the frequent trading and short terms contribute significantly to the losses with turbos.
- 38) The fact that turbos are mainly sold without advice or portfolio management means that distributors of turbos have limited insight into the personal situation or core objectives of the client. This contributes to the significant risk that turbos wind up with the general public rather than with a specifically described target group. The fact that the general public is involved in turbos contributes to the significant investor protection concern.

#### **3.1.4 The selling practices associated with turbos (Article 21, second paragraph, under (j), Delegated Regulation)**

- 39) Although turbos are complex products, they are offered to retail clients most commonly via electronic trading platforms, without the provision of investment advice or portfolio management. An assessment of appropriateness is required in such cases pursuant to Article 4:24 Wft. Providers are obliged to warn clients if they judge the service or product to be unsuitable. However, this assessment alone does not prevent turbos, without applying restrictions, from winding up with clients to whom they are not appropriate.

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<sup>15</sup> Articles 32, 32a and 32b of the Decree on Conduct of Business Supervision of Financial Undertakings under the Wft (Besluit Gedragtoezicht Financiële ondernemingen Wft).

- 40) As stated in 3.1.3, turbos are regularly promoted in advertisements in a manner that draws attention to the element of play in trading in turbos. In the product brochures, turbos are often promoted as a product enabling the investor to profit more, more quickly or disproportionately from a specific price movement of the underlying value. In addition, in some cases turbos are promoted in advertisements by offering reduced transaction fees or even no transaction fees at all for trading in turbos. Such promotions and incentives may divert clients' attention from the high risks associated with the product. They are targeted to attract retail clients and to incentivise trading. This is conducive to the risk that retail clients will consider these offers to be a core feature of the product, and this will compromise their ability to assess the actual risks of the product.
- 41) Further, the manner in which turbos are distributed entails the risk that retail clients have an incorrect or incomplete understanding of the pricing mechanism for turbos and of the relations between the various parties in the distribution chain. The AFM explains this as follows.
- 42) Turbos are offered as a vehicle with which a retail client invests in an underlying value. Turbos are traded via trading platforms. This combination may give rise to the impression for retail clients that the pricing mechanism for turbos works in a similar way to the pricing mechanism for the underlying value. That is not so, however. Whereas the price of the underlying value is formed, as a rule, by the mechanism of supply and demand of a large number of market parties, in the case of turbos, the retail client will often trade with a single counterparty only. Therefore, the retail client is strongly dependent on that counterparty for obtaining price information and for pricing.
- 43) Moreover, cooperation agreements may be in place between the various parties in the distribution chain for turbos - including the distributor, the counterparty trading with the retail client, the trading platform and the issuer - for instance, on making turbos available for trading and on forwarding order flows. In some cases, various parties in the distribution chain are part of the same group of enterprises. This can give rise to a degree of interdependence of the interests of the parties in the distribution chain, of which the retail client may not be aware.
- 44) The marketing and distribution techniques and manner of distribution for turbos described above contribute to the significant investor protection concern in connection with turbos.

### **3.2 Applicable requirements do not address the investor protection concern (Article 42, second paragraph under b, MiFIR)**

- 45) As required under Article 42, paragraph 2, under b, MiFIR, the AFM has considered whether existing regulatory requirements in the Union that are applicable to the provision of investment services pertaining to turbos avert the above concern and whether it would not be better to deal with the issue on the basis of improved supervision or enforcement of the existing requirements. The relevant applicable requirements when offering financial instruments such as turbos are laid down in MiFID II and the implementation thereof in the Wft and the Decree on Conduct of Business Supervision of Financial Undertakings under the Wft (**BGfo**) and the MiFID II

Delegated Regulation 2017/565 (**MiFID II Delegated Regulation**).<sup>16</sup> In this decision, the AFM will discuss in particular several statutory requirements that could address the investor protection concern. The AFM concludes that in the present case, investor protection concerns cannot be removed with improved supervision and enforcement of these requirements because of the risks identified above and due to the detrimental effect of turbos for retail clients.

46) The AFM is of the opinion that the following requirements in particular are relevant to the present measure:

- the requirements to provide appropriate information to clients in accordance with Articles 4:19, 4:20 and 4:22 Wft, and further elaboration thereof in Article 58 BGfo,<sup>17</sup> as well as the requirements included in Chapter III, Part 1 of the MiFID II Delegated Regulation and the requirements that investors are provided with information in accordance with Articles 5 up to and including 14 of Regulation (EU) No. 1286/2014 (**PRIPs Regulation**);<sup>18</sup>
- the requirements concerning completeness, consistency and comprehensibility of the prospectus to be published pursuant to Regulation (EU) 2017/1129 (**Prospectus Regulation**);<sup>19</sup>
- the suitability and appropriateness requirements as laid down in Articles 4:23 and 4:24 Wft;<sup>20</sup>
- the best execution requirements in accordance with Articles 4:90a et seq. Wft;<sup>21</sup> and
- the product governance requirements in accordance with Articles 4:14 and 4:90 Wft and Articles 32, 32a, 32b and 32c BGfo.<sup>22</sup>

47) This decision discusses in particular the requirements included in the Wft and the BGfo. These requirements arise from MiFID II and equivalent requirements apply in all other Member States as well in view of the maximum harmonisation intended by means of MiFID II. Where the AFM refers to existing requirements in the Wft and the BGfo that would not provide a better solution to the matter, the AFM also aims to refer to the requirements arising from MiFID II and the national implementation in other Member States as these apply to investment firms with their registered office in those other Member States or investment firms with their registered office in the Netherlands that offer turbos in other Member States via a branch or the freedom to provide services (European Passport).

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<sup>16</sup> Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, OJ L 87, pp. 1-83.

<sup>17</sup> Article 24, third, fourth and fifth paragraph, MiFID II.

<sup>18</sup> Regulation (EU) No. 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs).

<sup>19</sup> Article 20 of Regulation (EU) 2017/1129 of the European Parliament and the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (the 'Prospectus Regulation').

<sup>20</sup> Article 25, second, third, fourth and sixth paragraph, MiFID II.

<sup>21</sup> Article 27 MiFID II.

<sup>22</sup> Article 16, third paragraph, and Article 24, second paragraph, MiFID II and Chapter III of Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits

### 3.2.1 Provision of information

- 48) The Wft imposes requirements with respect to the provision of information to (potential) clients. Those requirements concern among other things the provision of correct, clear and non-misleading information<sup>23</sup> and the (timely) provision of certain information.<sup>24</sup> That information includes in particular appropriate information and warnings about the risks inherent in investment in financial instruments and whether the financial instrument is intended for retail clients or professional investors. Investment firms are also obliged to provide their clients with information concerning all costs and additional fees related to the investment services and the financial instruments.
- 49) There are also requirements with respect to the provision of information to investors on the basis of the PRIIPs Regulation. The PRIIPs Regulation imposed uniform rules regarding the shape and content of the key information document to be drawn up by PRIIP<sup>25</sup> developers as well as with respect to the provision of the key information document to retail clients in order to enable them to understand and compare the key characteristics and risks of a PRIIP. Specifically, Article 5 of the PRIIPs Regulation, as implemented further by Commission Delegated Regulation (EU) 2017/653, sets out a methodology for the presentation of the summary risk indicator and the related explanation. This concerns, for example, the question whether the retail client could lose the entire amount in invested capital or whether they have to assume further financial obligations.
- 50) Turbos are securities. The Prospectus Regulation stipulates that securities shall only be offered to the public in the Union or be admitted to trading on a regulated market situated or operating within the Union after prior publication of a prospectus in accordance with this Regulation.<sup>26</sup> The turbos offered to retail clients in the Netherlands do not qualify for an exemption. Issuers must therefore publish a prospectus for turbos pursuant to the Prospectus Regulation. The prospectus will be assessed by the AFM or another NCA as regards the requirements of completeness, consistency and comprehensibility, and will be approved after these requirements have been met.<sup>27</sup> Advertisements concerning turbos are also within the scope of the Prospectus Regulation.<sup>28</sup>
- 51) The AFM is of the opinion that compliance with the requirements concerning the provision of information cannot address the significant cause for investor protection concern. Firstly, improving the provision of information does not have an influence on the specific characteristics or components of turbos. In particular, improving information does not reduce the significant risk of loss or the negative return on turbos. Secondly, the complexity of turbos as described in paragraph 3.1.1 is such that even if the legal requirements to provide information are satisfied, the products will still be difficult to understand for retail clients.

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<sup>23</sup> Article 4:19, first paragraph, Wft.

<sup>24</sup> Article 4:20 Wft in conjunction with Article 58 BGfo and Articles 44 up to and including 51 of the MiFID II Delegated Regulation.

<sup>25</sup> Packaged retail and insurance-based investment product, as defined in Article 4, third paragraph, PRIIPs Regulation

<sup>26</sup> Article 3, first and third paragraphs, Prospectus Regulation.

<sup>27</sup> Article 20, Prospectus Regulation.

<sup>28</sup> Article 22, Prospectus Regulation.



### **3.2.2 Assessment of the suitability and appropriateness of the investment service and product**

- 52) The requirements with respect to the suitability of the financial instrument as referred to in Article 4:23 Wft were further strengthened under MiFID II with the obligation to provide a suitability report to the retail client as well as a further description of the suitability assessment. The objectives of the suitability assessment (considering products against clients' knowledge and experience, financial situation, risk tolerance and investment objectives) are substantially unchanged compared to the rules that applied under MiFID I<sup>29</sup>. The requirement to obtain sufficient relevant information and assess the suitability of the investment service or financial instrument to be provided is elaborated further in Articles 54 and 55 of the MiFID II Delegated Regulation. Specifically, Article 4:23, first paragraph, under a, Wft requires investment firms to obtain the necessary information regarding the client's or potential client's knowledge or experience in the investment field relevant to the specific type of product or service, the client's or potential client's financial situation including their ability to bear losses, and their investment objectives including their risk tolerance so as to enable the turbo provider to recommend to the client or potential client financial products that are suitable for them and are in accordance with their risk tolerance and ability to bear losses.
- 53) However, the suitability requirements are only applicable to the provision of investment advice and portfolio management. They are usually irrelevant in relation to the marketing, distribution or sale of turbos, which mostly occurs via electronic platforms, without the provision of investment advice or portfolio management. These requirements are therefore insufficient to remove the significant cause for investor protection concern.
- 54) In addition, implementation of MiFID II has also led to strengthening of the suitability requirements, in particular by reducing the number of products designated as non-complex as well as the scope for execution only services. Investment firms are obliged on the basis of Article 4:24, first paragraph, Wft to obtain information from their (potential) clients concerning their knowledge and experience in the investment field relevant to the specific type of product that is offered or desired, so that the provider is able to assess whether that product is suitable for the client or potential client. The provider warns the client or potential client if the provider considers that the product is not suitable for the client or potential client.
- 55) Turbos are complex financial products and are therefore subject to the appropriateness test in accordance with Article 4:24 first paragraph Wft. What is more, requirements with respect to appropriateness cannot prevent a retail client from trading in turbos even if non-appropriateness has been demonstrated. It is therefore not probable that improved supervision and enforcement of compliance with the requirements pertaining to appropriateness is able to remove the significant cause for concern about investor protection.

### **3.2.3 Best execution requirements**

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<sup>29</sup> Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 3/22/EEC (OJEU L 145 of 30.4, 2004, page 1).

- 56) The best execution requirements are detailed in Article 4:90a et seq. of the Wft. This concerns the obligation for investment firms to achieve the best possible result for their clients when executing orders. Various factors need to be taken into account in this connection, such as the classification of client, the price of the financial instrument, the execution fees, the promptness and probability of execution and settlement and the nature and scope of the order. Investment firms render account on this to their clients, for instance through the order execution policy, in which they explain how the orders are executed and the factors that affect this. In addition, investment firms are obliged to disclose the five principal locations where they have executed clients' orders, as well as the results of that execution.<sup>30</sup>
- 57) Best execution requirements do not have an impact on the degree of complexity, the transparency or the characteristics and components of the product itself. This means that supervision or enforcement of these requirements cannot lead to a change in the factors and criteria set out in paragraph 3.1.1. Supervision and enforcement of these requirements do not have a relevant impact either on the factors and criteria set out in paragraphs 3.1.2 up to and including 3.1.4. Supervision and enforcement of the above-mentioned criteria therefore cannot remove the significant cause for concern regarding investor protection that has been identified.

### **3.2.4 Product governance requirements**

- 58) The AFM has investigated the potential consequences of the product governance rules following from Article 4:14 Wft, Article 4:90 Wft and Articles 32, 32a, 32b and 32c BGfo. These rules require providers manufacturing financial instruments (including turbos) for sale to clients to ensure that the products are designed to meet the needs of an identified target market of end clients within the relevant category of clients. Further, providers are required to ensure that the strategy for distribution of the products is compatible with the identified target market. Providers must also take reasonable steps to ensure that the financial instruments are distributed to the identified target market and must periodically review the identification of the target market and the performance of the product. Turbo providers shall understand the financial instruments they offer or recommend and also assess the compatibility of the instrument with the needs of the client to whom they provide investment services. They must also take into account the identified target market of end clients, and ensure that financial instruments are offered or recommended only when it is in the interest of the client. Furthermore, providers that distribute financial instruments not manufactured by them shall have appropriate arrangements in place to obtain and understand the relevant information concerning the product approval process, including the identified target market and the characteristics of the product. Providers distributing financial instruments manufactured by providers not subject to the product governance requirements in MiFID II or by third-country providers shall also have appropriate arrangements to obtain sufficient information about the financial instruments.
- 59) The AFM notes that the product governance requirements arise from MiFID II. On 2 June 2017, ESMA published the 'Guidelines on MiFID II product governance requirements' in which guidance is provided to manufacturers and distributors for the assessment of the target market.

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<sup>30</sup> See Article 4:90b, third paragraph, seventh paragraph, Wft.

- 60) The purpose of the product governance requirements is to narrow down the type of clients (that is, the target market) for which financial instruments would be appropriate and to which they should therefore be distributed. If the financial instruments are not or no longer compatible with the needs, characteristics and objectives of the target group, or if the financial instruments are offered outside the identified target group, the provider will be obliged to implement appropriate measures. An appropriate measure may be adjustment of the target group, the manner of distribution or the product.
- 61) Product governance requirements have applied to manufacturers and distributors of financial instruments since 3 January 2018. Following the entry into force of the MiFID II product governance requirements, the AFM carried out a review at six distributors of turbos that have their registered office in the Netherlands. A number of distributors have informed the AFM about the steps they have taken with regard to product distribution. The AFM considered whether improved supervision and enforcement of the product governance requirements could address the significant cause for concern regarding investor protection that turbos give rise to. The AFM concludes however that such an approach is not effective and therefore insufficient to address the problem. The AFM explains this as follows.
- 62) Although a number of distributors of turbos have implemented improvements in the product distribution, these improvements cannot entirely remove the investor protection concern. That is because the cause for concern relates not only to the distribution of turbos, but also to the complexity, features and components of turbos, over which the distributor has little or no control.
- 63) Moreover, the concern about investor protection pertains not only to an individual provider of turbos, but constitutes a market-wide issue involving numerous providers, in the role of manufacturer, in the role of counterparty in the transaction or in the role of distributor. An enforcement process on the basis of product governance requirements is complex and highly intensive by its nature. Enforcement at all turbo providers would therefore be disproportionately burdensome for both the providers concerned and the responsible NCAs. What is more, enforcement on the basis of product governance requirements cannot prevent newly developed or newly distributed turbos from nonetheless giving rise to significant cause for concern about investor protection. The AFM notes in this connection that it has established that, since 2019, turbo providers have become active in the Dutch market that were not active in the past.

### **3.3 The decision is proportionate (Article 42, second paragraph, under c, MiFIR)**

- 64) In view of the extent and nature of the identified significant cause for concern about investor protection, the AFM considers it necessary and proportionate to restrict the marketing, distribution or sale of turbos to retail clients. The AFM deems it appropriate in selecting the restrictions for turbos to seek as much alignment as possible with the restrictions imposed in the CFD product intervention measure. The reason for this is the high degree of similarity between the criteria and factors that have led to the significant cause for concern about investor protection for turbos and the criteria and factors that have led to the significant cause for concern about investor protection for CFDs,

- 65) The restrictions of Article 2, first paragraph, of this decision are intended to limit the risks of trading in turbos. The restrictions of Article 2, second paragraph, aim to improve the provision of information when turbos are offered. The restrictions of Article 2, third paragraph, are intended to protect retail clients against undesirable incentives to trade in turbos. In determining these restrictions, account was taken of the nature of the identified risk as well as the level of sophistication and the expected impact on retail clients who trade in turbos. The AFM notes in this connection that the restrictions do not lead to retail clients being unable to trade in turbos. Nor do the restrictions have an impact on the possibility for retail clients to close positions in turbos they already hold. The leverage cap does not apply to the offer price issued by or on behalf of the retail client.
- 66) As a consequence of the CFD product intervention measure, the restrictions of the “margin close-out protection” and the “negative balance protection” apply to CFDs at the account level. The present decision does not impose such restrictions on turbos. The absence of a residual debt risk with turbos corresponds to the negative balance protection with CFDs at the position level. Therefore the negative balance protection at the account level does not apply to turbos. The margin close-out protection was introduced for CFDs to supplement the negative balance protection at the account level. As the latter restriction does not apply to turbos, neither does that reason to introduce the margin close-out protection. The AFM is aware that the other effect of the margin close-out protection, i.e. a uniform close-out process, is not achieved by the present decision. The AFM notes in this connection that imposing mandatory margin close-out protection for turbos would have a far-reaching impact on the turbo market as such a restriction would, for instance, lead to a prohibition of BEST turbos.
- 67) These restrictions remove the significant cause for concern regarding investor protection by achieving a suitable and uniform level of protection for retail clients in The Netherlands who are served by providers of turbos. The AFM is of the opinion that the current restrictions, in addition to the existing requirements, are sufficient to remove the significant cause for concern regarding investor protection. The AFM will continue to monitor developments, and will reconsider, expand or otherwise change the present decision in the future if necessary.
- 68) The expected effects of the present AFM measure are the following:
- i. reduction of the miss-selling of turbos and its related financial consequences. This is an important advantage, both for the retail client and for the financial markets as a whole, and
  - ii. restoration of investors' confidence in financial markets, including confidence in the providers in the financial sector whose reputation may have suffered under the problems experienced by investors.
- 69) The AFM will first explain the restrictions under the present decision. The AFM will then explain why the decision as a whole is proportionate.

### **3.3.1 Leverage cap**

- 70) The AFM considers it necessary to restrict the marketing, distribution or sale of turbos to retail clients by the application of certain specific leverage limits depending on the nature of the

underlying value. This restriction of the leverage limits contributes to retail client protection and to addressing the investor protection concern. The AFM explains this as follows.

- 71) Firstly, a higher leverage leads to higher sensitivity of turbos to price changes of the underlying value and thus increases the risk of the turbo. Limiting the leverage limits this risk. Secondly, a higher leverage entails a higher financing level. The costs of a turbo increase in line with the financing level, and as the costs increase, so does the probability of a loss with a turbo. Thirdly, higher leverage leads to a greater probability that the stop-loss will be reached, as a result of which the turbo will be settled at a (total) loss. The leverage limits limit the aforementioned loss probability.
- 72) Leverage limits already apply to CFDs. ESMA has determined these leverage limits for CFDs based on the assumption that there is a 5% probability that 50% of the initial investment will be lost within a specific reference period.<sup>31</sup> The AFM has elected to apply these leverage limits to turbos as well. Applying the same leverage limits for turbos and CFDs is consistent from an investor protection perspective. This contributes to the comprehensibility, and therefore the effectiveness, of the measures concerning turbos and CFDs as a whole. The AFM notes that the automatic close-out protection applies for CFDs, and that the present decision does not impose such a restriction on turbos. The AFM does not, however, see why this difference should prompt it to apply different leverage limits to turbos, at the expense of consistency and comprehensibility.

### **3.3.2 Risk warnings**

- 73) Another measure to address risks to retail clients in relation to turbos is to require the provision of standardised and effective firm-specific risk warnings including information on the percentage of the retail clients that lose money at the provider in trading in turbos. This requirement also applies to statements concerning the fictitious trading in turbos such as games and competitions, as such statements may contribute to the marketing, distribution or sale of turbos. Turbo providers must display the risk warnings in a prominent spot. This means that they are not allowed to place risk warnings behind disclaimers or in locations that require the retail client to make an effort to reach them. The presentation of the risk warning, such as the choice of font, the colour or duration of the display of the risk warning, may not result in the risk warning being unclear or insufficiently legible either. The AFM refers in this connection to the purpose of the risk warning, which is to enable retail clients to take note of the information provided by the risk warning so that they can include the information in making a well-considered decision whether to purchase a turbo or not.
- 74) The requirement for turbo providers to state the percentage of retail clients who lose money on turbos is designed by the AFM to offset the tendency of turbo providers to highlight the potential profits over losses. Furthermore, the AFM expects the warnings to support retail clients in making an informed decision about whether they wish to proceed with a high-risk product that is more likely to result in a loss than a gain.
- 75) In order to warn investors of the risk of losses related to investing in turbos, the AFM is of the opinion that each turbo provider should inform their clients of the percentage of retail clients that

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<sup>31</sup> This reference period depends on the underlying value and varies from one day to five days.

lost money over the last 12-month period in trading in turbos. Only realised returns should be taken into account in determining this percentage. Unrealised returns on turbos that have not yet been sold or terminated must not be taken into account. To ensure the figure is kept up-to-date, this calculation should be updated on a quarterly basis. The percentage shown should be presented in a simple and clear manner as part of a risk warning in every communication of the provider. In order to provide a complete picture of the percentage of retail clients who lost money, all costs in relation to the trading of turbos should be taken into account in the calculation.

- 76) For newly established turbo providers and turbo providers that have not had any open turbo positions in the past 12 months, it is not possible to calculate such a percentage over the last 12 months. Further, it may be difficult for turbo providers who are not distributors themselves and do not have the transaction data of retail clients to establish what percentage of retail clients loses money on the turbos offered by them. For these firms, this decision prescribes a standardised risk warning on the basis of the study carried out for the AFM (Annex 2, Section A, Article 5 of this decision).
- 77) One risk that the AFM acknowledges of the firm-specific loss percentages is that these percentages will be used for marketing instead of the original purpose, being the risk warning. For these reasons, NCAs should monitor that investment firms do not use the firm-specific percentages in an inappropriate manner. The AFM will monitor providers' application of the mandatory risk warnings closely and if necessary change this restriction in the future, for example if it becomes clear that the warning does not have the desired effect in practice.

### **3.3.3 The prohibition of monetary and non-monetary benefits**

- 78) A final measure to address risks relating to the distribution of turbos to retail clients is a ban on monetary benefits (for example so called 'trading bonuses') and certain types of non-monetary benefits. Waiving transaction fees for turbos, while transaction fees do apply to other financial products, can be qualified as a prohibited benefit in this connection. The costs for providing the services could in such cases possibly be recovered in other ways, for instance by selling the order flows for turbos. Financial promotions offering bonuses or other incentives for clients to trade turbos often divert the attention of these clients from the high-risk nature of turbos. They draw in retail clients who may not otherwise choose to invest in these products. For such benefits can be contingent on clients depositing money in the account or on executing a certain volume of trades.
- 79) However, the prohibition of benefits does not cover information and research tools provided to retail clients insofar as they relate to turbos (and exclude other non-monetary benefits), as these tools would help clients' decision-making. The prohibition of benefits does not cover general benefits, such as lower transaction fees for all products, either, which are not intended to persuade the retail client to trade (more) in turbos.

### **3.3.4 The decision as a whole is proportionate**

- 80) The AFM has reached the limits of what is effective as regards the use of non-binding tools, such as public warnings against the risks of trading in turbos. In this connection, in 2013, the AFM

published the results of its review of turbos and drew attention to the risks they involve. The AFM has engaged in dialogue with turbo providers in the Netherlands. This has led to a number of self-imposed measures, including the changes to the provision of information and setting the leverage cap at 50. While the AFM welcomed these self-imposed measures, they did not achieve the desired effect. For example, in the review it published in 2020, the AFM observed that leverage above 50 does still occur. Also, the results on trading in turbos are generally comparable to those of CFDs.

- 81) Various turbo providers mentioned the possibility of seeking to address the risks of turbos by means of self-regulation. Partly in view of the result of the previous attempt and the significant cause for investor protection concern due to turbos, the AFM does not consider it desirable to wait for a new self-regulation process, of which both the completion time and the outcome are uncertain.
- 82) As regards binding tools other than the present measure, it has already been explained in paragraphs 3.2 up to and including 3.2.4 why the issue would not be better addressed by enforcing the existing requirements. The AFM therefore considers the present measure, which restricts the marketing, distribution or sale of turbos to retail clients, to be appropriate to address risks to investor protection. The present decision in its entirety is necessary and proportionate to address the significant investor protection concern.
- 83) The leverage cap means that turbo providers are restricted in issuing an offer price. It is relevant here that turbo providers already imposed on themselves, in 2016, the measure to limit leverage to 50. The leverage cap in the present decision further tightens the aforementioned leverage limit. As an additional safeguard of compliance with the leverage cap, turbo providers are obliged, in case they observe any non-compliance with the leverage cap by another turbo provider in the same distribution chain, to report the breach to the turbo provider concerned and to the NCA. The AFM notes in this connection that the distributor and issuer themselves have an interest in seeing that the turbos distributed or issued by them are not offered with a higher leverage than that prescribed by the present decision.
- 84) The prohibition of monetary and non-monetary benefits imposes restrictions on the manner of marketing by turbo providers. It nonetheless remains possible for turbo providers to promote turbos in other ways.
- 85) The mandatory risk warning entails an additional administrative burden for some providers. This is outweighed, however, by the improved insight for retail clients into the risks of trading in turbos. Issuers that do not have the information to determine the trading results of retail clients can use the standard risk warning.
- 86) In general terms, the restrictions are expected to reduce the significant losses for retail clients when trading in turbos and also to increase awareness among this group of clients of the risks entailed by these products. The potential consequences for turbo providers principally comprise the potential decrease in their turnover from offering turbos and the administrative burden due to the mandatory risk warning.

### **3.4 Consultation with NCAs in other Member States (Article 42, second paragraph, under d, MiFIR)**

87) A number of investment firms that offer turbos to retail clients in the Netherlands have their registered office in another Member State. The present decision therefore may have an impact on other NCAs due to their responsibility as *home country supervisor*. The AFM therefore consulted on the present decision with the Autorité des marchés financiers in France, Bundesanstalt für Finanzdienstleistungsaufsicht in Germany and Finanstilsynet in Denmark.

### **3.5 No discriminatory effect on services and activities provided from another Member State (Article 42, second paragraph, under e, MiFIR)**

88) This decision applies to the providers of turbos with their registered office in the Netherlands that offer turbos to retail clients in The Netherlands and to providers of turbos with their registered office in another Member State that offer turbos to retail clients in The Netherlands. No distinction is made based on the Member State in which the registered office is located. It is therefore not likely that the present decision will have a discriminatory effect on services and activities provided from another Member State.

### **3.6 Consultation with public bodies competent for the oversight, administration and regulation of physical agricultural markets (Article 42, second paragraph, under f, MiFIR)**

89) The AFM has no indications that turbos pose a serious threat to the orderly functioning and integrity of a physical agricultural market. Nonetheless, the AFM consulted for the sake of additional care with the Ministry of Agriculture, Nature and Food Quality, European Agriculture and Fisheries Policy and Food Security. This consultation did not lead to insights that would lead to a decision different from the present decision.



#### **4. Notification of NCAs in other Member States and ESMA (Article 42, third paragraph, MiFIR)**

90) The AFM notified all NCAs in other Member States and ESMA in writing and in the agreed manner of the particulars referred to in Article 42, third paragraph, MiFIR, on 25 January 2021, which is at least one month before the measure takes effect. ESMA adopted and published an opinion on the ESMA website in accordance with Article 43, second paragraph, MiFIR. The AFM has taken note of the opinion adopted by ESMA.<sup>32</sup> The AFM concludes this decision is not contrary to the adopted opinion.

#### **5. Publication of the notice of the decision on the website (Article 42, fifth paragraph, MiFIR)**

91) The AFM publishes a notice of this decision in the following location:  
<https://www.afm.nl/nl-nl/professionals/onderwerpen/productinterventie>. The AFM's measure will enter into effect following publication of the notice of this decision on the AFM website and in the Government Gazette.

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<sup>32</sup> “ESMA issues an opinion on Product Intervention Measures on Turbos”, 8 June 2021,  
<https://www.esma.europa.eu/press-news/esma-news/esma-issues-opinion-product-intervention-measures-turbos>