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## What's new:

BaFin: Draft product intervention measure pursuant to Article 42 MiFIR and Section 15(1)(2) of the German Securities Trading Act on turbo certificates

## Relevant to:

Issuers, intermediaries, brokers, financial services providers offering products with leverage and knock-out feature (so-called "**Turbos, Turbo certificates or Turbo warrants**") in Germany

## Business impact

High

The German NCA for market supervision *Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)* recently proposed **restrictions on the offering of *turbos* to retail investors.**

This **planned product intervention measure** will be enacted through a general administrative act (*Allgemeinverfügung*), and *BaFin* is currently consulting with affected market participants. The decision follows a market survey that raised, in the opinion of the regulator, significant investor protection concerns. **Affected are not only German issuers and intermediaries offering *turbos* with Germany as Home Member State but also foreign market participants offering such products in Germany to retail clients.**

## Detailed analysis and action required

Under the proposed rules, *turbos* may only be offered to retail investors under specific conditions.

Intermediaries, issuers, and providers must adhere to the following:

- 1. Standardized Risk Warning:** Communications must include a warning that seven out of ten retail investors incur losses when trading *turbos*.
- 2. Ban on Incentives:** No bonuses or incentives (monetary or non-monetary) may be offered to encourage trading – e.g., no reduced fees, welcome bonuses, or gifts.
- 3. Enhanced Appropriateness Test:** Investors must complete a test covering key product features and correctly answer at least six questions before being allowed to trade *turbos*. This test must be repeated every six months.

Next steps after this announcement is a global hearing and then the final decision.



## Why is this a critical measure for the business

Reading BaFin's draft, it appears that the proposed measures are partly similar to the product intervention rules that took effect in the Netherlands on 1 October 2021. According to Dutch market participants, the implications have been significant, particularly given the ban on inducements in the Netherlands. As a result, cooperation between brokers and issuers has become extremely challenging and requires the utmost caution. Notably, trading volumes declined sharply in the Netherlands—by approximately 50% in the first quarter following the implementation.

The German draft is less stringent, for example there are no restrictions on the leverage and the inducement ban does not apply to general actions that are not specifically to *Turbos*, are not temporary and are not linked to conditions such as certain transaction volumes or a number of transactions. Nevertheless, there are **significant concerns regarding the appropriateness of such decision** and affected **market participants should take advantage of** the possibility of submitting a statement as part of the hearing process. The **deadline is 3 July 2025**.

## Arguments against BaFin's approach that can be used

The following key facts may call the appropriateness of the decision into question.

### Questionable data as outcome of the BaFin Turbo product assessment

Our in-depth review of the initial BaFin questionnaire highlights several limitations in the data collection and methodology, which may have led to a distorted and overly negative representation of Turbos:

- **Selective Scope:**  
The focus on expired and knocked-out products excluded still-active positions, skewing the yield analysis toward poor outcomes. Including live products significantly improves the overall performance picture.
- **Misrepresented Investor Behavior:**  
The analysis did not reflect typical holding patterns. Most Turbos are held intraday or short-term, which means actual costs and risks are far lower than suggested.
- **Incomplete Cost & Spread Assessment:**  
Cost and spread calculations did not consider leverage effects or proportional exposure, leading to overstated cost assumptions. More realistic metrics show that spreads are low and trading is efficient.

### Legal Overreach?

The proposed national restrictions risk undermining the EU's harmonized regulatory framework.

### Investor Protection Misrepresented

BaFin's claims of investor harm are based on a market study and selective and flawed data. ESMA has explicitly excluded *turbos* from its product intervention rules (for binary options), highlighting their distinct characteristics.



## **Distorted Competition**

Restricting public offerings in Germany while allowing others in the EU to offer *turbos* freely could create an uneven playing field and disadvantage local issuers and Germany as a market place.

## **Transparency and Complexity Concerns Unfounded**

*Turbos* are listed products with clear documentation, educational resources, and built-in loss protections. BaFin has not provided sufficient evidence that retail investors don't understand them.

## **Retail Investors Not Complaining**

A notable absence of retail complaints further weakens the case for intervention.

## Final Thoughts

The debate around turbos raises important questions about regulatory proportionality, data integrity, and investor choice. All affected market participants should take coordinated action to challenge this.

## Get in Contact



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## Thank You for Your Interest

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