

5.1.2 Companion Policy 91-102 Prohibition of Binary Options

COMPANION POLICY 91-102 PROHIBITION OF BINARY OPTIONS

Introduction

The purpose of Multilateral Instrument 91-102 *Prohibition of Binary Options* (the **Instrument**) is to help protect would-be investors from binary options fraud.

The purpose of this Companion Policy is to state the view of the participating members (**we**) of the Canadian Securities Administrators (the **CSA**) on various matters related to the Instrument.

We are concerned by complaints we have received regarding the marketing of products commonly called “binary options” to individuals. Many of these products and the platforms offering them have been identified as vehicles to commit fraud. Some persons have used misleading information to promote these products as legal and legally offered, despite not being authorized to offer these products to individuals in Canada. The Instrument explicitly prohibits advertising, offering, selling or otherwise trading a binary option, as defined in the Instrument, with or to an individual.

We consider a person or company to be trading in securities or derivatives in a local jurisdiction if that person or company offers or solicits transactions in securities or derivatives to persons or companies in that local jurisdiction, including through a website or other electronic means.

Definitions and interpretation

Unless defined in the Instrument or this Companion Policy, terms used in the Instrument and in this Companion Policy have the meaning given to them in securities legislation, including in National Instrument 14-101 *Definitions*. “Securities legislation” is defined in National Instrument 14-101 *Definitions*, and includes statutes and other instruments related to both securities and derivatives.

Interpretation of terms used or defined in the Instrument

Section 1 – Definition of “binary option”

The defined term “binary option” is intended to capture a range of products that are commonly called binary options, or are materially similar to products that are commonly called binary options, regardless of how they are named. Binary options are sometimes called a variety of other names, including but not limited to “all-or-nothing options”, “asset-or-nothing options”, “bet options”, “cash-or-nothing options”, “digital options”, “fixed-return options” and “one-touch options”.

Binary options are based on the outcome of a yes/no proposition, expressed as whether an underlying asset, event or value meets one or more predetermined conditions specified in the contract or instrument, at the time or during the time period specified in the contract or instrument. The specified time or time period for determining whether the predetermined condition or conditions are met can be very short, sometimes hours or even minutes.

Automatic exercise

Binary options typically exercise automatically; once the contract or instrument is entered into, there is no decision for either the buyer or the seller to make. The buyer either

- is entitled to receive a fixed amount if the predetermined condition or conditions are met, i.e., the buyer is “in-the-money”, or
- loses all or nearly all of the amount that was paid to enter into the contract if the predetermined condition or conditions are not met, i.e., the buyer is “out-of-the-money”.

Example yes/no propositions

The yes/no proposition is structured on the performance of an underlying interest or the occurrence of a specified event in connection with the underlying interest.

For the purposes of the Instrument, we interpret “underlying interest” as the event or thing that the value or payment obligations of the binary option is based on, derived from or referenced to. The underlying interest of a binary option could be, for example

- an election or a benchmark interest rate, or
- a security, index, currency, precious metal or any other commodity, price, rate, benchmark, variable or any other thing.

Examples of yes/no propositions that a binary option could be based on include whether:

- the value of the Canadian dollar will be above US \$0.75 on a particular day;
- the price of a share in ABC Company will be above \$14.37 at any time between two particular dates;
- the price of gold will be below \$1082 at 3:42 pm on a particular day;
- the price of oil will be in the range of \$48.00 – \$49.99 at any time on a particular day;
- a given candidate will be elected;
- a benchmark interest rate will rise by 25 basis points; or
- there will be more than one inch of rain reported at a specified location on a specific day.

No right to buy or sell the underlying interest

A binary option typically does not grant the buyer or seller any right or obligation to buy, sell, receive or deliver an underlying interest referenced in the contract or instrument. For example, if the yes/no proposition of a binary option is based on the value of a listed security, the binary option would provide for settlement in cash and would not provide for delivery of the underlying security. Similarly, if the yes/no proposition of a binary option is based on the movement in the price of gold, the binary option would provide for settlement in cash and would not provide for delivery of physical gold.

Payout structure

Typically, the only rights under a binary option for the buyer or seller are an entitlement to receive or an obligation to pay (a) a predetermined fixed amount if the predetermined condition or conditions are met, and (b) zero or another predetermined fixed amount if the predetermined condition or conditions are not met. We interpret “fixed amount” to refer to a fixed monetary amount and not to a fixed interest rate or other type of amount.

The definition of “binary option” is intended to capture contracts that provide for defined, discrete payout amounts (e.g., \$1.00, \$10.00, \$50.00). We are of the view that a contract with a continuous payout structure that is dependent on the performance of an underlying interest would not meet the definition of “binary option” in the Instrument.

General comments

There are certain contracts we do not consider to be “binary options” for the purposes of the Instrument. These contracts include, but are not limited to:

- a contract that is exercised without payout of a predetermined fixed monetary amount, such as a mortgage rate guarantee;
- an insurance contract or income or annuity contract or instrument that is entered into with a licenced insurer and is regulated as insurance under insurance legislation in Canada or a foreign jurisdiction; and
- a lottery ticket from a governmental lottery or gaming commission, regulated sports betting and bingo at a licensed bingo hall.

Section 2 – Trading binary options with an individual prohibited

Section 2 prohibits advertising, offering or selling a binary option to an individual. Advertising, offering and selling are elements of “trade” or “trading”. The phrase “or otherwise trade” includes soliciting and all other elements of “trade” or “trading”, including an act in furtherance of a trade.

Section 3 – Trading binary options with a person or company other than an individual prohibited

Section 3 prohibits advertising, offering or selling a binary option to a person or company that was created, or is used, solely to trade a binary option. Section 3 is designed to support the prohibition in section 2, by preventing a party that offers a binary option from avoiding the prohibition by having their proposed client create a corporation or other type of entity to trade binary options.

Section 4 – Binary options having a term to maturity of 30 days or longer

Section 4 carves out from the prohibition in sections 2 and 3 a binary option having a term to maturity of 30 days or longer. We consider “term to maturity” to mean, inclusively, the time the binary option is entered into until the time specified, or the expiry of the time period specified, in the contract or instrument for determining whether the predetermined condition or conditions are met. For example, if the original term to maturity of a binary option is 30 days or longer from the time it was first made available for trading, the binary option would not be caught by the Instrument.

A binary option that has a maturity date of 30 days or more from the date the binary option is entered into would not be excluded from the prohibition if the time or time period specified for determining whether the predetermined condition or conditions are met is less than 30 days from the date the binary option is entered into.

General

We remind market participants that binary options that are not subject to the Instrument are nevertheless derivatives and/or securities in each jurisdiction of Canada. Any person or company advertising, offering, selling or otherwise trading such products to persons or companies in Canada is subject to securities legislation in Canada including, for example, anti-fraud provisions and requirements respecting registration, market conduct and disclosure. Furthermore, in jurisdictions of Canada where binary options are regulated as securities, trading a binary option may be a distribution subject to the prospectus requirement.

Offering investment services or products to persons or companies in Canada, whether by telephone, online or in-person, is a regulated activity. Investing through unregistered offshore platforms or dealers can be risky and is a common red flag for investment fraud. We encourage all investors to visit aretheyregistered.ca to check the registration of any person or company offering investment products, including binary options, to Canadians. Anyone who has invested with, or has concerns about, a binary options trading platform should contact their local securities regulator. We also encourage all investors to visit binaryoptionsfraud.ca.