

Chapter 5

Rules and Policies

5.1.1 CSA Multilateral Notice of Multilateral Instrument 91-102 Prohibition of Binary Options and Related Companion Policy



CSA Multilateral Notice of Multilateral Instrument 91-102 *Prohibition of Binary Options* and Related Companion Policy

September 28, 2017

Introduction

We, the securities regulatory authorities in all Canadian jurisdictions other than British Columbia (collectively, the **Participating Jurisdictions**), are implementing the following:

- Multilateral Instrument 91-102 *Prohibition of Binary Options* (the **Instrument**); and
- Companion Policy 91-102 *Prohibition of Binary Options* (the **CP**).

In this Notice, the Instrument and the CP are referred to collectively as the **Binary Options Rule**.

In some jurisdictions, government ministerial approvals are required for the implementation of the Instrument. Provided all necessary approvals are obtained, the Binary Options Rule will come into force on December 12, 2017.

The British Columbia Securities Commission is not an authority implementing the Binary Options Rule. Please see BC Notice 2017/02 – *Binary Options* for more information regarding the regulation of binary options in BC.

Substance and Purpose

The purpose of the Binary Options Rule is to protect would-be investors from becoming victims of binary options fraud and from an illegal promotion of extremely high risk products. We believe the Instrument will achieve this goal by raising awareness among investors that the sale of these products is illegal and by disrupting the distribution of these products, including its facilitation through payment processing and advertising. To this end, the Instrument explicitly prohibits advertising, offering, selling or otherwise trading a binary option with or to an individual.

Summary of the Instrument

The Instrument prohibits advertising, offering, selling or otherwise trading a binary option having a term to maturity of less than 30 days with or to:

- an individual, and
- a person or company that is created, or is used, solely to trade a binary option.

The Instrument sets out a definition of “binary option” that is intended to capture a range of products that are commonly called binary options, or that are similar to products that are commonly called binary options, regardless of how they are named.

Background

Binary options

Binary options are based on the outcome of a yes/no proposition. If the outcome is yes, the buyer wins or is “in-the-money”. If the answer is no, the buyer loses or is “out-of-the-money” and loses all, or nearly all, of their investment. The yes/no proposition is structured on the performance of an underlying interest referenced in the contract – for example, a change in the value of a currency, commodity, stock index, or listed security – or the occurrence of a specified event in connection with an underlying interest – for example, the outcome of an election or a change in a benchmark interest rate. The time or time period specified in the contract for determining whether the predetermined condition (i.e., the outcome of the yes/no proposition) or conditions are met can be very short, sometimes hours or even minutes. The buyer either:

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

Binary options fraud

We are concerned by the large number of complaints received regarding the marketing of products commonly called “binary options” to individuals. Binary options are also 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.

All contracts or instruments, however named, marketed or sold that meet the definition of a binary option are prohibited under the Instrument.

A significant number of the complaints and inquiries received by CSA members concern online binary options platforms. These platforms operate as unregistered dealers, are typically located off-shore, and promise quick and high-yielding returns from trading binary options. On some platforms, trading may actually take place but it is typically extremely difficult and often impossible to win on the bet (because the platform controls the odds and often the reference value of the underlying interest). In some cases, even if an individual theoretically does win, the winnings may appear as a credit on a trading account on the platform but the investor’s money is not transferred or returned. In many other cases, no trading actually takes place and the operation is purely a fraud set up to take money from individuals, including through cash advances processed through the target’s credit card. Once a victim has lost their money, it is almost impossible to recuperate their losses.

No individuals or firms are registered to sell binary options in Canada

The Instrument prohibits advertising, offering, selling and otherwise trading binary options to an individual and to a person or company that was created, or is solely used, to trade binary options.

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.

Offering investment services or products to persons or companies, whether by telephone, online or in-person, is a regulated activity. It is illegal to offer securities or derivatives, including binary options, whether or not subject to the Instrument, without being registered as a dealer. There are only limited and narrow exceptions to the registration requirement for transactions with highly sophisticated investors. We emphasize that no offering of these products, including by a broker, dealer or platform, has

been authorized anywhere in Canada. Many of these products and the platforms selling them have been identified as vehicles to commit fraud.

Investing through unregistered offshore platforms or dealers can be risky and is a common red flag for investment fraud. Registration as a dealer is an important safeguard for investors, helping to ensure the character, proficiency and solvency of the dealer and typically requiring the registered dealer to assess the suitability of an investment for an investor. 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.

Summary of Written Comments Received

The Instrument was published for comment as Proposed National Instrument 91-102 *Prohibition of Binary Options* (the **Proposed NI**) on April 26, 2017 in all CSA jurisdictions except BC. The public comment period for the Proposed NI expired on May 29, 2017 in Alberta and Québec, June 28, 2017 in Manitoba and Saskatchewan, and July 28, 2017 in all other CSA jurisdictions except BC.

We received eight comment letters on the Proposed NI. A list of those who submitted comments as well as a chart summarizing the comments received and our responses is attached as Annex A to this Notice. Copies of the comment letters can be found on the websites of the Alberta Securities Commission, Autorité des marchés financiers, and Ontario Securities Commission.

Summary of Changes

We have made certain non-significant changes to the Instrument in response to the comments received. We have also made several non-significant changes to the CP to provide further guidance on the types of contracts we intend and do not intend to capture under the Instrument.

Contents of Annexes

The following annexes form part of this CSA Notice:

- Annex A – Summary of Comments and CSA Responses,
- Annex B – Multilateral Instrument 91-102 Prohibition of Binary Options,
- Annex C – Companion Policy 91-102 Prohibition of Binary Options, and
- Annex D – Local Matters.

Questions

Please refer your questions to any of:

Martin McGregor
Legal Counsel, Corporate Finance
Alberta Securities Commission
403-355-2804
martin.mcgregor@asc.ca

Lise Estelle Brault
Co-Chair, CSA Derivatives Committee
Senior Director, Derivatives Oversight
Autorité des marchés financiers
514-395-0337, ext. 4481
lise-estelle.brault@lautorite.qc.ca

Kevin Fine
Co-Chair, CSA Derivatives Committee
Director, Derivatives Branch
Ontario Securities Commission
416-593-8109
kfine@osc.gov.on.ca

Steven Gingera
Legal Counsel
Manitoba Securities Commission
204-945-5070
steven.gingera@gov.mb.ca

Rules and Policies

Wendy Morgan
Senior Legal Counsel, Securities
Financial and Consumer Services Commission,
New Brunswick
506-643-7202
wendy.morgan@fcnb.ca

Dean Murrison
Director, Securities Division
Financial and Consumer Affairs Authority
of Saskatchewan
306-787-5842
dean.murrison@gov.sk.ca

Abel Lazarus
Director, Corporate Finance
Nova Scotia Securities Commission
902-424-6859
abel.lazarus@novascotia.ca

ANNEX A

**SUMMARY OF COMMENTS AND CSA RESPONSES ON
PROPOSED NATIONAL INSTRUMENT 91-102 PROHIBITION OF BINARY OPTIONS**

<u>Section Reference</u>	<u>Summary of Issues/Comments</u>	<u>Response</u>
GENERAL COMMENTS		
General Comments	<p>Commenters generally supported the efforts of the CSA to help protect would-be investors from binary options fraud and generally strengthen the integrity of, and public confidence in, the financial sector, including by ensuring that products cannot be sold to investors through unauthorized mechanisms.</p> <p>One commenter noted that certain investors mistake the current unlawful activity for that of regulated brokers in Canada, and that the reputation of the financial and brokerage industry is, therefore, indirectly at stake.</p>	No change. We thank the commenters for their submissions.
	<p>Commenters had mixed views on binary options:</p> <ul style="list-style-type: none"> • One commenter stated that binary options are high risk and not a get rich quick scheme, suggesting that the CSA should not ban binary options for all investors because some people have lost money. 	
	<ul style="list-style-type: none"> • Another commenter urged that binary options are, by design, harmful for investors, particularly retail investors. The commenter stated that firms should not be allowed to offer binary options to the public, and particularly not to retail investors. 	
	<ul style="list-style-type: none"> • One commenter submitted that the offering of binary options does not enhance any investor portfolio, nor does it enhance fair and efficient capital markets. 	
	<ul style="list-style-type: none"> • Another commenter submitted that non-fraudulent binary options products can be used to offset an existing risk or economic exposure or to speculate on market volatility – for example, to hedge or speculate on very short term market volatility created by the release of specific major economic figures. 	
Will the Proposed NI accomplish the intended purpose?	<p>Commenters generally noted that those operating fraudulent online binary options platforms are unlikely to comply with the Proposed NI. Two commenters stated that the Proposed NI will not end the illegal activity but may interfere with current “legal” institutional binary options trading taking place in the Canadian market.</p> <p>One commenter submitted that the only market participants that will comply with the Proposed NI, such as the large institutional dealers, are already complying with all applicable securities laws and regulations.</p>	No change. The Instrument is one aspect of the CSA’s multi-pronged effort to combat binary options fraud, and we have already seen positive outcomes from this rule-making project.

	<p>Two commenters submitted that the policy objectives could be met with a narrowed scope, and that products traded on a recognized exchange or cleared by a recognized clearing agency or clearing house, or financial instruments legally traded on certain US exchanges should be excluded from the prohibition.</p>	<p>No change. It is currently our view that binary options should not be permitted to be sold to individuals by a registered dealer or regulated exchange.</p>
	<p>One commenter submitted that the detailed regulatory oversight regimes applicable in each Participating Jurisdiction has proven to be effective with respect to other types of instruments, and that any financial product, and not only binary options, that is offered illegally to Canadian investors poses a threat to investors' protection.</p>	<p>No change. It is currently our view that binary options should not be permitted to be sold to individuals by a registered dealer or regulated exchange.</p>
Investor protection	<p>One commenter submitted that, by prohibiting trading of binary options with a maturity of less than 30 days, the regulator is meeting its mandate to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets.</p>	<p>No change. We thank the commenter for their submission.</p>
	<p>One commenter noted that many of the investor protection-related concerns regarding binary options are also present regarding leveraged retail forex and CFDs, including regarding pricing transparency, and queried whether other leveraged derivatives products sold to retail investors should also be covered in this rule-making project.</p>	<p>No change. The focus of the Instrument is specifically on the fraud being perpetrated by unregulated, online platforms providing primarily – to date – binary options.</p>
Alternative approaches to accomplishing the policy objectives	<p>Commenters pointed to other tools to deter and eliminate fraud relating to binary options, either in support of the Proposed NI or instead of the Proposed NI. One commenter submitted that efforts to attack the bad actors rather than the financial instrument, and that limit demand for the illegal product (e.g., allowing registered firms and exchanges to offer legitimate binary options as a legal alternative) would more effectively protect the Canadian public and reduce the fraud than attempting to ban a financial product.</p>	<p>We note that the Instrument is one aspect of the CSA's multi-pronged effort to combat binary options fraud, and that we have already seen positive outcomes from this rule-making project.</p>
	<p>Four commenters generally felt that fraudulent binary options platforms and their offerings should be dealt with differently than "legitimate" binary options offered by a registered dealer or a recognized exchange, as in the U.S. and certain other jurisdictions.</p>	<p>No change. It is currently our view that binary options will not be permitted to be sold to individuals by a registered dealer or regulated exchange.</p>
Enforcement	<p>One commenter urged that the only effective means of influencing the fraudulent online platforms is through enforcement actions. Another commenter sought more emphasis in the Proposed NI on utilizing enforcement tools and coordinated enforcement action with other jurisdictions to deter and eliminate fraud associated with binary options.</p>	<p>No change. The Instrument is one aspect of the CSA's multi-pronged effort to combat binary options fraud, and we have already seen positive outcomes from this rule-making project.</p>

Investor warnings and investor education	Two commenters stated that the only way to prevent online fraud is to tell Canadians about this “trading” scam as well as the related “we help recover your money” scam, and urged regulators to continue investor warnings and investor education programs – pointing to other CSA efforts, including: the website www.binaryoptionsfraud.ca , holding investor information seminars, and advertising warning of the dangers of buying binary options from online platforms.	No change. The Instrument is one aspect of the CSA’s multi-pronged effort to combat binary options fraud.
Coordinating with distribution and facilitation service providers	One commenter noted that major credit card companies have recently taken steps to limit the availability of funding to unregistered providers of binary options. The commenter submitted that the Participating Jurisdictions should also work with search engine providers to limit online advertising of illegal services to Canadian consumers.	No change. The Instrument is one aspect of the CSA’s multi-pronged effort to combat binary options fraud.
Regulating binary options as fraud	Two commenters recommended the RCMP be involved in stopping online binary options fraud, by handling investigations, shutting down websites and prosecuting platforms in coordination with international law enforcement agencies.	No change. The Instrument is one aspect of the CSA’s multi-pronged effort to combat binary options fraud.
Regulating binary options as gambling	One commenter submitted that fraudulent binary options should be treated as gambling activity, regulated by the applicable gambling authority in each province and subject to the Criminal Code, with enforcement by the RCMP.	No change. We are of the view that binary options are securities and/ or derivatives in each Participating Jurisdiction and therefore that regulating the advertising, offering, selling and otherwise trading of binary options is within the CSA’s regulatory jurisdiction and mandate.
Permitting binary options to be offered by a registered (or exempt) dealer	Two commenters recommended that, if the CSA proceeds with the Proposed NI, that the rule should provide for a general exception for selling binary options through a registered or exempt dealer. One commenter recommended that the CSA allow registered, IIROC-regulated firms to offer these products to all investors (including both retail and sophisticated investors), in order to: ensure the protection of the public against unfair, abusive and fraudulent practices; apply the concepts of investment suitability; and apply disclosure obligations to allow clients to understand the product and the significant risks involved.	No change. It is currently our view that binary options will not be permitted to be sold to individuals by a registered dealer.
Permitting binary options to be offered on a recognized (or exempt) exchange or cleared by a recognized clearing agency or clearing house	Two commenters recommended that the CSA permit binary options to be offered to individuals on a recognized exchange. One commenter recommended that the CSA permit a registered dealer to offer binary options traded on a recognized exchange, or cleared by a recognized clearing agency or clearing house, noting the level of CSA oversight over a recognized exchange and a recognized clearing agency.	No change. It is currently our view that binary options will not be permitted to be sold to individuals through a recognized exchange or cleared by a recognized clearing agency.

s. 1 – Definition		
Definition of “binary option”	Several commenters suggested that the definition of “binary option” is too broad, as it may prohibit:	
	<ul style="list-style-type: none"> the offering to an individual of an instrument otherwise duly listed on a recognized exchange or cleared by a recognized clearing agency; 	No change. The Instrument is intended to prohibit the advertising, offering, selling and otherwise trading of a binary option to an individual, regardless of whether it is listed on a recognized exchange or cleared by a recognized clearing agency.
	<ul style="list-style-type: none"> conventional options with a term of less than 30 days that are used by individuals; 	No change. A conventional option would not become a prohibited “binary option” simply because its term to maturity is less than 30 days.
	<ul style="list-style-type: none"> legitimate binary option transactions executed by institutional and sophisticated investors; 	No change. The Instrument is intended to prohibit the advertising, offering, selling and otherwise trading of a binary option to an individual, including an individual that is a sophisticated investor.
	<ul style="list-style-type: none"> genuine non-fraudulent binary options that have been offered for many years by regulated firms dealing over-the-counter in Europe and Japan, or in the United States on exchanges. 	No change. The Instrument is intended to prohibit the advertising, offering, selling and otherwise trading of all binary options to individuals.
	<ul style="list-style-type: none"> binary contracts currently being legitimately sold to sophisticated individuals, including products described in the ISDA 2005 Barrier Option Supplement to the 1998 FX and Currency Option Definitions¹. 	Change made. After follow-up consultations with commenters, we have revised the definition of “binary option” to mitigate against the Instrument capturing some products that were not intended to be caught. We believe that some of the products identified to us would not be caught by the definition, while other products – including some identified in the ISDA 2005 Barrier Option Supplement – would be caught. Information available to us indicates that individuals are not actively trading products under the ISDA 2005 Barrier Option Supplement.
	One commenter submitted that the definition may be too narrow, as it may not capture all types of product that present similar concerns and it may be too easy for a fraudulent online platform to work around.	No change. The revised definition of “binary option” reflects a balancing of efforts intended to focus only on the products we intend to prohibit to be traded with individuals.
	One commenter submitted that the words, “a lesser amount or” should be deleted from section 1(b) to help mitigate the risk that other products, including those that do not involve an “all or nothing” approach, would be captured under this definition.	Change made. Paragraph (b) of the definition of “binary option” has been revised.

¹ Available at: <https://www.newyorkfed.org/medialibrary/microsites/fxc/files/2005/fxc051206a.pdf>.

	One commenter submitted that the scope of the Proposed NI should be limited by the scope of contracts set out under the various <i>Derivatives: Product Determination</i> rules ² .	No change. A number of the exclusions in the <i>Derivatives: Product Determination</i> rules are not appropriate or are not relevant to the Instrument.
s. 2 – Trading binary options with an individual prohibited		
Exclusion for offering binary options to sophisticated investors	One commenter submitted that only an unsophisticated individual is in need of the protection of the Proposed NI, and that sophisticated individuals have the ability to analyze and discern the risks inherent in binary option transactions. The commenter noted that “accredited investors” are considered sufficiently sophisticated that securities can be sold to them without a disclosure document.	No change. It is currently our view that binary options will not be permitted to be sold to individuals, including individuals that are “accredited investors”.
s. 3 – Trading binary options with a person or company other than an individual prohibited		
Not necessary	Two commenters submitted that proposed section 3 should be removed, because any retail investor that has the means to create a company or a trust in order to circumvent a trading ban should be considered a sophisticated investor, and that such an individual should not need the protection of the Proposed NI.	No change. It is currently our view that binary options will not be permitted to be sold to individuals, including through a company or other entity created, or used, solely to trade a binary option.
Impractical	One commenter stated that proposed section 3 would be impractical and difficult to implement, as the dealer would need to look behind its counterparty to determine whether it was created, or is primarily used, to trade a binary option for an individual. The broad wording of the provision means the determination would need to be made in respect of all or almost all of a dealer’s counterparties.	Change made. Section 3 has been revised to better facilitate implementation by entities that comply with all applicable securities legislation in providing legitimate, non-fraudulent contracts and instruments to counterparties that are not individuals and that are not structured to evade the Instrument.
s. 4 – Binary options having a term to maturity of 30 days or longer		
Term to maturity of 30 days or longer	Commenters generally queried the focus on binary options having a term to maturity shorter than 30 days. One commenter requested an explanation for the 30-day term to maturity in the prohibition.	No change. We have reviewed the products being illegally provided on unregistered online platforms and are satisfied that the minimum 30-day term to maturity period is appropriate to balance our objectives.
	Two commenters submitted that all binary options, regardless of duration, present similar concerns and therefore that the Proposed NI should not be limited to only binary options of 30 days or less.	No change. We feel that the minimum 30-day term to maturity strikes an adequate balance between banning the types of quick-turnover products that invite fraudulent activity and not banning legitimate trading in other types of instruments.
	One commenter requested clarification on the application of the 30-day term to maturity in the prohibition.	Change made. Section 4 has been revised to exclude a binary option having a term to maturity of 30 days or longer.
	One commenter stated that the 30-day minimum expiry time is inappropriate, as markets can move very quickly.	No change. The Instrument is designed to prohibit short-term binary options.

² Manitoba Securities Commission Rule 91-506 *Derivatives: Product Determination*; Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination*; Québec Regulation 91-506 respecting derivatives determination; and Multilateral Instrument 91-101 *Derivatives: Product Determination*.

Rules and Policies

	<p>One commenter suggested that the 30-day limitation may preclude a trader from closing out a position through an offsetting trade with less than 30 days to expiration, thereby limiting the trader's ability to take profits or limit losses.</p>	<p>No change. The prohibition applies only to a "binary option", as defined in the Instrument; therefore, the minimum 30-day term to maturity exclusion serves only to carve out from the prohibition those contracts that (i) meet the definition of "binary option", and (ii) have a term to maturity of 30 days or longer. The minimum 30-day term to maturity exclusion in no way affects a trader's ability to trade in, or close out a position in, a contract that is not a binary option.</p>
--	--	---

List of Commenters:

1. Canadian Advocacy Council for Canadian CFA Institute Societies
2. Canadian Market Infrastructure Committee
3. Canadian Foundation for Advancement of Investor Rights
4. Investment Industry Association of Canada
5. Investor Advisory Panel of the Ontario Securities Commission
6. North American Derivatives Exchange, Inc.
7. TMX Group, on behalf of the Bourse de Montréal Inc. and the Canadian Derivatives Clearing Corporation
8. Tyson G.

ANNEX B

**MULTILATERAL INSTRUMENT 91-102
PROHIBITION OF BINARY OPTIONS**

Definition

1. In this Instrument, “binary option” means a contract or instrument that provides for only
 - (a) a predetermined fixed amount if the underlying interest referenced in the contract or instrument meets one or more predetermined conditions, and
 - (b) zero or another predetermined fixed amount if the underlying interest referenced in the contract or instrument does not meet one or more predetermined conditions.

Trading binary options with an individual prohibited

2. No person or company may advertise, offer, sell or otherwise trade a binary option with or to an individual.

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

3. No person or company may advertise, offer, sell or otherwise trade a binary option with or to a person or company that was created, or is used, solely to trade a binary option.

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

4. Sections 2 and 3 do not apply in respect of a binary option having a term to maturity of 30 days or longer.

Exemption – general

5. (1) Except in Québec, the regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario, only the regulator may grant an exemption.
- (3) Except in Alberta, Ontario and Saskatchewan, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

Effective date

6. (1) This Instrument comes into force on December 12, 2017.
- (2) In Saskatchewan, despite subsection (1), if these regulations are filed with the Registrar of Regulations after December 12, 2017, these regulations come into force on the day on which they are filed with the Registrar of Regulations.

ANNEX C

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.

ANNEX D

LOCAL MATTERS

ONTARIO RULE-MAKING AUTHORITY

AUTHORITY FOR THE INSTRUMENT

In Ontario, the rule-making authority for the Instrument is in paragraphs 11, 13 and 35 of subsection 143(1) of the *Securities Act*.

- Paragraph 11 of subsection 143(1) provides the Commission with the authority to regulate the trading of derivatives.
- Paragraph 13 of subsection 143(1) provides the Commission with the authority to regulate trading in or advising about derivatives to prevent trading or advising that is fraudulent, manipulative, deceptive or unfairly detrimental to investors.
- Paragraph 35 of subsection 143(1) provides the Commission with the authority to prescribe requirements relating to derivatives. In particular, subparagraph 35(vi) of subsection 143(1) of the OSA provides the Commission with the authority to make rules “[p]rescribing requirements relating to derivatives, including ... (vi) requirements that one or more classes of derivatives not be traded in Ontario”.