

## ESMA Notice

### Notice of ESMA's Product Intervention Renewal Decision in relation to binary options

On 21 September 2018, the European Securities and Markets Authority (ESMA) adopted a Decision under Article 40 of Regulation (EU) No 600/2014 to prohibit the marketing, distribution or sale of binary options to retail clients. The Decision renews and amends ESMA Decision (EU) 2018/795.

In accordance with Article 40(5) of Regulation (EU) No 600/2014, this Notice provides details of the Decision and the time from which the measure will take effect. The full text of the Decision is published in the *Official Journal of the European Union*.

#### Prohibition in relation to binary options

The enacting terms of the Decision provide:

##### *Article 1*

#### **Temporary prohibition on binary options in respect of retail clients**

1. The marketing, distribution or sale to retail clients of binary options is prohibited.
2. For the purposes of paragraph 1, irrespective of whether it is traded on a trading venue, a binary option is a derivative that meets the following conditions:
  - (a) it must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event;
  - (b) it only provides for payment at its close-out or expiry;
  - (c) its payment is limited to:
    - (i) a predetermined fixed amount or zero if the underlying of the derivative meets one or more predetermined conditions; and
    - (ii) a predetermined fixed amount or zero if the underlying of the derivative does not meet one or more predetermined conditions.
3. The prohibition in paragraph 1 does not apply to:
  - (a) a binary option for which the lower of the two predetermined fixed amounts is at least equal to the total payment made by a retail client for the binary option, including any commission, transaction fees and other related costs;
  - (b) a binary option that meets the following conditions:

- (i) the term from issuance to maturity is at least 90 calendar days;
- (ii) a prospectus drawn up and approved in accordance with Directive 2003/71/EC is available to the public; and
- (iii) the binary option does not expose the provider to market risk throughout the term of the binary option and the provider or any of its group entities do not make a profit or loss from the binary option, other than previously disclosed commission, transaction fees or other related charges.

#### *Article 2*

#### **Prohibition of participating in circumvention activities**

It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the requirements in Article 1, including by acting as a substitute for the binary option provider.

#### *Article 3*

#### **Entry into force and application**

1. This Decision enters into force on the day following that of its publication in the Official Journal of the European Union.
2. This Decision shall apply from 2 October 2018 for a period of 3 months.