

## 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](http://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](http://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:

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