

ANNEX B

PROPOSED COMPANION POLICY 91-102 *PROHIBITION OF BINARY OPTIONS*

Introduction

The purpose of National 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 members of the Canadian Securities Administrators (the “CSA” or “we”) 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 selling 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.

The CSA consider a person or company to be trading in securities or derivatives in a local jurisdiction if that person or company offers or solicits trades of 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, or are 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 or during the time or time period specified in the contract or instrument. The specified time or time period for determining whether the predetermined condition or conditions are met is often very short, sometimes hours or even minutes.

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 is met, i.e., the buyer is “in-the-money”, or
- loses all or nearly all of the amount paid if the predetermined condition is not met, i.e., the buyer is “out-of-the-money”.

The yes/no proposition is structured on the performance of an 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 the

- occurrence of a specified event, e.g., the outcome of an election or a change in a benchmark interest rate, or
- performance or value of a security, index, currency, precious metal or any other commodity, price, rate, benchmark, variable or any other thing.

For example, a binary option may be based on a yes/no proposition such as whether:

- the value of the Canadian dollar will be above \$0.75 US 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; or
- there will be more than one inch of rain reported at a specified location on a specific day.

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 share price, the binary option would provide for settlement in cash and would not provide for delivery of the underlying share. 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.

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 fixed amount if the predetermined condition or conditions are met, and (b) a lesser amount or zero if the predetermined condition or conditions are not met. The payout structure of a binary option is non-linear; that is, the payout possibilities are discrete amounts that are specified at the time the contract or instrument is entered into (although the actual value of the payout amount may not be determined at the time the contract or instrument is entered into).

However the product is named, the prohibition in the Instrument applies if the product meets the definition of “binary option” and the specified time for determining whether the predetermined condition is met is less than 30 days from the date the contract or instrument is entered into.

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, other than an individual, that is created, or is primarily used, 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 of 30 days or longer

Section 4 carves out from the prohibitions in sections 2 and 3 a binary option for which the specified time period for determining whether the predetermined condition or conditions are met is 30 days or more from the date the binary option is entered into.

We remind market participants that binary options that are not subject to the Instrument are 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.

In Québec, under the qualification regime, any person that wishes to create or market a derivative is required to apply to the Autorité des marchés financiers for qualification before the derivative is offered to the public. A qualified person may only market derivatives that have been

duly authorized by the Autorité des marchés financiers as listed in its qualification decision or in a specific decision following an application by the qualified person. In addition, the qualified person must offer derivatives to the public through a registered dealer, or register with the Autorité des marchés financiers as a dealer.

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. The CSA 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.