



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Central Bank of Ireland Binary Options Intervention Measure

pursuant to Article 42 of Regulation (EU) No
600/2014 of the European Parliament and of
the Council

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Introduction: Central Bank of Ireland Binary Options Intervention Measure

Introduction

1. In recent years, the Central Bank of Ireland (Central Bank) has increased its focus on the sale of speculative products to retail clients, including:
 - conducting a thematic review in relation to contracts for difference (CFDs);
 - publishing a consultation paper setting out its concerns in relation to CFDs and outlining proposed measures aimed at protecting the interests of retail clients (CP 107); and
 - working closely with the European Securities and Markets Authority (ESMA) on its work on CFDs, binary options and other speculative products.
2. On 27 March 2018, the Central Bank [issued a warning](#) to investors against binary options and CFDs. The Central Bank had previously highlighted the risks associated with these speculative products and published ESMA warnings about CFDs, binary options and other speculative products in 2013 and 2016.
3. The Central Bank has significant concerns about investor protection issues from the sale of binary options to retail clients, particularly because of their inherent complexity, lack of transparency, the level of sophistication of investors, as well as evidence of investor losses. The Central Bank considers that a prohibition on the sale of binary options to retail clients is necessary and proportionate to address the significant concerns about the risk to investors from these products.
4. Due to EU-wide concerns about investor protection in relation to these products, ESMA introduced a temporary EU-wide product intervention measure to prohibit investment firms from marketing, distributing or selling binary options to retail clients (ESMA Binary Options Measure). The initial ESMA Binary Options Measure applied from 2 July 2018 for a three-month period and was subsequently

renewed by ESMA. The Central Bank supported ESMA's Binary Option Measure and the subsequent renewals.¹

5. The Central Bank has worked closely with ESMA in developing the ESMA Binary Options Measure and in its assessment of the conditions in Article 40(2) of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (MiFIR). The ESMA Binary Options Measure was designed to address the significant investor protection concerns caused by the characteristics of this product. The same concerns relating to the product apply equally to the Central Bank's assessment that a significant investor protection concern arises in relation to the sale of binary options to retail clients.

The Central Bank Binary Options Measure

6. The Central Bank is now putting in place a Central Bank of Ireland Binary Options Intervention Measure pursuant to Article 42 of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (MiFIR) (the Central Bank Binary Options Measure) to prohibit the sale, marketing and distribution of binary options to retail clients in or from Ireland. It is intended that these measures will replace ESMA's temporary intervention measure and ensure continued protection of investors by the Central Bank.
7. In simple terms, binary options enable an investor to speculate on the short-term price movements, level or value of an underlying reference asset. The potential outcome is predetermined, with an investor usually losing their initial stake if their prediction is incorrect, or receiving a fixed pay-out if they are correct. In some cases, binary options may have more than two outcomes, but these remain pre-determined.
8. All binary options (with the sole exception of those referred to in paragraph 1(c) of the Central Bank Binary Options Measure, regardless of the name under which they are marketed, distributed

¹ See Decision (EU) 2018/795, Decision (EU) 2018/1466, Decision (EU) 2018/2064 and Decision 2019/509.

or sold, fall within the scope of application of the Central Bank Binary Option Measure. Reference is made, for example, to all-or-nothing options, up-or-down options, trend options, digital options and one-touch options.

9. The scope of the Central Bank Binary Option Measure includes binary options that have several different predetermined conditions, which have to be met (or not met) before the payment is provided. In the ESMA Binary Options Measure, an example was considered of a binary option that provides payment of (i) a predetermined amount if the underlying asset meets a certain predetermined condition (for example the value of the underlying asset rises on a specific date), as well as (ii) an additional predetermined amount (a 'bonus') if the underlying asset meets another predetermined condition (for example the value of the underlying asset rises above a certain percentage). In this and similar cases, the payment of the sum of the two predetermined amounts in points (i) and (ii) would amount to the payment of a predetermined fixed amount for the purposes of paragraph 1(b)(iii) of the Central Bank Binary Option Measure.

Legislative basis and compliance with Article 42(5) of MiFIR

10. MiFIR introduced product intervention powers under which the Central Bank may prohibit or restrict the marketing, sale or distribution of certain financial instruments or a type of financial activity or practice in or from Ireland.
11. Commission Delegated Regulation (EU) 2017/567 of 18 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions (Delegated Regulation) specifies certain criteria and factors to be taken into account by national competent authorities (NCAs) in determining when there is a significant investor protection concern.
12. Article 42(5) of MiFIR requires the Central Bank to publish on its website notice of any decision to impose any prohibition or

restriction referred to under Article 42(1) of MiFIR. This notice must specify:

- a. details of the prohibition or restriction,
- b. a time after the publication of the notice from which the measures will take effect, and
- c. the evidence upon which the Central Bank is satisfied each of the conditions in Article 42(2) are met.

13. In accordance with Article 42(5) of MiFIR, Part A of this notice sets out the evidence upon which each of the conditions in Article 42 (2) of MiFIR are met in relation to the Central Bank Binary Options Measure.

14. Directive 2014/65/EU of the European Parliament and the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) is transposed into Irish law by Statutory Instrument No.375 of 2017 (the MiFID Regulations).

15. For the avoidance of doubt, terms used in the Central Bank Binary Options Measure have the same meaning as in Directive 2014/65/EU, including the definition of derivatives.

PART A

Evidence upon which each of the conditions in Article 42 (2) of MiFIR are met in relation to the Central Bank Binary Options Measure

16. The Central Bank Binary Options Measure puts in place product intervention measures on a national basis, the substance and scope of which reflects the ESMA Binary Options Measure, which applied on a temporary basis across the EU. Much of ESMA's considerations in the ESMA Binary Options Intervention relate to the characteristics and nature of binary options. Those considerations are equally relevant to the Central Bank's own analysis. The Central Bank worked closely with ESMA in its analysis and assessment of the evidence underpinning the ESMA Binary Options Intervention and has assessed the evidence gathered by ESMA.
17. The Central Bank assessment of the criteria in Article 42(2) of MiFIR set out in this Part draws on the evidence and analysis gathered by ESMA in assessing its compliance with the conditions in Article 40(2) of MiFIR, in addition to the evidence gathered and analysis undertaken by the Central Bank. This includes the evidence and analysis set out in:
 - a. the ESMA Binary Options Measure, which sets out evidence from all EU Member States in relation to the sale of binary options to retail clients on a cross-border basis; and
 - b. ESMA's *ESMA Product Intervention Analysis - Measure on Binary Options* (ESMA 50-162-214).
18. The Central Bank's assessment set out in the following sections is based on the substantial evidence gathered by other NCAs and ESMA over recent years.

The existence of a significant investor protection concern Article 42(2)(a) of MiFIR

19. Article 42(2)(a) of MiFIR states that the Central Bank may take action if it is satisfied on reasonable grounds that a financial instrument, structured deposit or activity or practice gives rise to significant investor protection concerns. In determining whether there exists a significant investor protection concern, the Central Bank has assessed the relevance of the criteria and factors listed in

Article 21(2) of the Delegated Regulation. After taking the relevant criteria and factors into consideration, the Central Bank has concluded that there is a significant investor protection concern for the reasons set out in this Part A.

20. A binary option is any cash settled derivative in which the payment of a fixed monetary amount depends on whether one or more specified events in relation to the price, level or value of the underlying asset occurs at, or prior to, the derivative's expiry² (for example the underlying asset has reached a specified price ('the strike price') at expiry).
21. Binary options enable an investor to make a bet on the occurrence of a specified event in relation to the price, level or value of one or more underlying asset (for example a share, a currency, a commodity or an index). If the event does not occur, the investor loses their money. If the event occurs, the option pays out or the contract remains open with the opportunity to receive a pay out if a separate event occurs. In this sense, binary options can be regarded as 'yes/no propositions'. Often, the 'yes/no proposition' is whether the price of the underlying asset at expiry of the binary option is above or below a given price.
22. The Central Bank shares concerns of other regulators and ESMA about binary options not meeting any genuine investment needs for retail clients³. The Central Bank also shares concerns about the risks related to the inherent features of binary options as well as the in-built and unmanageable conflicts of interest related to the offer of these products to retail clients⁴. These risks were often amplified by the aggressive marketing techniques used by binary option providers.
23. Several NCAs have also indicated in engagement at ESMA that these products attract compulsive gambling behaviour. A study from the UK-FCA demonstrated that some investors place many bets within the space of a few days or weeks, despite losing money on a cumulative basis. The study also found a close similarity in payoff structure and time horizon between binary options and gambling

² Typically, the lower of the two monetary payoffs is zero, but this need not be the case. Binary options are distinct from other speculative products sold to retail clients, such as CFDs, in that the payment is of a predetermined monetary amount not directly linked to the size of the change in the price, level or value of the underlying asset.

³ For example, FR-AMF, BE-FSMA, UK-FCA, IT-CONSOB; see ESMA Binary Options Measure, recital 13.

⁴ ESMA Binary Options Measure, recital 13.

products⁵. The ESMA Binary Options Measure notes that these concerns have materialised across several jurisdictions, with a vast majority of retail clients in those jurisdictions typically losing money⁶.

The degree of complexity and transparency of binary options

Article 21(2)(a) of the Delegated Regulation

24. Binary options are complex financial instruments. For example, binary options do not meet the criteria to be regarded as non-complex financial instruments according to the combined reading of regulation 33 (8) and (9) of the MiFID Regulations⁷ and Article 57 of the Delegated Regulation (EU) 2017/565. The complexities of the pricing structure pose a risk of significant information asymmetries between providers and retail clients and hence raise significant investor protection concerns. Furthermore, there are a number of inherent features of binary options that make them complex and difficult for retail clients to understand.
25. Binary option providers typically price binary options based on the market-implied or otherwise modelled probability of a specified event occurring before applying a spread or other form of transaction fee to each option such that it yields a negative expected return for the client.
26. This pricing structure of binary options presents a number of challenges for retail clients. In particular, the pricing structure requires retail clients to accurately assess the value of the option in relation to the expected probability of the reference event occurring. Although retail clients may use common research and pricing tools to price binary options, retail clients face significant information asymmetries compared to providers. Providers have much greater access to information and systems to properly price and value these products. In particular, binary option providers have access to historical price data – for example, recorded price feeds from an exchange or commercial data provider in relation to a given underlying asset – which is not generally available to retail clients. Binary option providers also have much more experience in pricing

⁵ For example, UK-FCA; see see ESMA Binary Options Measure, recital 13.

⁶ ESMA Binary Options Measure, recital 13.

⁷ Article 25(4) of Directive 2014/65/EU

contracts than retail clients typically do and are more likely to have developed sophisticated pricing methodologies. Furthermore, retail clients may not appreciate that if a trade has a very short term, or if a position is closed close to expiry, factors used to price options such as historic volatility have little impact on the option's value. This limits the ability of retail clients to properly value the option, even when using available pricing tools. Moreover, due to the application of spreads and other transaction fees, retail clients would need to outperform expected returns on investment significantly on a regular basis to achieve profits from trading. Therefore, it is difficult for retail clients to make an informed assessment of the risk-return profile of the product.

27. The combined effect of the pricing structure and the application of transaction fees to each trade is that a large majority of retail client accounts lose money in aggregate and providers, which are typically direct counterparties to the trade, make a profit from clients in the long term through their losses from trading and through transaction fees⁸.
28. Some providers offer continual two-way pricing and the ability for clients to enter and exit the trade over the course of the term of a binary option. In such a case, a client can exit their position prior to the binary option's expiry by selling it back to the provider or otherwise forfeiting the conditional payment at expiry. In return, the client receives some payment from the provider, as per the continual price offered by the provider depending on the difference between the current market price and the fixed strike price of the underlying asset and the time to expiry.
29. Continual two-way pricing is an additional feature that may be offered by binary option providers. This feature adds a further layer of complexity, which makes it difficult for retail clients to value these products accurately or make a positive return on investment. This is because retail clients would need to continuously monitor the pricing and estimate the expected outcome. Furthermore, exiting a trade and entering a new one comes at an additional cost to the client due to the application of a spread to the offer price or through transaction fees⁹.

⁸ ESMA Binary Options Measure, recital 20

⁹ ESMA Binary Options Measure, recital 22

30. Furthermore, EU retail clients typically invest in binary options OTC. As such the pricing, performance and settlement of binary options is not standardised. This impairs retail clients' ability to understand the terms of the product. This, in addition to the differences in the type of 'yes/no propositions' that form the basis of a binary option, the complex pricing structure (sometimes including two-way pricing) and the existence of even more complex offerings (such as options that package together a set of binary options), add to the complexity of these products and further undermine retail clients' ability to understand that the specific features of one type of binary option do not necessarily feature in another.
31. In addition, binary option providers are typically the counterparty to their retail clients' trades, with the provider determining the price at execution and the payment at expiry. In addition, providers often require clients to acknowledge that the prices used to determine the value of the binary option may differ from the price available in the respective underlying asset market. This means that it may not always be possible for retail clients to check the accuracy of the prices received from the provider. These factors make it extremely complex for retail clients to value binary options objectively. The high level of complexity and poor degree of transparency associated with binary options therefore confirms that a significant investor protection concern exists.

The particular features or components of binary options

Article 21(2)(e) of the Delegated Regulation

32. Binary options are typically very short-term investments, in some cases expiring minutes after being entered into. The binary outcome nature of binary options mean that they are primarily used for speculative purposes. The payment of a fixed monetary amount or zero limits the value of binary options as a hedging tool in contrast to traditional options, which allow the client to manage their risk by setting a 'ceiling' or 'floor' for a specific asset that they may have direct exposure to. This is exacerbated by the typical short term of binary options.
33. Furthermore, binary options are priced according to the probability of an event occurring, quoting payoffs in a similar manner as traditional fixed-odds bets (for example bets on sporting events or election outcomes). Trades are mostly very short term and investors

stand either to make a very large return or to lose their entire investment. These fundamental features are also found in gambling products, which are linked with addictive behaviour and poor outcomes for consumers.

34. As mentioned above, binary option providers usually act as direct counterparty to the client's trade, hence taking the client's trade onto their own book. This business model places the provider's interests in direct conflict with those of its clients, which increases the risk that the provider may manipulate the price of the underlying asset at expiry of the binary option or extend the term of the binary option by seconds or milliseconds so as to avoid having to pay out on the option contract¹⁰. The risk of conflict of interest is particularly acute for binary options, as the payment structure of these products is determined by whether the underlying asset has reached the specified strike price at expiry. NCAs have also identified practices whereby binary options providers apply an asymmetrical or inconsistent mark up to core spreads on the underlying asset, which results in the option being 'out of the money' where it otherwise would be 'in the money' at expiry¹¹. In addition, the distribution models observed by ESMA in this sector of the market bear certain and sometimes inherent conflicts of interest¹² and the pressure to maintain a pipeline of new clients increase the potential for conflicts of interest to occur.
35. Given that binary options structurally have negative expected returns, the more positions an investor takes, the more likely they are to lose money on a cumulative basis. For instance, for a binary option with a 50 % win probability and a return of 80 % of the amount invested if at expiry the option is 'in-the-money', an investor faces around a 75 % probability of suffering a cumulative loss over 20 trades¹³.
36. The high risk of binary options being traded speculatively as well as of conflict of interests between binary option providers and their clients confirm the existence of a significant investor protection concern.

¹⁰ ESMA Binary Options Measure, recital 30

¹¹ Ibid

¹² Section 2 of ESMA's Questions and Answers (Q&As) relating to the provision of CFDs and other speculative products to retail clients under MiFID (ESMA35-36-794) as updated on 31 March 2017, discusses some of these conflicts of interest in more detail.

¹³ ESMA's Product Intervention Analysis: Measure on Binary Options, 2018.

The size of potential detrimental consequences and the degree of disparity between returns for investors and the risk of loss

Article 21(2)((b) and (f) of the Delegated Regulation

37. Prior to the ESMA Binary Options Intervention, ESMA and NCAs had expressed concerns on the increasing numbers of retail clients trading binary options across the EU. These concerns are also supported by the numerous complaints received from retail clients across the EU who have suffered significant detriment when trading binary options¹⁴.
38. The ESMA analysis on retail clients' expected negative returns (see recital 36 of the ESMA measure) is also corroborated by data on losses suffered by retail clients reported to ESMA by certain NCAs:
- (a) CY-CySEC (Cyprus) conducted analysis of a sample of binary option client accounts of 10 binary options providers for the period from 1 January 2017 to 31 August 2017. It found that on average, 87 % of client accounts made a loss over that period. On average, the loss per account was around EUR 480;
 - (b) the Komisja Nadzoru Finansowego (PL-KNF), the NCA in Poland, based on data from a Polish investment firm, found that 86.3 % of the clients lost money in 2016 and 86.4 % lost money in 2017;
 - (c) IT-CONSOB found on the basis of a survey carried out in March 2017 at five branches of EU-based investment firms active in binary options that Italian retail clients investing in binary options realised relevant losses in 2016 up to 74 % with an average loss of approximately EUR 590; and
 - (d) UK-FCA found from a review of firm data reporting client account performance in 2016 that between 81 % and 85 % of client accounts lost money and that, on average, clients made a loss between GBP 400 and GBP 1,200. Reported figures indicate that clients made a profit from trading but made a loss when taking into account the

¹⁴ESMA Binary Options Measure, recitals 34 and 35

impact of transaction fees. This indicates that clients may not understand the impact of transaction fees on the performance of their account¹⁵.

39. In order to assess how and the degree to which binary options pose a risk to investor protection, ESMA analysed the distribution of investor returns¹⁶. This analysis identified two important features¹⁷. The first important feature is the high level of risk involved in binary options: a general feature of binary options is that the investor stands to lose the entire amount invested.
40. The second feature, the negative expected return of the product, is an important source of detriment in this context and applies to all binary options. Unlike financial investments, the contracts are typically very short term and do not offer participation in the growth in value of the underlying asset. Unlike traditional options, which are often used for hedging purposes, binary options provide a fixed payoff if a specified event occurs. In contrast, the payoff of a typical option is contingent on the change in the price of the underlying asset once the option is in the money (that is the payoff is variable). This inherent feature of binary options limits the value of the product as a hedging tool, whereas other kinds of option have been used to smooth out or limit the price of an asset that a firm or an investor has direct exposure to.
41. Furthermore, the typically short term of binary options enables an investor to place many trades sequentially. This combined with the negative expected return results in an increasing likelihood of an investor losing on a cumulative basis the more trades placed. This is a statistical property of repeated negative expected return trading.
42. Importantly, the negative-expected return is generally integral to the business model of a provider, as it is generally the source of their expected profits. A binary option obliges the binary option provider to pay the investor a fixed amount if a specified event happens, so for the provider to make an expected profit, the investor must make an expected loss. In addition, it is also possible that providers will impose additional charges.

¹⁵ ESMA Binary Options Measure, recital 36(iv)

¹⁶ ESMA Binary Options Measure, recital 80 and ESMA's Product Intervention Analysis: Measure on Binary Options 2018.

¹⁷ Ibidem.

43. Specifically for binary options offered with continual two-way pricing, as the provider will need to offer pricing allowing them to make an expected profit, the provision of this pricing cannot improve expected returns for the investor. Indeed, to the extent investors exit positions before expiry, their expected return is lower than if they hold the position to expiry. The magnitude of this incremental expected loss will vary from provider to provider and case to case, but the expected value to an investor implied by the two-way pricing must typically be negative, just as a product's initial price will imply a negative expected return for the investor.
44. The combined effect illustrates an essential element of binary options due to their negative expected returns: if the retail client makes a very large number of investments, or if a very large number of investors each make a single investment, the probability of making a profit overall is very low.
45. ESMA's analysis of the return distribution of binary options correlates with data from NCAs in highlighting the degree of high risk for retail clients to lose a substantial portion (often all) of their investment and the negative expected return. These features are also combined with a general complexity and lack of transparency related to the product features of binary options, poor marketing and distribution practices and inherent conflicts of interest. There is no compensation to provide any corresponding benefit. Together these features constitute a major source of detriment to current and potential retail clients.
46. According to the *IOSCO Report on the IOSCO Survey on Retail OTC Leveraged Products*¹⁸, (the IOSCO Report), amongst the most common complaints across jurisdictions with regard to authorised providers are those related to product performance (investor losses incurred), clients not understanding the product or service provided (and its risks), difficulties in withdrawing funds, aggressive/misleading marketing, and price or trade manipulation¹⁹.

¹⁸ IOSCO Report on the IOSCO Survey on Retail OTC Leveraged Products, December 2016 (available at: <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD550.pdf>).

¹⁹ IOSCO Report page 46.

The type of clients involved in a financial activity or financial practice

Article 21(2)(c) of the Delegated Regulation

47. The complexity of binary options makes it difficult for the majority of retail clients to properly understand and assess the actual risk they incur when dealing with these products. The evidence of losses observed by NCAs in retail client accounts described in the ESMA Binary Options Intervention and in this Central Bank Binary Options Measure demonstrates that binary options are unsuited to retail clients.

48. Although binary options are complex products, they were (prior to the ESMA Binary Options Measure) offered to retail clients most commonly via electronic trading platforms, without the provision of investment advice or portfolio management.

49. The ESMA Binary Options Measure notes that NCAs had observed aggressive marketing practices as well as misleading marketing communications in this sector of the market²⁰. They include, for example, the use of sponsorship arrangements or affiliations with major sports teams, which give the misleading impression that complex and speculative products such as binary options are suitable for the retail mass market by promoting general brand name awareness.

The degree to which the financial instrument may threaten investors' confidence in the financial system

Article 21(2)(v) of the Delegated Regulation

50. The combination of the degree of complexity and lack of transparency of binary options, the negative expected return of the product for investors, the lack of reasonable investment objectives, the misleading and aggressive nature of many marketing and distribution activities, conflicts of interest for providers as well as the size of potential detrimental consequences, all contribute to retail clients losing confidence in the financial system.

²⁰ For example, BE-FSMA, ES-CNMV, FR-AMF and IT-CONSOB.

51. Given the high probability of clients suffering losses as evidenced in this Central Bank Binary Options Measure, investors who had no other experience of investing in financial instruments and had been attracted by the aggressive marketing conducted by binary option providers may conclude that these products are representative of all financial instruments. This concern is even more significant considering the high number of retail clients of binary option providers and the number of complaints in respect of these products²¹.

The Central Bank's assessment of the existence of significant investor protection concerns

52. The Central Bank has considered the evidence relating to the sale of binary options to retail clients, as set out above, and has concluded that, in the absence of the restrictions contained in the temporary ESMA Binary Options Measure, the sale of binary options to retail clients gives rise to significant investor protection concerns.

Applicable existing regulatory requirements under European Union law do not sufficiently address the significant investor protection concern identified

Article 42(2)(b) of MiFIR

53. As required under Article 42(2)(b) of MiFIR, the Central Bank has considered whether existing regulatory requirements in the European Union that are applicable to the relevant financial instrument or activity would not address the threat. The Central Bank has considered the applicable existing regulatory requirements set out in the MiFID Regulations, MiFIR and Regulation (EU) No 1286/2014 of the European Parliament and of the Council (the PRIIPs Regulation). In particular, they include: (i) the requirement to provide appropriate information to clients in Regulation 32 (3) to (9) of the MiFID Regulations²²; (ii) the suitability and appropriateness requirements in Regulation 33 (3) to (7) of the MiFID Regulations²³; (iii) the best execution requirements in Regulation 35 of the MiFID

²¹ ESMA Binary Option Measure, recital 51

²² Article 24(3) and (4) of Directive 2014/65/EU

²³ Article 25(2) and (3) of Directive 2014/65/EU

Regulations²⁴; (iv) the product governance requirements in Regulation 23 (1) (b) to (e)²⁵ and Regulation 32 (1) to (2)²⁶ of the MiFID Regulations; and (v) the disclosure requirements in Articles 5 to 14 of the PRIIPs Regulation.

54. The Central Bank considers that existing regulatory requirements do not sufficiently address the significant investor protection concern arising from the features of binary options, and the evidence from ESMA and other NCAs of high levels of losses among retail clients.

The issue would not be better addressed by improved supervision or enforcement of existing requirements Article 42(2)(b) of MiFIR

55. Article 42(2)(b) requires that the significant investor protection concern identified would not be better addressed by improved supervision or enforcement of existing requirements.
56. The evidence referred to in this Central Bank Binary Options Measure raises concerns that the distribution of binary options to retail clients does not allow the provider to act in the best interests of clients or to allow the provision of information that is fair, clear and not misleading. As such, varied individual supervisory actions would not immediately ensure that further harm to retail clients is prevented and would not provide an adequate alternative to the Central Bank Binary Options Measure.
57. On 27 March 2018 the Central Bank warned investors against binary options and CFDs. The Central Bank had previously highlighted the risks associated with these speculative products and published ESMA warnings about CFDs, binary options and other speculative products in 2016 and 2013. The Central Bank has worked closely with ESMA in relation to issues arising on the sale of binary options to retail clients.
58. Prior to adopting the ESMA Binary Options Intervention, ESMA took a number of non-binding actions in relation to the significant investor protection concern identified in relation to the sale of binary options to retail clients. ESMA has carried out supervisory convergence

²⁴ Article 27 of Directive 2014/65/EU

²⁵ Articles 16(3) of Directive 2014/65/EU

²⁶ Article 24(2) of Directive 2014/65/EU

work and has coordinated the work of a Joint Group established to tackle issues related to a number of providers offering binary options, CFDs and other speculative products to retail clients on a cross-border basis across the EU. ESMA has repeatedly noted the risks of binary options in investor warnings, Questions and Answers and its opinion on 'MiFID practices for firms selling complex products'²⁷. Despite ESMA's extensive use of its non-binding instruments to ensure a consistent and effective application of the applicable existing regulatory requirements, the investor protection concerns persists²⁸. This highlights that, for the reasons set out in this section, these requirements do not address the concern identified.

The action is proportionate taking into account the nature of the risks identified, the level of sophistication of investors or market participants concerned and the likely effect of the action on investors and market participants who may hold, use or benefit from the financial instrument, structured deposit or activity or practice

Article 42(2)(c) of MiFIR

59. The Central Bank considers it necessary and proportionate to prohibit the marketing, distribution or sale of binary options to retail clients. This prohibition addresses the concern by affording an appropriate level of protection to retail clients trading binary options in and from Ireland. It does not have a detrimental effect on the efficiency of financial markets or on investors that is disproportionate to its benefits.

60. The Central Bank therefore considers that the intervention measures to prohibit the marketing, distribution or sale to retail clients of all types of binary options to be appropriate to address risks to investor protection.

²⁷ Opinion on MIFID practices for firms selling complex financial products of 7 February 2014 (ESMA/2014/146).

²⁸ ESMA Binary Options Measure, recital 66.

61. The Central Bank does not consider that less restrictive measures could address the key features of binary options, which give rise to a significant investor protection concern.

The measures do not have a discriminatory effect on services provided from another Member State

Article 42(2)(e) of MiFIR

62. The Central Bank considers that the national measures do not have a discriminatory effect on services or activities provided from another Member State as the measures provide for equal treatment of the marketing, distribution or sale of binary options regardless of the Member State from which those services or activities are carried out.

Consultation and notification

Article 42(2)(d) and (f) of MiFIR

63. In accordance with Article 42(2)(d) of MiFIR, the Central Bank has properly consulted competent authorities in other Member States that may be significantly affected by the action.

64. In accordance with Article 42(2)(f) of MiFIR, the Central Bank has properly consulted the Department of Agriculture, Food and the Marine.

PART B

Central Bank of Ireland Binary Options Intervention Measure of 12 June 2019

pursuant to Article 42 of Regulation (EU) No 600/2014 of the
European Parliament and of the Council of 15 May 2014 on
markets in financial instruments and amending Regulation (EU)
No 648/2012

(the Central Bank Binary Options Measure)

Pursuant to Article 42(1) of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, and having regard to the criteria in Article 42(2) of MiFIR, the Central Bank of Ireland hereby requires compliance with the below provisions.

1. Prohibition on binary options in respect of retail clients

- a) The marketing, distribution or sale to retail clients of binary options is prohibited in or from Ireland.
- b) For the purposes of paragraph (a), irrespective of whether it is traded on a trading venue, a binary option is a derivative that meets the following conditions:
 - i) 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;
 - ii) it only provides for payment at its close-out or expiry;
 - iii) its payment is limited to:
 - (1) a predetermined fixed amount or zero if the underlying of the derivative meets one or more predetermined conditions; and
 - (2) a predetermined fixed amount or zero if the underlying of the derivative does not meet one or more predetermined conditions.
- c) The prohibition in paragraph (a) does not apply to:
 - i) 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;

- ii) a binary option that meets the following conditions:
 - 1) the term from issuance to maturity is at least 90 calendar days;
 - 2) a prospectus drawn up and approved in accordance with (a) Directive 2003/71/EC of the European Parliament and of the Council²⁹ or (b) Regulation (EU) 2017/1129 of the European Parliament and of the Council,³⁰ is available to the public; and
 - 3) 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.

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 section 1, including by acting as a substitute for the binary option provider.

3. Date of application

This measure shall take effect from 2 July 2019.

²⁹ Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC ((OJ) L. 345, 31.12.2003, p. 64)

³⁰ Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC Text with EEA relevance.



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