

ESMA Notice

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

On 14 December 2018, the European Securities and Markets Authority (ESMA) adopted a Decision under Article 40 of Regulation (EU) No 600/2014¹ to renew the prohibition on the marketing, distribution or sale of binary options to retail clients. The Decision renews ESMA Decision (EU) 2018/795² on the same terms as the previous renewal decision, ESMA Decision (EU) 2018/1466³.

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 renewed measure will take effect. The full text of the Decision will soon be 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

¹ 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 (OJ L 173, 12.6.2014, p. 84).

² European Securities and Markets Authority Decision (EU) 2018/795 of 22 May 2018 to temporarily prohibit the marketing, distribution or sale of binary options to retail clients in the Union in accordance with Article 40 of Regulation (EU) No 600/2014 of the European Parliament and of the Council (OJ L 136, 1.6.2018, p. 31).

³ European Securities and Markets Authority Decision (EU) 2018/1466 of 21 September 2018 renewing and amending the temporary prohibition in Decision (EU) 2018/795 on the marketing, distribution or sale of binary options to retail clients (OJ L 245, 1.10.2018, p. 17).

- (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/EC⁴ 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 January 2019 for a period of 3 months

⁴ 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).