

October 2017

## Securities Regulators Ban Short-Term Binary Options

On September 28, 2017, the securities regulatory authorities in all Canadian jurisdictions, except British Columbia<sup>1</sup> (the “**CSA**”), introduced Multilateral Instrument 91-102 – *Prohibition of Binary Options* and the related companion policy (the “**Instrument**”), which explicitly prohibits advertising, offering, selling or otherwise trading a binary option with or to an individual. Subject to necessary approvals, the Instrument will come into force on December 12, 2017.

Binary options are essentially bets structured on the performance of an underlying asset, such as a change in value of a currency, stock index, or share, or the occurrence of a specified event, such as the outcome of an election or a change in the benchmark interest rate. The holder either receives a predetermined payout if certain conditions are met or loses the entire amount if the conditions are not met. The time period for determination of whether the predetermined condition is met is often very short, sometimes hours or even minutes, and once an investment decision is made, holders of binary options typically have no ability to make further decisions regarding the investment.

The CSA identified a particular concern with the large number of complaints received regarding the marketing of binary options. Online binary options platforms are unregistered dealers, operating off-shore, and, in many circumstances, such online platforms are fraudulent – no actual trading occurs and the transaction occurs for

---

<sup>1</sup> The British Columbia Securities Commission concurrently introduced BC Notice 2017/02 *Binary Options*, which creates a prohibition on advertising, offering, selling or otherwise trading binary options to retail investors in British Columbia.

the sole purpose of stealing money. Even if trading actually occurs, it is often extremely difficult or even impossible to win the bet.

The Instrument defines a “binary option” as a contract or instrument that provides for only:

- (a) a predetermined fixed amount if the underlying interest referenced in the contract or instrument meets one or more predetermined conditions, and
- (b) zero or another predetermined fixed amount if the underlying interest referenced in the contract of instrument does not meet one or more predetermined conditions.

The Instrument provides that no person or company may advertise, offer, sell or otherwise trade a binary option having a term of maturity of less than 30 days with or to:

- (a) an individual; or
- (b) a person or company that was created, or is used, solely to trade a binary option.

Once the Instrument comes into force, binary options will not be permitted to be offered or sold to individual investors, including individuals who are sophisticated investors or “accredited investors”, even by a registered dealer, broker or platform. The CSA further notes that no offering of binary options has been authorized anywhere in Canada.

by Jason Haley

For more information on this topic, please contact:

Calgary      Jason Haley      403.215.2758      [jason.haley@mcmillan.ca](mailto:jason.haley@mcmillan.ca)

[a cautionary note](#)

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

© McMillan LLP 2017