

June 22, 2017

**BY EMAIL**

Alberta Securities Commission  
Autorité des marchés financiers  
Financial and Consumer Services Commission (New Brunswick)  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Nova Scotia Securities Commission  
Nunavut Securities Office  
Ontario Securities Commission  
Office of the Superintendent of Securities, Newfoundland and Labrador  
Office of the Superintendent of Securities, Northwest Territories  
Office of the Yukon Superintendent of Securities  
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Grace Knakowski  
Secretary  
Ontario Securities Commission  
20 Queen Street West, 22<sup>nd</sup> Floor  
Toronto, ON M5H 3S8  
[comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca)

Dear Sirs/Mesdames:

**Re: Request for Comments on the Proposed National Instrument 91-102 –  
*Prohibition of Binary Options and Related Proposed Companion Policy (the  
“Binary Option Prohibition”)***

The Canadian Advocacy Council<sup>1</sup> for Canadian CFA Institute<sup>2</sup> Societies (the CAC) appreciates the opportunity to comment on the proposed Binary Option Prohibition.

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<sup>1</sup>The CAC represents more than 15,000 Canadian members of the CFA Institute and its 12 Member Societies across Canada. The CAC membership includes portfolio managers, analysts and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. See the CAC's website at <http://www.cfasociety.org/cac>. Our Code of Ethics and Standards of Professional Conduct can be found at <http://www.cfainstitute.org/ethics/codes/ethics/Pages/index.aspx>.

<sup>2</sup> CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behavior in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors' interests come first, markets function at their best, and economies grow. CFA Institute has more than 149,603 members in 163 countries, including 143,386 CFA charterholders and 148 member societies. For more information, visit [www.cfainstitute.org](http://www.cfainstitute.org).

We support the CSA's efforts in prohibiting the advertising, offering, selling and trading of binary options to an individual including a company that is created, or primarily used, to trade binary options. It appears evident in the preamble of the proposed Binary Option Prohibition that binary options are commonly used as vehicles to commit fraud against individuals, often with no possibility of recovering the funds. Accordingly, it is important that the CSA takes this measure in furtherance of the goal to prevent fraud and support better investor protection in the capital markets.

We provide the following comments specifically relating to the scope of the proposed Binary Option Prohibition.

First, the definition of binary options, as set out in the proposed Binary Option Prohibition, includes a contract or instrument that pays a fixed amount to the holder if the underlying interest in the contract or instrument meets a pre-determined condition, and a lesser amount or no payout if the underlying interest does not meet the pre-determined condition. Unlike other forms of derivatives, binary options do not oblige the holder to deliver or purchase the security or commodity. This definition of a binary option could potentially exclude other types of financial instruments that raise similar investor protection concerns. Accordingly, we query whether the sale of other such financial instruments to retail investors should also be restricted.

In particular, instruments such as leveraged foreign exchange over-the-counter products may give rise to the same concerns expressed in the Binary Option Prohibition and consequently we query whether they ought to fall within the ambit of this proposal. We observe that these types of instruments along with their pricing, terms, and other features are equally opaque to the retail investor.

Second, in taking regulatory action, it is important to explore the treatment of like instruments in order to ensure clarity and consistency in the capital markets. We note that the Ontario Securities Commission (OSC) published a Staff Notice in 2009 with respect to the offering of contracts for difference and foreign exchange contracts to Ontario investors (the Notice).<sup>3</sup> In this Notice, the OSC emphasized the need for registration and reminded market participants of the prospectus requirements and exemptions when offering such products to Ontario investors, but did not take any further regulatory action with respect to banning these products. The Notice was in response to concerns raised that such instruments were being sold to retail investors by unregistered and offshore entities through the internet. Similar concerns are expressed in the proposed Binary Option Prohibition.

Third, we are of the view that binary options are fairly opaque products for the retail investor. The ability to offer such products to retail investors (provided the pre-determined condition is met in 30 days or more) may still present certain fraud risks which would inhibit the proposed ban from fully achieving its objectives.

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<sup>3</sup> See OSC Staff Notice 91-702 – Offerings of Contracts For Difference and Foreign Exchange Contracts to Investors in Ontario

### **Concluding Remarks**

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at [chair@cfaadvocacy.ca](mailto:chair@cfaadvocacy.ca) on this or any other issue in future.

(Signed) *Michael Thom*

**Michael Thom, CFA**  
**Chair, Canadian Advocacy Council**