

Belgian

Report on Retail OTC Leveraged Products

Final Report



IOSCO

**The Board
OF THE
INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS**

FR17/ 2018

SEPTEMBER 2018

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Chapter 1 – Introduction

In December 2016, IOSCO Committee 3 published a *Report on Retail OTC Leveraged Products* (December 2016 Report).¹ The December 2016 Report described the activity in this particular off-exchange retail market sector explaining the types of relevant products offered (rolling spot forex contracts, contracts for differences and binary options);² identifying the different types of firms and business models commonly seen in the sector; and outlining the different approaches taken by IOSCO member jurisdictions to regulate the distribution of the relevant products by firms. The December 2016 Report also described supervisory concerns and challenges arising in the sector. It further set out potential risks to investors and instances of misconduct by licensed firms, as well as growing concerns with activity by unlicensed entities predominantly offering the products online.

Following the publication of the December 2016 Report, which was an initial fact-finding exercise, the IOSCO Board agreed on a mandate in July 2017 to more closely explore the ongoing regulatory challenges and common concerns about OTC leveraged products offered and sold to retail investors. The overall goal for the new mandate has been to identify and promote regulatory approaches that can enhance the protection of retail investors in this area. To help achieve this goal, IOSCO members are encouraged to consider, to the extent legally permissible in their jurisdiction, improving the practices of licensed firms in the sector, better informing investors about the features and risks of the products and the firms offering them, or restricting the marketing or sale of the products, as well as more effectively combatting illegal cross-border activity in this area.

In line with the overall goals of the mandate set out above, IOSCO has developed three complementary toolkits that provide guidance to IOSCO members on ways to mitigate harm to retail investors in the sector. These toolkits set out:

- i. Policy measures with guidance for the regulation of the offer and sale of the relevant products by intermediaries;
- ii. Investor education materials with guidance about the relevant products and firms; and,
- iii. Enforcement approaches and practices to address and mitigate the risks posed by unlicensed firms offering the relevant products to retail investors.

This report incorporates all three of the toolkits.

The first toolkit describes a range of policy measures that may be adopted by IOSCO members to address the specific risks arising from the offer and sale of the relevant products by intermediaries. These vary from leverage limits and pricing methodologies to restrictions on certain marketing activities and a prohibition on the sale and/or distribution by intermediaries of the products to retail investors.

The second toolkit describes ways for IOSCO members to design investor education programmes to inform retail investors about the nature and risks of the relevant products. The toolkit includes guidance on developing educational content for retail investors about the relevant products and informing them of unlicensed entities, the use of different communication channels and forging partnerships to improve the effectiveness of communication to the retail market.

The third toolkit explores issues raised by unlicensed entities offering OTC leveraged products to retail investors, with a particular focus on unlicensed binary options firms and activities

¹ <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD550.pdf>

² See Chapter 2 for a description of these products.

carried out by them. The toolkit highlights the challenges regulators commonly meet when enforcing their requirements on firms offering retail OTC leveraged products, and sets out practices employed in different IOSCO member jurisdictions that have been found to be effective in mitigating risks posed by firms that illegally and/ or fraudulently offer the relevant products.

The different toolkits describe how each of the measures addresses investor detriment in the sector, as well as how different IOSCO members have implemented the measures for the purpose of providing guidance on possible ways to implement each measure.

IOSCO members are encouraged to consider adopting one or several of these measures, in accordance with their legal and regulatory framework and the specific risks they have identified, to help ensure an appropriately high level of protection for retail investors transacting in the relevant products.

The toolkits described in this report do not mandate regulatory action. IOSCO acknowledges that not every measure described would be appropriate in all IOSCO member jurisdictions and that the use of any measure is dependent upon the capacity of the relevant IOSCO member under its legal and regulatory framework. In addition, measures should be implemented in light of the specific risks that have been identified in the respective jurisdiction. Therefore, implementation of the different measures may vary across IOSCO members.

Chapter 2: Retail OTC Leveraged Products

The products

This report covers the offer and sale by intermediaries of the following categories of OTC leveraged products that are actively marketed and sold to retail investors in the majority of IOSCO member jurisdictions, both domestically and on a cross-border basis:

- **Rolling spot forex contracts**, which are contracts where the pay-out is based on the fluctuation of foreign exchange rates and the initial maturity of two business days is automatically extended (by one business day at a time) if the contract is still open by the end of trading on the second business day. This product family includes economically equivalent leveraged forex contracts;
- **Contracts for differences (CFDs)**, which are contracts where the pay-out is based on the fluctuation of underlying financial rates and prices and which stay open until closed by one of the parties;
- **Binary options**³ which are contracts where the pay-out, based on any of a variety of underlying financial rates and prices, depends entirely on the outcome of a yes/no proposition (typically whether the price of the underlying asset will rise or fall below a specified level), and is either zero or a fixed amount or a specified percentage of the price (amount invested) of the option.⁴

The products are generally used by retail investors to speculate on the short-term price movements in a given underlying asset. Some retail investors, who are more sophisticated, may also use the products for hedging purposes.

The products are typically not listed on an exchange, but traded over the counter (OTC).⁵ As such, the pricing and settlement as well as the trading terms of the products are not standardised. Typically, the products are offered through online trading platforms and are sold without the provision of investment advice. An increasing number of IOSCO members have reported that intermediaries active in these products are targeting the mass retail market.

In the case of rolling spot forex contracts and CFDs, the products are typically traded on margin, allowing retail investors to open a position by only depositing a small proportion of their overall exposure as collateral to support their position. Trading on margin amplifies even minor fluctuations in the value of the investor's position, exponentially increasing the investor's losses and gains.

In the case of binary options, the investor commits funds to a position and in a typical scenario, if the value of the underlying asset reaches a specified strike price at a specified time, the investor receives a pre-determined pay-out based on a fixed multiple of the initial payment. If the value of the underlying asset does not reach the specified strike-price, the investor loses all

³ While binary options are not leveraged, the way the products are offered and sold on a cross-border basis is similar to the way CFDs and rolling spot forex contracts are offered and sold to retail clients. The types of firms offering binary options to retail clients, their business models and distribution strategies are also very similar to firms offering CFDs and rolling spot forex contracts.

⁴ The pay-out in some binary options can also be based on a non-financial underlying asset, such as a weather event or the outcome of an election. In some jurisdictions, only binary options that are based on a financial underlying asset are classified as financial instruments.

⁵ There are certain jurisdictions where some of the relevant products are traded on venue or centrally cleared, e.g. Romania, Japan, and the United States. The Australian Exchange formerly offered listed CFDs but the service is no longer available.

or most of the initial payment. The investor sets the level of the initial payment or premium, which is not contingent on the value of the underlying asset.

As markets evolve, the firms offering retail OTC leveraged products are likely to further develop their product offerings. IOSCO members may wish to consider whether the same or similar risks to those identified in this report also emerge in relation to these new products. For example, recently many IOSCO members have observed a notable increase in firms offering retail OTC leveraged products with a cryptocurrency underlying.

Firms and their business models

The December 2016 Report describes how the number of market intermediaries offering the relevant products has increased in several IOSCO member jurisdictions in recent years.

While a variety of business and trading models are observed in the sector, firms offering the relevant products to retail investors typically act as the counterparty to the client's trades. Some of these firms hedge their exposure according to their risk appetite or on a trade-by-trade basis, while others assume the full market risk against the client's position.

A significant proportion of firms offer services on a cross-border basis, often without a physical presence in many of the jurisdictions where the end-investors reside. This presents specific challenges to regulators regarding the supervision of these firms. This risk is further highlighted below under enforcement challenges arising from retail OTC leveraged products.

Key risks of the products

As set out in the December 2016 Report, several IOSCO members have recently expressed concerns about the offer and sale of these complex and risky products to retail investors, in particular over the level of losses experienced by retail investors trading in them and the manner in which these products are mass-marketed to consumers. IOSCO members also raised concerns about the quality of disclosures provided by intermediaries offering the products to retail investors and about certain operational issues, such as concerns around quality of execution in the relevant products. These concerns are reflected in the number of investor complaints received by the relevant authorities in relation to the products (in some jurisdictions many more complaints arise in relation to firms that are operating illegally without licenses) as well as the enhanced supervisory focus on the sector across a number of IOSCO jurisdictions.

In addition to the concerns set out above, supervisory work across IOSCO member jurisdictions has identified several other risks arising from the sector. These risks are outlined below:

Distribution risks

Several IOSCO members have indicated that firms in the sector are targeting the general public and, in some cases, have widened the target audience for the relevant products in recent years. As a consequence, the following risks have been identified and are becoming increasingly acute in relation to the distribution of the products:

- Firms adopting business models that rely on churning a high volume of inexperienced retail clients who are likely to lose money when trading in the products;
- Firms adopting aggressive marketing methods to attract new retail clients;
- Firms failing to undertake sufficiently robust on-boarding processes before allowing new clients to start trading;
- Firms using misleading marketing messages and making insufficient disclosures of the risks to their retail clients; and,
- Firms using incentives, such as bonuses, to attract retail clients, which put the clients at risk of suffering higher losses than they otherwise would assume.

Risks arising from certain product features

As the December 2016 Report set out, rolling spot forex products and CFDs sold to retail investors are characterised by the ability of investors to trade these products on margin. In recent years, a number of IOSCO member jurisdictions have observed that the level of leverage offered by firms distributing the relevant products has substantially increased. For instance, while common leverage levels observed by national competent authorities have typically ranged between 10:1 and 200:1, some firms have recently been observed offering levels as high as 2000:1, depending on the underlying asset of the product and the firm offering the product.

High levels of leverage pose considerable risks to retail investors, including:

- Exposing investors to a high probability and high value of losses, which can exceed their deposited funds;
- Exacerbating the impact of costs and charges;⁶
- Increasing the risk of conflicts of interest, particularly for firms who take the other side of the investors' trades and who therefore directly benefit from the investor's losses;
- Increasing the counterparty credit risk that firms offering the products present to their clients, and
- Posing a credit risk to the firms themselves.

For binary options, the following risks can arise:

- Although the products appear simple and therefore attractive to retail investors, firms use complex probability methodologies to calculate pay-offs to ensure that on aggregate, the firm always profits from the trades. This also makes it difficult for investors to fairly value the product and make an informed investment decision;
- Where there is lack of transparency in the price of the underlying asset, it is often difficult for a retail investor to assess the fairness of the price at the start of the contract and at expiry; and
- The very short duration of many binary option contracts exacerbates the above risks.⁷

Risks arising from the potential conflicts in the market intermediaries' business models and execution practices

Some of the business models of firms that offer and sell CFDs and rolling spot forex products to retail investors bear an inherent conflict of interest between the firm and the investor. This mainly arises when the firm acts as the counterparty to the client's trades and where it might be directly benefiting from the client's losses. In particular, the conflict is greater where the firm does not hedge or only partially hedges the client's trades.

Potential conflicts also arise from the lack of transparency in the pricing of the relevant products. Indeed, it is not always clear whether the pricing can be linked to an underlying market. In addition, firms may require the client to acknowledge that the reference prices used to determine the value of the underlying asset may differ from the price available in the market. As a consequence, clients often find it difficult to verify the accuracy of the price offered to

⁶ Costs for CFDs and rolling spot forex products sold to retail clients are typically based on the client's notional exposure and are calculated as a percentage of the notional exposure.

⁷ Some regulators question whether products such as binary options can ever fulfil a genuine investment need and are concerned that the short-term nature of these contracts may encourage repeated transactions that can present addiction-like risks leading to large losses.

them by the firm and face information asymmetries when attempting to monitor the price and the performance of their investment.

In addition to these conflicts, several IOSCO members have expressed concerns over the execution practices observed in the sector. In particular, members have reported their concern that some firms selling CFDs and rolling spot forex products invoke contractual clauses to exercise discretion either cancelling a trade to avoid pay-out or closing trades to crystallise client losses. Concerns have also been raised over firms engaging in asymmetric slippage practices.⁸

Although they are sold as straightforward products and perceived as simple by retail clients, binary options present significant information asymmetries, which are often exploited by firms to the detriment of the client, as set out above.

Risks arising from unlicensed entities

In addition to issues relating to licenced firms offering the relevant products to retail investors, several IOSCO members have reported an increase in the number of unlicensed firms, who often hold themselves out as being licensed, and offer these products illegally.

The complexity and high-risk/high-profit nature of the relevant products makes them particularly attractive for unlicensed firms to use as tools for defrauding retail investors. As such, unlicensed firms distributing the products via online platforms pose a significant risk to investor protection.⁹ This has led to increased levels of investor detriment and associated investor complaints and enquiries.

For instance, fraudulent behaviour by unlicensed firms offering the relevant products can include:

- Transferring funds deposited by clients immediately via wire to an offshore account solely with a view to prevent clients from accessing the funds. No actual trading takes place on the trading platform and the prices displayed on the platform are not reflective of actual market prices.
- Manipulating the risk settings on the trading platform in a way that allows the client to initially win to entice the client to deposit more funds on their trading account, however, after more funds are deposited the firm changes the settings again to make the client lose. Victims rarely, if ever, manage to make a profit or collect their earnings.

Some jurisdictions have set their regulatory perimeter to only require firms that market, offer or sell the products to residents of that jurisdiction to be licensed. In these jurisdictions, firms that offer the relevant products to non-residents are exempt from the requirement to be registered for the purposes of those activities, and are therefore not subject to any regulatory oversight in that “home” jurisdiction.

A number of firms in the sector have exploited this regulatory gap to target foreign investors, by locating in jurisdictions where they are not required to be licensed when offering and selling

⁸ Asymmetric slippage involves a firm passing negative price movements to the client, but seeking to capture positive slippage itself by only giving the client the original quoted price where a positive movement for the firm has occurred in the intervening time between a quote being provided and the execution of the order.

⁹ For example, to date, Canadian regulators have identified more than 300 illegal binary options platforms targeting Canadian retail investors operating from 30 different jurisdictions. In addition, AMF France has identified 455 illegal rolling spot forex, CFD and binary options platforms targeting French retail investors since 2010.

the relevant products to foreign investors only. As a result, it can be difficult for the regulators in the jurisdiction of the investor to effectively take enforcement actions against these firms.

Enforcement challenges posed by firms illegally offering retail OTC leveraged products

IOSCO members have identified particular challenges in taking enforcement action against firms offering binary options and other OTC leveraged products to retail investors and combating illegal activity (including sales of the products by unlicensed firms and fraud) arising from the sale and offer of the products.

Given that OTC leveraged products are predominantly offered to retail investors through online trading platforms, new firms offering the products can enter the market relatively easily with minimal or no physical presence in the jurisdiction where their products are sold, purchasing off-the-shelf trading platforms and marketing themselves with minimal capital expenditure and very low, fixed overheads. This can make it difficult for IOSCO members to locate, identify and take action against a firm before it closes and reopens under a new entity.

For example, it may be difficult for regulators to establish the actual physical location of a firm whose presence in its claimed home-jurisdiction is limited to a mail drop or a virtual office provider.

Firms whose location and identity can be challenging for regulators to establish often:

- Lack a physical presence in the jurisdiction of their investors;
- Provide false addresses or use anonymous domain registrations for their websites;
- Use different trading names or brands;
- Outsource important parts of their business, including the trading infrastructure/IT systems, marketing/promotional activities (for example through the use of call centres that may be located in a different jurisdiction), client on-boarding, control functions and safeguarding of client money; and
- Operate through different internet domains or use different trading platforms, whose names differ from the entity's corporate name, thereby creating identity confusion.¹⁰

Moreover, even once the location and identify of a firm or individual is established, enforcing judgments against defendants located in a foreign jurisdiction is a challenge often encountered by IOSCO members in relation to firms offering OTC leveraged products. The enforcement toolkit in Chapter 5 explores the issues and challenges raised by unlicensed and/ or fraudulent firms offering or selling retail OTC leveraged products and provides guidance on different types of effective enforcement approaches and practices employed across IOSCO member jurisdictions.

Regulation

The regulatory treatment of retail OTC leveraged products differs across jurisdictions, as detailed in the December 2016 Report. The relevant products are typically characterised as OTC derivatives, although in some jurisdictions different regulatory requirements may apply

¹⁰ Regulators have found that some firms use internet domain privacy services offered by registrars to mask the identity of who registered the website. A domain name registrar is an organisation or commercial entity that manages the reservations of internet domain names. Because a domain record is public for all to see, some registrars sell "privacy services" whereby they will either not publish the domain owner's contact details or will publish masked details that refer to anonymous names and addresses at the registrar.

based on the specific category of OTC derivatives involved (e.g. swaps, options).¹¹ Moreover, in a few jurisdictions, some of the products are legally deemed to be securities, implying potentially differing requirements and standards across the different products.¹²

In addition, the regulation applicable to the market intermediaries offering the relevant products is quite heterogeneous across different IOSCO member jurisdictions. This reflects the different regulatory frameworks, as well as the various regulatory initiatives IOSCO members have undertaken in recent years in response to the risks identified in relation to the relevant products.

Nonetheless, firms in different jurisdictions are typically subject to similar conduct rules, which generally include:

- Ensuring that the information provided to clients, including financial promotions and marketing materials, is clear, accurate and not misleading and that disclosures include appropriate risk warnings to enable clients to make informed investment decisions;
- Carrying out appropriate client on-boarding, including know-your-customer procedures and entering into a written agreement with the client as well as, in some jurisdictions, carrying out an assessment of the appropriateness of the products offered to the client (where no advice is provided);
- Assessing the suitability of any advice given to clients;
- Ensuring client orders are executed on the best terms available;
- Operating effective organisational arrangements that mitigate any conflicts of interest and ensure fair treatment of all clients; and,
- Ensuring adequate safeguarding of client money and assets.¹³

In addition, various capital, liquidity and organisational requirements apply to the relevant firms across IOSCO member jurisdictions. These include requirements relating to risk management, internal controls, business continuity and record keeping.

While the standard regulatory requirements mentioned above address some of the broader risks arising from the offer and sale of the relevant products to retail investors, several IOSCO members have taken the view that they do not necessarily address the more specific investor protection risks arising from the distribution of the products to retail investors. As a result, some IOSCO member jurisdictions have adopted more specific regulatory measures to enhance investor protection in this particular area. These additional, targeted measures are the focus of the regulatory toolkit outlined below.

¹¹ In some jurisdictions the products may be traded on exchanges.

¹² For example, the requirement to publish a prospectus may only apply to securities; or certain transaction reporting requirements may differ depending on whether the transaction involves a security or a derivative or both.

¹³ These requirements reflect the *IOSCO's Objectives and Principles of Securities Market Regulation*, June 2010. Also see *IOSCO's Methodology for Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation*; *Suitability Requirements with respect to the Distribution of Complex Financial Products*, January 2013; *Guidelines for the Regulation of Conflicts of Interest Facing Market Intermediaries*, November 2010; *Recommendations Regarding the Protection of Client Assets*, Report of IOSCO, January 2014.

Chapter 3: Regulatory toolkit to enhance conduct standards

Introduction and overview of the toolkit

This toolkit sets out policy measures that IOSCO members may consider in their regulation of firms offering and selling retail OTC leveraged products. The purpose of the toolkit is to identify for IOSCO members potential options for targeted regulatory measures that address the specific investor protection risks arising from CFDs, rolling spot forex contracts and binary options sold to retail customers.

The measures are designed to help reduce the risks to investors in these products, improve the practices of licensed firms that sell them, improve the likelihood that the products are sold to an appropriate target market and reduce the likelihood that these products are sold illegally by unlicensed firms.

This toolkit comprises nine different policy measures with guidance for seven broad areas. This includes:

- i. A licensing requirement for all firms that sell the relevant products to retail investors either domestically or on a cross-border basis;
- ii. Leverage limits or minimum margin requirements;
- iii. Measures to address the risk of investors losing more than their initial investment;
- iv. Measures to enhance the disclosure of costs and charges of the products;
- v. Measures to improve the disclosure of risks of the products, including profit and loss ratios;
- vi. Other focused requirements to enhance the quality of pricing and order execution; and
- vii. Measures to restrict the sale, distribution and marketing of the products with a view to addressing mis-selling risk.

Several of the measures in this toolkit have already been adopted by some IOSCO members who apply them alongside the standard regulatory framework governing the sale and offering of a broader set of investment products. Where this is the case, it has been indicated in the toolkit. Other IOSCO members may wish to consider applying similar measures when determining their approach to regulating the intermediaries offering and selling OTC leveraged products to retail investors.

Licensing of intermediaries

A licensing requirement is a priority tool to help ensure that firms are subject to certain minimum standards and regulations, that they can be effectively supervised, and be subject to enforcement actions in the event of non-compliance.¹⁴ Licensing provides a critical safeguard that firms are appropriately managed, and that certain conduct and prudential standards are observed when undertaking business.

Unlicensed firms avoid the regulatory requirements or standards that licensed firms are subject to when selling the relevant products to retail investors. As such, they pose considerable risk to retail investors.¹⁵

¹⁴ This requirement is outlined in Principle 29 of IOSCO Objectives and Principles of Securities Market Regulation, June 2016. Issues and challenges raised by unlicensed firms and enforcement against unlicensed entities are addressed in Chapter 5.

¹⁵ It should be noted that in certain jurisdictions, a firm that is in compliance with a regulatory exemption may not need to be licensed.

The IOSCO Principle 29 states that jurisdictions should ensure that, as a condition of operating a securities business, market intermediaries are subject to minimum entry standards. IOSCO member jurisdictions are responsible for determining the scope of their regulatory perimeter, and it is not the intention of this toolkit to suggest harmonising licensing requirements beyond those standards that are strictly necessary to address significant investor protection concerns, in particular the concerns arising from unlicensed or illegal cross-border offerings of OTC leveraged products to retail investors.

Measure 1: Requirement for firms offering the relevant products to retail investors to be licensed

This measure would require market intermediaries to be registered and/or licensed by a relevant regulatory authority when physically based in and operating from that jurisdiction and offering the relevant products to retail investors, regardless of where the end-investor is located.

This measure will ensure that firms are subject to regulatory oversight regardless of where their end-customers are located, and that firms meet certain minimum standards when offering their services.

In particular, preventing a carve out from the licensing requirement based on the investor's location would ensure that all firms operating in the sector:

- are subject to certain regulatory requirements;
- can be supervised and inspected; and,
- can be held to account for their misconduct, including through effective enforcement actions.¹⁶

A more common approach to licensing will help mitigate regulatory arbitrage in the sector which remains an ongoing problem. In particular, subjecting all firms offering the relevant products to retail investors to a licensing requirement in the jurisdiction where they are based will make it more difficult for firms to avoid meeting any regulatory requirements purely by marketing the relevant products outside of the jurisdiction where the firm is domiciled. It will also assist regulators in inspecting firms to ensure compliance with relevant conduct measures. In addition, such a measure will likely reduce the burden of taking action against unlicensed entities in jurisdictions where the investors reside because supervision by the home country authority would likely help deter illegal activity abroad. In this context, an appropriate licensing/registration regime may be necessary for some regulators to take effective enforcement actions and, thus, is linked to the implementation of the enforcement tools highlighted in Chapter 5 of this report.

Adoption of the measure by IOSCO members

In most IOSCO member jurisdictions, firms offering the relevant products are already regulated and required to be licensed regardless of the location of the end-customer. In addition, in the large majority of IOSCO member jurisdictions, the relevant products are considered to be financial instruments (i.e., either securities or derivatives and are accordingly subject to regulatory oversight.

Recently, a number of jurisdictions have taken steps to amend their regulatory perimeter to bring the relevant products within the scope of local financial services regulation, and to subject firms offering them to a licensing requirement. For example, in the UK binary options, unlike

¹⁶ In the event of an enforcement investigation, record keeping and disclosure requirements that apply to licensed firms, may provide crucial information for the investigation.

CFDs, have historically been treated as gambling products subject to regulation by the Gambling Commission. The UK Parliament, however, recently amended primary legislation in order to bring binary options within the regulatory perimeter of the Financial Conduct Authority (UK FCA) with effect from January 2018.¹⁷ Israel also recently passed legislation to completely ban the offering of binary options from Israel – both to investors in Israel and abroad.

Appendix A includes examples of enforcement actions that IOSCO members have taken against licensing or registration violations by firms.

Guidance on the application of the measure

One of the most effective measures to address this serious investor protection issue is through licensing requirements. It is acknowledged that the scope of the licensing requirement in different IOSCO member jurisdictions is likely to be determined under the relevant statutory law. While there may be challenges in adopting this measure as a result of this, the relevant jurisdictions are encouraged to adopt this measure in order to address any existing gaps in the regulation of the firms offering the relevant products in their jurisdiction.

Given the evident risks attached to trading these products for retail investors, to help provide a consistent level of investor protection, jurisdictions would need to characterize these products in a manner that allows them to be treated in the same way as other products typically characterized as financial instruments to ensure that firms offering the relevant products are licensed as financial intermediaries and that the measures outlined in this toolkit can be applied to them.

To avoid regulatory arbitrage and to help ensure that retail investors are afforded sufficient protections when dealing with firms offering the relevant products, regardless of where the investors are located, IOSCO members may wish to consider the following approaches when establishing a licensing regime in respect to the relevant firms:

- Requiring all intermediaries physically located in their jurisdiction and who deal with retail investors residing either in the local jurisdiction or abroad to obtain the necessary local license;
- Requiring all intermediaries physically located in their jurisdiction and who deal with retail investors residing in the same jurisdiction to obtain the necessary local license, while prohibiting any such local intermediary from dealing with retail investors residing in other jurisdictions; or,
- Refraining from licensing any intermediary physically located in their jurisdiction who intends to only deal with retail investors residing in other jurisdictions.

Leverage limits or minimum margin requirements

Leverage alters the investor's financial exposure to the underlying asset. It allows the investor to enter into trades by only posting a small proportion of the total notional investment to support the trading position. This increases the investor's exposure to the volatility of the underlying asset and typically increases the investor's notional investment. As such, leverage magnifies

¹⁷ The UK's recent amendment, treating binary options as financial instruments reflects the European Commission's revised guidance on binary options treatment under European law, which had not originally considered the products as financial instruments for the purposes of MiFID. Other European jurisdictions had taken a similar approach as the UK before the revised guidance from the European Commission.

the risk and potential size of losses for investors, including the risk that investor losses can exceed the initially deposited investor funds.

The below measure seeks to ensure that the levels of leverage that firms offer to their retail investors trading in the relevant products are limited, thereby contributing to the protection for these investors.

Measure 2: Requirement for firms to incorporate a prescribed minimum margin requirement for retail investors

This measure would require market intermediaries to comply with minimum margin requirements when transacting in CFDs or rolling spot forex contracts, ensuring that they collect from their clients a certain margin amount as collateral before opening a position. The measure can also be applied so that it requires a certain level of margin to be maintained to support a position over the course of the trade.

Setting a minimum margin requirement on CFDs and rolling spot forex contracts reduces the risk of losses to investors trading in these types of products. By limiting the investor's exposure, the measure reduces the likelihood and volume of potential investor losses. Limiting the leverage available in the products also helps firms mitigate potential conflicts of interest arising from situations where they act as the counterparty to the client's trades and where they directly benefit from the client's losses. Furthermore, the measure also mitigates the counterparty credit risk that the firms offering the products can present when offering the products to retail customers at excessive levels of leverage.

Adoption of the measure by IOSCO members

Several IOSCO members have decided to apply minimum margin requirements to CFDs and rolling spot forex contracts as a measure to mitigate investor detriment arising from the relevant products.

The measures adopted by different IOSCO members include:

- Firms being subject to different levels of initial margin and maintenance margin requirements for rolling spot forex contracts and CFDs;
- Firms being subject to the same leverage limits as firms offering exchange-traded futures contracts on the applicable underlying asset; and,
- Firms being subject to different minimum margin requirements or leverage limits depending on the relevant product and underlying asset.

Guidance on the application of the measure

When considering the appropriate level of minimum margin for the relevant products, IOSCO members will need to carefully balance the need to ensure robust investor protection while allowing customers who sufficiently understand the products and their risks and are able to bear any associated losses to continue to trade these products.

In designing the measure, IOSCO members may wish to take into account one or both of the following factors when setting the minimum margin requirement for the products:

- the riskiness and volatility of the underlying asset; or
- margin requirements applicable to other comparable, or economically equivalent products (such as futures).

IOSCO members may also wish to consider their approach for requiring firms to maintain a prescribed margin level supporting their client's position. Some jurisdictions require firms to collect and maintain a minimum margin from the client over the course of the transaction.

Others apply the minimum margin requirements for clients only to the client's initial position, allowing the margin to be eroded over the course of the trade.

Firms in jurisdictions without the requirement to maintain the margin at a pre-determined level typically adopt a margin close out feature for the relevant products. This feature closes out the client's position as soon as market conditions allow once the client's margin has fallen below a pre-determined proportion of their notional exposure. In practice, the feature provides a set limit for leverage available to the client during the course of the trade. However, because the level of margin at which the close out is effected is set as a proportion of the initial margin posted, such a feature makes available higher levels of leverage to the client during the course of the trade than that available to the client when opening the position.

Taking into account the above considerations, where there is no regulatory requirement for a maintenance margin, IOSCO members may wish to consider requiring the margin close out feature for the relevant products.

Measures for intermediaries that counter the risks of investors losing more than their initial investment in the relevant products

The leveraged nature of the relevant products means that retail investors trading in them can be exposed to losses exceeding their deposited funds. Depending on the leverage used and the volatility of the underlying asset, the speed and volume of the losses can be significant.

Set out below is a policy measure that mitigates the risk of investors losing more than their initial deposits when investing in the relevant products.

Measure 3: Negative balance protection

This measure would require market intermediaries to limit retail clients' losses in CFDs and rolling spot forex contracts to their deposited funds or their funds invested for each trade, thereby preventing firms from recovering any losses that exceed the clients' deposited funds or funds invested for each trade.

A measure limiting client losses to their deposited funds or funds invested for each trade in CFDs or rolling spot forex contracts provides a high level of protection to clients by guaranteeing a certain floor for the losses clients may be exposed to. It addresses the risk that a significant change in the price of the underlying asset can subject the client to considerable, in some cases even unlimited losses. It provides a level of certainty to the client of possible investment outcomes when trading in CFDs or rolling spot forex contracts.

While a minimum margin requirement addresses some of the risks of retail clients investing in the products, a requirement for firms to cap retail client's losses provides a guaranteed backstop to the level of losses retail clients can be exposed to. As such, the measure provides a high level of protection for clients against potential losses, including during periods of significant market volatility.¹⁸

Application of the measure by IOSCO members

Measures adopted by IOSCO members include:

¹⁸ When implementing the measure, IOSCO members should consider the impact the measure has on the capital standards and prudential requirements for the firms and ensure that these are revised accordingly and in a manner that, together with the negative balance protection measure, ensures an appropriately high level of protection to investors.

- A restriction on the marketing, distribution and sale of CFDs and/ or rolling spot forex contracts that do not limit the client's losses to the balance on the client's trading account.
- A prohibition on electronic advertising of all retail OTC derivatives that do not limit the client's losses to the initial investment made to create any relevant client position (thereby prohibiting firms from making a subsequent margin call or clients from posting additional margin to maintain an open position).
- A requirement for firms offering rolling spot forex contracts to agree and set an individual loss limit for their client transactions and terminate the client's trade when it reaches the agreed limit.

Guidance on the application of the measure

The primary consideration for IOSCO members when designing this measure is whether to apply it on a per position or per account basis. If applied on a per position basis, the client's losses in a particular position are limited to the funds held to support that particular position. If applied on a per account basis, the client's losses on one or multiple positions are limited to the total equity in the client's account.

Applying the measure on a per position basis provides the most comprehensive level of protection to the client. However, it restricts certain client trading strategies and is likely to be costly for firms to provide, therefore likely leading to higher transaction costs for retail clients when trading in the relevant products. Applying the measure on a per account basis allows more flexible trading strategies by investors trading in the products and is less costly for firms to offer. However, it allows the firms to use profits across the client's trading account to cover losses on individual positions.

IOSCO members may also wish to consider adopting the measure requiring firms to agree and set the level of the loss limit separately with each client.

Measures to enhance the disclosures of costs and charges by intermediaries

As set out in the December 2016 Report, several IOSCO members have raised concerns that there is a lack of transparency around the different costs and charges that market intermediaries impose on the sale of the relevant products and that many retail clients may find it difficult to understand which costs are applicable and how the application of the various costs affects the returns on the product.

Standardised cost disclosures are designed to ensure that firms accurately describe the costs arising from trading in the products.

Measure 4: Prescribed disclosures setting out the total costs of the product

This measure would require market intermediaries to provide a standardised disclosure that clearly sets out the total costs and charges charged by intermediaries relating to the product before it is sold to retail clients.

This measure promotes transparency of the information available to investors on the costs and charges of the product. In addition, the measure helps investors compare the different products, helps them to better assess value for money and the impact of costs on the expected performance of the product, and ultimately assists them in making an informed investment decision.

Adoption of the measure by IOSCO members

In Europe, firms are required to disclose to the client the total cost of the product as part of enhanced disclosure requirements stemming from the MiFID 2 legislation.

In addition, firms offering the relevant products are required to provide other standardised disclosures to their clients, including information on the objectives of the product, target market and costs and charges as set out in the Regulation on Key Information Documents for Packaged Retail and Insurance-based Investment Products (PRIIPs).

Guidance on the application of the measure

Should this measure be adopted by IOSCO members, regulators may wish to require that firms ensure that at least the following costs and charges are included in the enhanced disclosure:

- The spread;
- The various other costs and charges applied, including:
 - Any financing charges to keep the position open, such as daily or overnight charges;
 - Commissions, (e.g. general commission, commission on each trade, or commission on opening and closing an account);
 - A mark-up to the market prices¹⁹ the firm receives from an external source;
 - Any costs or charges applicable if a client closes a position;
 - Account management fees.

Where an exact cost for the product cannot be indicated at the outset, IOSCO members may wish to require a firm to make this clear and disclose to their client how those costs will be calculated and applied.

IOSCO members could also consider requiring firms to make estimations of the expected costs and charges for any costs that cannot be indicated at outset. For example, firms could be required to use incurred costs as a proxy for expected costs and charges. Firms should be expected to make reasonable assumptions and take into account any factors that can impact the costs, such as the type of products and the underlying asset, the expected holding period and/or expiry of the product. In addition, firms could be expected to regularly review any ex-ante assumptions they have made based on actual outcomes and make amendments to the disclosures where appropriate.

In designing the measure, IOSCO members may want to consider the following aspects:

- The timing of the disclosure;
- The medium for the disclosure;
- The scope of application of the measure, including whether it would apply to licensed firms offering the relevant products outside their home jurisdiction;
- Whether, aside from total cost of the product, any other key information should be included in the disclosure;
- The level of granularity and format for disclosing the methodology the firm uses to calculate and apply the costs;
- Whether the impact of costs and charges on the performance of the product should be included as part of the disclosure.

¹⁹ These market prices may already include a spread added by an external source.

Measures to improve the disclosure of risks of the products

Firms in the sector are commonly observed using misleading marketing messages when promoting their products to retail clients, focusing on the benefits and ease of trading in the relevant products and emphasising the potential of significant profits, while playing down the risks and potential for rapid and potentially unlimited losses.

The below measure is designed to help ensure that firms offering the relevant products adequately describe the risks arising from the products when offering them to retail investors.

Measure 5: Disclosure of investor profit and loss ratios

This measure would require market intermediaries to disclose to their clients the percentage of client accounts that made a net profit or loss during a certain period of trading activity.

Given that several IOSCO members have found that a majority of investors lose money on these products, this measure provides a simple, firm-specific figure highlighting actual investor trading outcomes. It helps to ensure that investors are better informed of the risks associated with the relevant products and that firms communicate certain key messages in a clear and understandable way.

While disclosures alone have some limitations in impacting investor behaviour, the measure helps offset the tendency of firms and investors to focus on the potential for profits rather than losses, and supports investors in making an informed decision about whether they wish to proceed with a high-risk product that, statistically, is more likely to result in a loss than a gain.

Adoption of the measures by IOSCO members

Similar measures adopted by IOSCO members include:

- A requirement for firms offering the relevant products to disclose data on loss-making and profit-making accounts at firm level for the last calendar quarters.
- A competent authority publishing monthly, firm-level statistics on profit and loss ratios of the clients trading in the products.
- A requirement for firms that offer CFDs with leverage in excess of a specified level to provide an express warning to investors on the complexity, risk and likelihood of losses.

Guidance on the application of the measure

In addition to the considerations set out for IOSCO members when designing the requirement for firms to disclose the total costs of the product as set out under Measure 4, members may want to set out specific instructions to firms for calculating the profit-loss ratio. This would help prevent firms from using a methodology that is designed to produce an attractive marketing message and ensure that the methodology firms use to calculate the ratio accurately reflects genuine investor outcomes. It would also ensure comparability of the profit-loss ratios across firms. For example, the instructions could include the following:

- The percentage of profitable versus loss-making accounts should include the realised and unrealised gains and/ or losses on all relevant contracts for each retail client.
- The calculations for the profit and loss ratios should be inclusive of all fees, commissions and any other charges.
- The calculations for the profit and loss ratios should be exclusive of all deposits of funds, all withdrawals of funds and all accounts that have not entered into a single trade over the relevant period.

IOSCO members could also consider other alternatives when designing requirements for firms to disclose the actual outcomes of clients who trade in the relevant products. These could include, for example, firms disclosing the actual average losses experienced by clients. When considering such measures, IOSCO members may wish to test different approaches for their impact on retail investor behaviour.

Measures to improve the quality and integrity of pricing and order execution

Several IOSCO members have raised concerns over execution practices of firms offering the relevant products to retail investors, stating that the products present challenges to regulators to ensure that the firms are delivering the best possible execution outcomes to their clients.

Below are measures that IOSCO members can adopt in an effort to improve the integrity of pricing of the relevant products and to enhance execution quality in the sector.

Measure 6: Adoption of a fair pricing methodology and use of externally verifiable price sources

This measure would require market intermediaries to be able to demonstrate a clear pricing methodology for the relevant products and to use independent and externally verifiable price sources and liquidity providers to derive their prices.

To increase the transparency in the pricing of the relevant products, IOSCO members may wish to require that firms be able to demonstrate how their prices are constructed and how they apply a spread or a mark-up to the reference prices used. Furthermore, IOSCO members may wish to consider mandating firms to use externally verifiable price sources and liquidity providers to derive their prices as a way of ensuring fair pricing.

This measure helps to ensure that firms are clear about how they construct the prices for the relevant products and that the firm's pricing methodology supports quality outcomes for its clients.

Improving price transparency in the relevant products also makes it easier for clients to compare the quality of the firm's service offering, to make informed investment decisions and to assess value for money.

Adoption of the measure by IOSCO members

In Europe, investment firms are required to demonstrate fairness in pricing when executing in OTC products and increase transparency around execution processes as part of the best execution requirements arising from MiFID 2.

In the US, broker-dealers are required to ensure that the prices they offer bear a 'reasonable' relationship to prevailing market prices. FINRA rules also address both reasonable mark-ups and potentially conflicted fee structures for securities.

Guidance on the application of the measure

Firms could be expected to demonstrate that their pricing methodology supports quality outcomes for clients, for instance, by:

- Referencing the price they offer to their clients to market data used in the estimation of the price of the product;
- Using independent and externally verifiable price sources and liquidity providers to derive their prices;
- Comparing their pricing with that of similar or comparable products.

As part of the measure, IOSCO members may wish to require firms to disclose their pricing methodology to their clients, as suggested under Measure 7, in way that is clear and easily understandable. To ensure that firms continue to deliver quality outcomes and service to their clients on a consistent basis, IOSCO members may wish to require firms to review their pricing methodology at regular intervals.

Measure 7: Enhanced disclosures about order execution quality

This measure would require that market intermediaries provide clear and effective disclosures to their clients about how their orders are executed.
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Increased transparency around order execution helps clients to better understand and to evaluate the quality of the firm's execution practices and thus to better assess the quality of the overall service provided to them. In addition, improved information on how the firm prices its products assist clients when monitoring the prices they have been offered by the firm and helps them better look after their own interests.

Adoption of the measure by IOSCO members

In Europe, firms are required to disclose their order execution policy to their clients as part of their best execution requirements. The requirement for firms to disclose their pricing methodology is also consistent with the spirit of the legislation.

The enhanced best execution requirements in MiFID 2 also require investment firms, including brokers, to make public the top five execution venues where they execute client orders and information on the quality of execution obtained. Execution venues are also required to make public detailed data relating to the quality of execution of transactions on that venue.

In addition to the requirement to ensure that the prices broker-dealers offer bear a reasonable relationship to prevailing market prices, in the US, the NFA requires forex dealer members to provide their customers, upon request, with certain transaction execution data. This includes price data for the 15 transactions in the same currency pair that occurred immediately before and after the customer's transaction.

Guidance on the application of the measure

IOSCO members have different requirements for firms to inform their clients about how their orders are executed. Taking into account the diverging national requirements in this area, IOSCO members may wish to require firms to provide at least the following disclosures to their clients in respect of the way they execute their client orders:

- a) Order execution policy explaining the methodology the firm uses to deliver the best possible outcome to their clients when executing their orders;
- b) The firm's pricing methodology; and,
- c) Any other data relating to execution quality, such as slippage ratios or re-quote and rejection rates, which clients can use to better evaluate the quality of execution delivered by the firm.

Firms should ensure that the disclosures to clients are clear and allow the clients to readily understand how their orders are executed by the firm.

As part of this measure, IOSCO members may expect firms in the sector to include the following considerations in their execution policy:

- The process followed for selecting the execution venue and price sources used by the firm;
- The process for selecting the hedging venue for the client's trades;

- The process for selecting and monitoring the technology used for executing client orders; and,
- How the firm manages any potential conflicts of interest arising when executing client orders.

Measures to restrict the sale and marketing of the relevant products

As set out in the December 2016 Report, OTC leveraged products are increasingly being marketed and sold to the mass retail market, despite the fact the products are unlikely to be appropriate for most ordinary retail investors.

Given that the products are complex and highly risky, presenting their investors with a high probability of losses, they are likely to be appropriate only for a relatively small number of sophisticated retail investors who understand the products and their risks and are financially capable of absorbing the potential losses.

As pointed out previously, some IOSCO members consider that the general regulatory requirements applicable to market intermediaries, or the enhanced regulatory requirements above, do not sufficiently address some of the specific risks arising from the relevant products. To mitigate the high risk of mis-selling in the sector, a number of jurisdictions have adopted more stringent measures, ranging from a full ban on intermediaries either marketing or selling the relevant products to retail investors, to more targeted measures prohibiting certain forms of aggressive sales or marketing techniques.

The different options for IOSCO members to consider are set out below.

Measure 8: A ban or restrictions on certain forms of marketing and sales techniques for the relevant products

This measure would involve placing restrictions on certain forms of marketing or sales techniques used by market intermediaries offering some or all of the relevant products to retail investors.

This measure seeks to ensure that the relevant products to be offered to retail investors are appropriately marketed and/or distributed. It addresses the risk of mis-selling the relevant products. It is intended to help prevent indiscriminate and inappropriate mass marketing of the products and prevent pressure sales to retail clients.

Adoption of the measure by IOSCO members

The restrictions on certain types of marketing and sales techniques adopted by IOSCO members include:

- A ban on advertising of all binary options and of certain types of CFDs and rolling spot forex products with specified product features (i.e. CFDs and rolling spot forex products that may give rise to a loss greater than the initial amount invested by the retail client). The ban covers all forms of electronic advertising, promotion and marketing, including emails, internet pop-up banners, mobile applications (apps), social media postings, radio and television. The ban also prohibits sponsoring by the relevant firms, for example of sports teams. In addition to prohibiting financial sector firms from issuing such marketing material, the ban extends to prohibiting advertising sector firms from issuing the relevant material. The ban does not apply to information provided by financial firms directly on their websites, provided that the firm is acting legally in the jurisdiction.
- A prohibition on the use of incentives to retail clients by firms offering retail OTC leveraged products.

- Another jurisdiction has prohibited certain distribution techniques with respect not only to these particular products but to all OTC derivatives that may be offered to retail clients. The prohibition includes a ban on the use of call centres to market the products, preventing the use of credit cards to make payments to the relevant firms and restricting the use of promotional cash bonuses.

In Europe, MiFID 2 legislation requires product manufacturers to identify an appropriate target market for their products and to ensure that the products are designed to meet the needs of the target market and are distributed accordingly. Distributors of products are required to use the target market information from product manufacturers and take account of the target market in designing their distribution strategy.

Guidance on the application of the measure

Ways for IOSCO members to limit the marketing and distribution of the products could include:

- Prohibiting or restricting electronic advertising of the products, with a focus on media such as web-based marketing and mobile apps used by firms to reach customers;
- Prohibiting or restricting unsolicited promotions and intrusive sales techniques for the products, including cold calling;
- Prohibiting or restricting bonus promotions to market the products;
- Prohibiting or restricting the payment of compensation to clients to introduce new clients;
- Requiring firms to undertake target-market assessments and use an accordingly tailored distribution strategy for the products; and/ or
- Limiting the use of third parties, such as call centres, by firms to promote the products and to introduce clients to the firm selling them.

Measure 9: A ban or restriction on the sale and/or distribution of the relevant products by intermediaries

This measure would prohibit or restrict the sale and/or distribution of some or all of the relevant products to retail investors by market intermediaries, or require transactions on the relevant products to take place on exchanges.

Banning the sale and/or distribution of any of the relevant products, or requiring such transactions to take place on regulated exchanges, could be used in scenarios where IOSCO members consider that other measures are insufficient in mitigating the investor protection risks arising from the products in their respective jurisdictions. Such measures help ensure that products that pose a significant risk of investor detriment cannot be sold off-exchange and/or distributed to retail clients.

Monitoring compliance with a ban or restrictions on sales and/or distribution of the products may be less resource intensive for the relevant regulatory authorities than monitoring compliance with the other suggested measures.

Adoption of the measure by IOSCO members

The following approaches have been applied by IOSCO members that prohibit or otherwise restrict the distribution of some (or several) of the relevant products:

- Some jurisdictions prohibit the sale and/or distribution of some or all of the relevant products to retail investors either off-exchange or via any electronic trading platform;
- Some jurisdictions have adopted or consulted on a prohibition on the sale of some or all of the relevant products regardless of whether they are sold on exchange while other

jurisdictions require such transactions to take place under a regulatory regime specifically tailored to such products;

- Some jurisdictions have taken the approach not to authorise any firms offering binary options to retail clients.

Guidance on the application of the measure

IOSCO members may wish to consider this measure alongside other measures set out in this toolkit that address the offering of sale of the products with certain features. In particular, where those measures require the products to incorporate certain features, they can also be considered as restrictions on the distribution of the relevant products that do not incorporate such features.

Before applying this type of measure, it may be helpful for IOSCO members to consider whether applying any of the measures set out previously, or a combination of them, could sufficiently mitigate the investor protection risks arising from the relevant products. For example, because of their inherent complexity and the lack of transparency in their pricing, IOSCO members may consider that there are inherent flaws in binary options as products that render them unsuitable for sale to retail clients by intermediaries. In addition, the product features of binary options may mean that some of the measures presented in this toolkit have little impact on addressing the risks arising from binary products. Therefore, IOSCO members may choose to adopt the measure restricting intermediaries from selling these products as a proportionate measure to help ensure a sufficient level of protection for retail clients.

When applying this measure, IOSCO members may also want to decide whether reverse solicitation of the relevant products should be allowed.²⁰

Finally, as this measure may heighten the risk that retail investors are targeted by unlicensed entities, which become the sole providers of these products, IOSCO members adopting this measure may wish to consider appropriate enforcement approaches (as set out in the enforcement toolkit in Chapter 5) that can be adopted alongside this measure and that can help to mitigate the risk of unlicensed entities offering the products illegally.

²⁰ In this context, reverse solicitation is taken to mean an offering or sales process that is initiated by the customer.

Chapter 4: Toolkit of investor education materials with guidance about retail OTC leveraged products and firms offering them

Introduction and overview of the toolkit

This toolkit sets out measures that can help to educate retail investors about the specific risks arising from retail OTC leveraged products.²¹

It contains guidance to regulators in the following four areas:

- i. Developing educational content about retail OTC leveraged products;
- ii. Informing the public about unlicensed or fraudulent firms;
- iii. Using different communication channels to reach targeted audiences; and
- iv. Forging partnerships to increase the effectiveness of educational measures.

IOSCO members are encouraged to consider utilising one or more of the educational measures included in the toolkit, depending on the specific risks they have identified in their respective jurisdictions, and to work to ensure that retail investors have sufficient information to make informed decisions about transacting in OTC leveraged products.

Appendix A includes an overview of investor education materials that IOSCO members have used in the sector, including information about the distribution channels used.

Measure 1: Developing educational content about retail OTC leveraged products

This measure consists of developing investor education materials and warnings to explain the characteristics and risks of retail OTC leveraged products.

Chapter 2 of this report provides an overview of the risks arising from the sale and offer of retail OTC leveraged products. Investor education materials and warnings can help to ensure that retail investors trading in the products better understand the nature of the products and their risks. They can also help retail investors to recognise unlicensed and/ or fraudulent firms.

Educational materials and warnings about the relevant products can be used to complement other regulatory requirements that apply to the offer and sale and of the products to retail investors, such as those set out in the policy toolkit in Chapter 3 and the enforcement toolkit in Chapter 5.

Adoption of the measure by IOSCO members

Most IOSCO members where retail OTC leveraged products are marketed and sold have issued warnings to retail investors and prospective investors regarding the risks of trading in the relevant products and the likelihood of incurring losses. This includes:

- The European Securities and Markets Authority (ESMA) issued a warning in 2016 about the sale of OTC leveraged products to retail investors. ESMA felt that retail investors lacked a full awareness of the risks associated with these products.
- AMF France conducted an online campaign in 2014 to warn retail investors about OTC leveraged products, stating that 89% of investors who invested in CFD or leveraged forex products lost money over a period of four years, with an average loss per client of nearly €10,900.

²¹ IOSCO's report on Sound Practices for Investment Risk Education, which identified a number of sound practices for investment risk education initiatives in general, can be a useful complement to this educational toolkit. See: FR21/2015 Sound Practices for Investment Risk Education, Report of the Board of IOSCO, September 2016, available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD505.pdf>.

- CNMV Spain warned the public in 2016 that, according to its research, 82% of retail investors who entered into CFD transactions experienced a loss.
- In March 2017, The Monetary Authority of Singapore (MAS) issued an investor warning about the risks of trading binary options on unregulated platforms and suggested steps investors can take to protect themselves. Subsequently in May 2018, MAS issued a joint warning with the Singapore Police Force to advise the public to exercise extreme caution when dealing with unregulated online trading platforms. Investors were advised to check if the entities offering financial products were licensed by the MAS by referring to the Financial Institutions Directory and the Investor Alert List (IAL). These advisory messages were also echoed through the national financial education programme, the MoneySense website, social media, campaigns and ground outreach events.

Apart from investor warnings, IOSCO members have also used other educational materials to educate investors about the characteristics and trading mechanisms of OTC leveraged products and the risks of trading them. These include:

- Maintaining a dedicated webpage for the relevant products on the regulator's website that provides educational materials and explains the products, their risks and how they are traded.
- Distributing brochures and other materials about OTC leveraged products and their risks that specifically target retail investors who trade them.
- Producing articles and videos that inform retail investors about fraud and how they can avoid being misled by unlicensed firms offering the relevant products.

Please see Appendix A for further examples of educational content on the relevant products developed by IOSCO members.

Guidance on the application of the measure

Depending upon their primary purpose and target audience, educational materials will have differences in content and focus and will have often gradually evolved over time. However, IOSCO members may find the following practices helpful:

- Displaying materials in a comprehensive manner, on a dedicated web page, for example, or linking different materials together can help regulators to disseminate consistent information to investors.
- Providing investor education materials and warnings in language that is clear and easily understandable and that the information provided is concise and timely. Insights from behavioural economics can help regulators to achieve these goals.
- Using real life user cases or testimonials in investor education materials to help convey messages effectively.

Measure 2: Informing the public about unlicensed or fraudulent firms

This measure entails IOSCO members warning the public of unlicensed and/or fraudulent firms and platforms that offer OTC leveraged products to retail investors.

Unlicensed firms frequently create new websites that offer highly speculative investments to retail investors. IOSCO members have found many of these websites to be fraudulent. The sophisticated marketing and distribution techniques employed by fraudulent firms offering retail OTC leveraged products can also make it difficult for the potential clients of these firms to identify fraud and to realise they are being scammed.

Enforcement action by IOSCO members (and other law enforcement bodies) against the entities and persons engaging in fraudulent or other illegal activities through websites and other fraudulent marketing can be difficult because of the enforcement challenges set out under Chapter 2. For this reason, well informed investors are the first line of defence against fraud and unlicensed operators.

This measure would warn investors and the general public of unlicensed and/ or fraudulent firms and help IOSCO members to limit fraud and protect investors in their jurisdiction.

Some IOSCO members also publish information about their enforcement actions as an additional way to deter future illegal activity. Warnings and updates about enforcement actions may also discourage other potential perpetrators from carrying out illegal activities.

Adoption of the measure by IOSCO members

Several IOSCO members, consistent with the jurisdictions' laws and regulations, maintain lists of unlicensed and/ or fraudulent firms and platforms that sell OTC leveraged products. In these jurisdictions, the lists are typically published on the relevant regulator's website. IOSCO members also commonly issue additional public warnings or investor alerts in the form of media or press releases to inform the public of unlicensed and/ or fraudulent entities targeting the general public. The warnings generally identify the unlicensed and/or fraudulent platform or website and the provider operating it, and the type of retail OTC leveraged product being offered.

Some IOSCO member jurisdictions prohibit the sale of binary options to retail customers and therefore, inform the public of any firms that attempt to offer such products in their jurisdiction in violation to the prohibition

Please see Appendix A for particular practices adopted by IOSCO members to inform the public about the activities of unauthorised firms and/or to warn them of fraudulent schemes and their trading platforms.

Guidance on the application of the measure

The primary consideration for IOSCO members when applying this measure is their capacity to identify new unlicensed and/ or fraudulent providers. The first step for IOSCO members is to identify any new providers offering the relevant products in their jurisdiction and determine whether they are licensed.

IOSCO members who publish lists of unlicensed and/ or fraudulent providers are recommended to update these lists when new unlicensed and/ or fraudulent providers are identified. IOSCO members may also wish to include a warning to investors that new unlicensed and/ or firms appear regularly and therefore that the list may not be exhaustive.

IOSCO members are recommended to distribute warnings about unlicensed firms to the public as widely as possible to prevent the public from trading with these firms in good faith. Warnings or alerts can, for example, take the form of news, press releases or information feeds on the IOSCO member's website. They should be easily accessible to the public on a dedicated section of the website, and highly visible to investors and the press. It is also helpful for the public to have easy access to an archive of all the published warnings.

When issuing a warning, IOSCO members may wish to include prevention and good practice messages and refer investors to existing educational materials on the relevant products.

Measure 3: Using a variety of communication channels to inform investors

This measure encourages IOSCO members to use different communication channels when informing retail investors about the risks of OTC leveraged products.

IOSCO members typically have a range of communication channels available to them to reach investors. In addition to the regulator’s website, other communication channels to educate investors include in-person outreach events, online content, hard copy brochures and materials, press releases, interviews, articles, videos, television, radio, and social media. Different communication channels allow IOSCO members to reach different audiences and can impact their audiences differently.

Adoption of the measure by IOSCO members

The majority of IOSCO members publish investor warnings and other educational materials on their websites, often by creating dedicated webpages. Many also promote the warnings and materials through social media, videos, webinars, blogs, TV, radio, brochures, mobile apps and articles in newspapers and magazines. In addition, a number of IOSCO members have run online advertising campaigns to warn and educate investors about binary options and other retail OTC leveraged products.

For example, some IOSCO members have purchased search engine text ads that warn potential investors searching for specific keywords, such as “binary options”, and the names of companies for which investor warnings have been issued, about the potential for fraud. Such ads then direct potential investors to investor warnings and information prepared by the regulator about the fraudulent activities of binary options firms.

Please see Appendix A for more detailed examples of IOSCO members using different communication channels to inform retail investors about the risks of OTC leveraged products.

Guidance on the application of the measure

Different communication channels reach different target audiences. An educational message is also likely to have a different impact across different demographic segments depending on the communication channel chosen. IOSCO members are encouraged to consider the most appropriate communication channel for their message based on the risks and harms the message seeks to address and depending on the desired target audience for the message. For instance:

- Materials distributed through the press, TV and radio have the potential to reach a wide audience.
- Online and social media can amplify a message’s reach, particularly in jurisdictions and among audiences that have high internet and social media penetration.
- In-person outreach and print materials can be especially effective to educate and inform people with little or no online exposure, including, for example, those living in rural areas and older demographics.
- Online advertisement campaigns can be effective in reaching potential customers when they are actively searching for investment opportunities. This approach can be particularly relevant and efficient for jurisdictions with a sizeable market for retail OTC leveraged products and where providers aggressively target the general public online.

Often IOSCO members use a combination of communication channels to extend the reach and impact of their educational activities and to target specific investor segments.

IOSCO members should ensure that their educational messages about the relevant products are clear and concise. Members are also encouraged to ensure that any press and news outlets

involved in the distribution of those messages are well-informed so that they will convey and share accurate information.

Measure 4: Forging partnerships to develop and disseminate educational materials

This measure encourages IOSCO members to co-operate and work in partnership with other regulatory bodies, consumer representatives and associations, and relevant trade associations to develop and distribute educational materials.

Partnerships and the sharing of educational content with other regulatory bodies, consumer representatives and associations, and relevant trade associations both domestically and internationally can help IOSCO members to develop and distribute messages to retail investors more effectively. Such partnerships can be especially helpful for members dealing with cross-border issues. Many IOSCO members already share their investor warnings and alerts on unlicensed and/or fraudulent firms through the IOSCO Investor Alerts Portal.²² In addition, IOSCO members share information through IOSCO Committee 8 on Retail Investors and the IOSCO Investor Education Portal.²³

Adoption of the measure by IOSCO members

Several IOSCO members work in partnership with other regulatory bodies, consumer representatives and/or trade associations to develop and/or disseminate materials and messages to investors. This is done, for example, by:

- Issuing joint alerts and warnings with other regulators about retail OTC leveraged products,
- Working alongside consumer representatives or agencies to develop and disseminate messages that warn retail investors about the risks arising from retail OTC leveraged products,
- Publishing investor warnings by other regulators on their website,
- Encouraging trade associations to publish industry codes of good practice and produce their own educational material for investors.

Please see Appendix A for more examples of IOSCO members forging partnerships with other regulatory bodies, consumer representatives and/or trade associations.

Guidance on the application of the measure

Co-operation among different regulatory bodies, consumer representatives and/or relevant trade associations undertaken to educate the public about retail OTC leveraged products and to warn them about unlicensed and/or fraudulent entities can help IOSCO members to send a strong message about the risks arising from such products. Co-operation in this area, including joint distribution of educational material with different IOSCO members, can help IOSCO members to provide a consistent message to different stakeholders and potentially reach a wider target audience than if the communications were issued unilaterally.

²² https://www.iosco.org/investor_protection/?subsection=investor_alerts_portal

²³ https://www.iosco.org/investor_protection/?subsection=investor_education_gateway&subSection1=portal

Chapter 5: Toolkit of enforcement approaches and practices to address and mitigate the risks posed by unlicensed firms offering OTC leveraged products to retail investors

Introduction and overview of the toolkit

This toolkit sets out enforcement approaches and practices employed in different IOSCO member jurisdictions that have been found to be effective in mitigating the risks posed by firms illegally offering binary options.²⁴ While the toolkit focuses on the risks posed by firms illegally offering binary options due to the significant amount of recent investment fraud relating to this particular high-risk retail OTC leveraged product, the approaches are broadly applicable to all retail OTC leveraged products.

There are five measures included in this toolkit that can be used by IOSCO members in an enforcement context to address illegal and fraudulent offerings of OTC leveraged products:

- i. Formal enforcement actions;
- ii. Cooperation with international and local partners;
- iii. Laws that facilitate or strengthen enforcement actions;
- iv. Information gathering;
- v. Raising awareness with relevant stakeholders such as advertising facilitators, mobile application providers, banks and payment platforms; and

In addition to describing the above measures, the toolkit also highlights examples of specific enforcement cases used by IOSCO members that are related to the various measures.

IOSCO would like to note that while this report and the different toolkits included in it are targeted at IOSCO members (securities regulators), criminal authorities and other law enforcement bodies will also often play a crucial role in enforcement actions against unlicensed and/or fraudulent firms in many IOSCO member jurisdictions.

Detailed examples of adoption of the relevant measures by different IOSCO members are included in Appendix A.

Measure 1: Formal enforcement actions

This measure involves an IOSCO member taking formal enforcement action with regard to illegal activity, where appropriate.

Formal enforcement actions can be defined as a regulator's actions pursuant to the statutory powers granted to the regulator, taken in cases of violation of the applicable regulations. The most prevalent formal enforcement actions include cease and desist orders; suspension, removal, and prohibition orders; civil money penalties; and prompt corrective action directives. The primary objective of formal enforcement actions is to enforce the laws and regulations and discourage practices which are illegal.

Adoption of the measure by IOSCO members

IOSCO members have used a number of different enforcement actions to address firms illegally offering binary options. These include: bringing actions to assert the regulator's jurisdiction; blocking access in their jurisdiction to websites offering illegal binary options; obtaining court orders for disgorgement, customer restitution and penalties; publication of legal action (such

²⁴ Firms illegally offering binary options includes both firms operating without the relevant license but also fraudulent activity. The focus of this toolkit is on unlicensed firms, however IOSCO also recognises that fraudulent activity can be carried out by licensed firms.

as the bringing of an enforcement action or its results); shutting down illegal businesses and obtaining reciprocal orders based on actions of fellow regulators.

Guidance on the application of the measure

Formal enforcement actions by IOSCO members (and/ or law enforcement bodies) can send a strong message to the market that the regulator is actively investigating illegal and/ or fraudulent activity and open to taking disciplinary action where appropriate. IOSCO members may wish to consider formal enforcement actions as their first course of action in circumstances where they can prove that an entity is illegally offering any retail OTC leveraged products.

Please see Appendix A for more detailed examples of formal enforcement actions that illustrate the range of approaches adopted by IOSCO members to prevent binary options fraud or firms offering binary options without the relevant license.

Measure 2: Cooperation with international and local partners

This measure involves cross-border cooperation among IOSCO members to share information and other assistance in enforcement investigations and actions.
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Maximising available information through collaboration and information sharing on unlicensed and/ or fraudulent firms among IOSCO members, where appropriate, and increased coordination in parallel enforcement actions enables IOSCO members to conduct enforcement investigations more effectively. Cross-border cooperation between IOSCO members can be an essential part of an enforcement investigation, for example when mapping the flow of funds and identifying the different entities involved in illegal activity. It also sends a strong message to the industry that IOSCO members will detect, investigate and sanction illegal activity and that regulators around the world are willing to cooperate to hold firms and persons accountable.

Adoption of the measure by IOSCO members

Below are examples of effective international cooperation between different IOSCO members as well as between IOSCO members and criminal authorities.

- The Canadian Securities Administrators (CSA) Task Force on Binary Options (CSA Task Force) was originally composed of several Canadian regulators. Over time, it expanded to include members from different civil and criminal authorities, including authorities in the U.S. in some of its initiatives.
- A group of IOSCO members, including the U.S. SEC, U.S. CFTC, and Québec AMF, recently met with U.S. criminal authorities to discuss binary options fraud and the need for joint actions, setting out plans to work jointly on educational and communication strategies to prevent binary options fraud.
- Europol, the EU agency for law enforcement cooperation, recently organised a binary options fraud summit. The meeting brought together members and investigators from European countries, as well as the Financial Services and Markets Authority of Belgium (FSMA), the French AMF, the CSA Task Force and different North American criminal authorities.

Guidance on the application of the measure

IOSCO members are encouraged to consider ways in which they can better utilise existing mechanisms to share and disseminate information, to improve communication between them, and allow for greater collaboration in investigations, both domestically and internationally.

For example, IOSCO members may wish to maximise consultations and proactive referrals under the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and

Cooperation and the Exchange of Information, as amended (“MMoU”) and Enhanced MMoU (“EMMoU”) to ensure that information relating to firms illegally offering OTC leveraged products to retail investors across jurisdictions is effectively shared with other relevant MMoU/EMMoU authorities.

IOSCO members may also wish to consider greater engagement with their counterpart criminal authorities to collaborate and coordinate their actions regarding firms illegally offering OTC leveraged products to retail investors.

Measure 3: Laws that facilitate or strengthen enforcement actions

This measure involves IOSCO members bringing an enforcement action for fraud or for negligence, or an enforcement action requiring the cessation of an illegal, unlicensed activity, where appropriate.

Depending on the regulatory framework, it may be appropriate for an IOSCO member to bring an enforcement action against activities involving illegal OTC leveraged products for violation of its anti-fraud laws, particularly where there is evidence of scienter. In the absence of anti-fraud laws in a jurisdiction, IOSCO members could consider recourse, such as an action for negligence, under their securities laws.

In some IOSCO member jurisdictions it is possible to petition a court to order the cessation of activity by an unlicensed firm offering OTC leveraged products to investors in that jurisdiction. Such a proceeding, whether it is initiated by an IOSCO member or another interested party, may prove swifter and more effective than other types of enforcement action such as a criminal prosecution, depending on the regulatory framework of the jurisdiction.

Adoption of the measure by IOSCO members

Under the U.S. securities law, for example, in addition to its authority to bring actions for intentional or reckless fraud, the SEC has the authority to bring an action for “negligence-based securities fraud”. In the EZTD, Inc. case, the U.S. SEC charged EZTD, Inc. with failure to register and with making materially misleading statements concerning the profitability of investing in EZTD’s binary options. Negligence, or the failure to exercise reasonable care, is sufficient to establish such a violation.²⁵ EZTD, Inc. reached a settlement agreement with the SEC, without admitting or denying the findings, and agreed to a cease-and-desist order against future violations of Section 17(a)(2) and the registration requirements of the U.S. securities laws, a censure, disgorgement and a civil monetary penalty.

The U.S. CFTC has also charged firms with fraud, including non-scienter fraud, in cases involving binary options.²⁶

Beginning in 2014, AMF France availed itself of the general provisions contained in a 2004 law on the digital economy that enable any interested person to ask a court to issue a cease and desist order against illegal activities conducted through a website accessible to French investors. Such requests benefited from a fast-track procedure but were relatively complex and time-consuming to implement.

A new provision of the French Monetary and Financial Code (Article L621-13-5) came into force in December 2016. It provides for the following two-step fast-track procedure («

²⁵ In violation of Section 17(A)(2) of the Securities Act of 1933. See <https://www.sec.gov/news/pressrelease/2016-236.html/litigation/admin/2016/33-10251.pdf>.

²⁶ The Vision case, described under examples of formal enforcement actions in Appendix A is an example of such action by CFTC.

summary proceedings ») where illegal on-line offers of investment products and services are observed. First, AMF France addresses an injunction to the firm offering investment services in France without the required license. The firm has one week to reply. At the same time, AMF France addresses a copy of the injunction to the relevant internet service provider, requesting the latter to take all measures necessary to prevent access to the illegal on-line service by the general public in France. The internet service provider also has one week to reply. Second, should the injunction not be complied with at the end of the one-week period, AMF France is empowered to petition a particular French court- Paris TGI- to order the cessation of the activity, using a accelerated and simplified procedure. In 2017, 5 hearings in these matters before the Paris TGI took place and resulted in the issuance of 20 judicial orders to cease and desist involving 42 internet sites or domain names, while 22 internet sites were closed to the French public before any court hearing of the case took place.

Guidance on the application of the measure

Establishing a fraud violation may require evidence of intent or scienter, which may be difficult for IOSCO members to obtain even in circumstances where an investor has been wrongfully deceived. When an IOSCO member is unable to obtain evidence sufficient to support such an allegation, they may wish to consider bringing an action for negligence, where appropriate. This could include bringing action for a firm acting recklessly or having made misleading or deceptive statements or representations. While a negligence or non-scienter fraud violation may be less severe than a scienter-based fraud violation, it offers IOSCO members the opportunity to alert investors that an investment may be fraudulent. IOSCO recognises that the legislative framework of a jurisdiction is likely to be determinative to the extent an IOSCO member can carry out administrative, civil and criminal proceedings against an unlicensed firms offering financial products and services illegally on-line.

Measure 4: Intelligence gathering

This measure involves IOSCO members developing information databases and formal intelligence gathering plans relating to fraudulent offerings of binary options.

Binary options fraud schemes commonly operate using several different names. Entities operating such schemes will simply close one operation when it comes under scrutiny by regulators, only to open the same scheme under another name. As noted under Chapter 2, establishing the location and identity of the individuals or entities operating such schemes can be challenging for regulators.

Intelligence databases and formal intelligence gathering plans about fraudulent offering of binary options can help regulators to identify the individuals and entities involved in fraudulent activities and better understand how they are related to different fraudulent schemes. Such information is also valuable for regulators for developing appropriate strategies to target the schemes and the individuals and entities operating them.

Adoption of the measure by IOSCO members

In June 2016, in Canada, the CSA Task Force put in place a national data collection plan to more effectively collect intelligence about fraudulent binary options schemes. The intelligence collected was used to develop an understanding of the binary options ecosystem, produce statistics for public awareness campaigns, and provide insights to investigations.

Guidance on the application of the measure

The intelligence gathered under such databases or intelligence gathering plans can include a variety of critical information needed for an investigation and enforcement action, such as: names of fraudulent binary options platforms, their addresses, jurisdiction targeted, type of

payment used (e.g. wire transfer details), particularity of the fraud, number of victims and the amounts

Measure 5: Raising awareness with relevant stakeholders such as advertising facilitators, mobile application providers, banks and payment platforms

This measure involves IOSCO members reaching out to relevant stakeholders to raise awareness of illegal activities related to OTC leveraged products.

Illegal binary options platforms commonly use internet sites and mobile apps to mass market the products to the public. They may also sponsor sports teams and high profile athletes in an effort to gain credibility and visibility. Advertising facilitators and mobile app providers may not be aware of their illegal nature. For example, raising awareness of binary options fraud with these stakeholders may result in such entities no longer offering their services to firms that are likely to be fraudulent in order to mitigate the reputational risk of being associated with fraud.

Some IOSCO members have raised awareness about binary options fraud and unlicensed firms offering binary options to retail investors among mobile application stores. This engagement has resulted in certain app stores preventing unauthorised firms from offering binary options apps through their sites.

Adoption of the measure by IOSCO members

- In Canada, the CSA Task Force and MasterCard are collaborating and exchanging information on the most active illegal binary options firms targeting local investors via a referral agreement. Possible outcomes for investors include refunds from credit card companies. The Task Force expects similar action from other payment partners.
- In 2017 the CSA Task Force, the U.S. CFTC, and a U.S. criminal authority organised a presentation for various major payment processors, mobile app providers, and social media sites with the objective of educating private companies on how binary options firms perpetrate fraud. Following the briefing, several of these stakeholders voluntarily changed their advertising policies, policies on content, the terms of internal control as well as removed binary options apps from their sites or limited the use of their credit card systems for binary options transactions.
- In March 2017, ASIC conducted a review of mobile app stores, focusing on apps associated with binary options trading. The review highlighted over 330 apps, offered to Australians by entities and individuals that appeared to be unlicensed. ASIC engaged with Apple and Google about the apps that were the subject of this surveillance.
- The U.S. CFTC and CSA Task Force took a similar step and used their educational outreach initiatives to inform Apple and Google about binary options fraud, explained that firms offering these OTC leveraged products to U.S. retail customers are required to be registered and presented the representatives with the U.S. CFTC's "RED List" of unlicensed entities that have been found to offer the relevant products to U.S. retail customers without registration.
- Following the engagement with both jurisdictions' securities regulators, both Apple and Google removed the apps of the firms identified by ASIC and the U.S. CFTC from their respective app stores. As of June 2017, Apple no longer accepts any binary options apps in its store.
- In 2017, AMF France contacted Google and Apple about mobile apps offering binary options or leveraged forex trading. AMF France informed Google and Apple about the publication of blacklists of unlicensed firms on the AMF website and the ban on electronic advertising of these products in France. AMF France is also engaged with

the ARPP, the French advertising self-regulatory organisation. In 2017 a meeting was organised by AMF France and ARPP with the various types of firms in the advertising chain including advertising broadcasters, media buyers, space buyers, media companies and advertising sales companies to inform these stakeholders of the risks of illegal or fraudulent activity relating to binary options transactions.

- The Japan FSA, together with the Kanto Local Finance Bureau²⁷ and the Financial Futures Association²⁸ jointly requested that the Japan Interactive Advertising Association and internet firms refrain from posting advertisements if the registration of the broker cannot be confirmed via a list of authorised brokers, which is available on the JFSA website. A similar request to ensure that wire transfers are not initiated if the firm is not registered as an authorised broker was made to the Japanese Consumer Credit Association.

Guidance on the application of the measure

In a typical binary options transaction, a customer makes a payment to the firm offering the product using a credit card. To ensure that banks and payment platforms processing and facilitating the payments understand the risk of illegal activity relating to binary options transactions, IOSCO members may wish to raise awareness among these stakeholders for example of the likelihood of fraudulent transactions involving firms offering these products. Raising awareness about the risks of fraud arising from the products may result in the relevant stakeholders choosing to disassociate themselves from entities or products that are fraudulent or otherwise illegal.

²⁷ A branch office of the Ministry of Finance, which has jurisdiction over Tokyo and the surrounding area.

²⁸ The self-regulatory organization for futures and FX leverage trading in Japan

Chapter 6: Conclusions

Certain retail OTC leveraged products have increasingly been offered, often illegally and on a cross-border basis, to retail investors in many IOSCO jurisdictions. In response to widespread retail investor harm, a number of IOSCO members have adopted targeted policy measures, enforcement actions and investor education initiatives to address the specific risks and challenges posed by such products.

This report provides a variety of measures that IOSCO members are encouraged to consider when determining their approach to address the specific risks arising from the offer and sale of OTC leveraged products to retail investors. They are intended to serve as useful guidance to IOSCO members while considering their legal framework and enforcement and investor education policies. The identified policy, enforcement and educational measures are complementary, and should be seen as part of a holistic approach to effectively address the risks of the relevant products.

The tools in this report largely draw on IOSCO members' experience and practices. Given the kinds of unauthorised cross-border and on-line offerings involved, the report includes various innovative policy, enforcement and educational approaches that IOSCO members have adopted.

To this end, the policy toolkit aims to help reduce risks posed by the offering of OTC leveraged products to retail investors; improve licensed firms' practices with regards to the sale of the products; and reduce the likelihood that the products are sold illegally by unlicensed firms.

In addition to regulation, investor protection can also be enhanced through investor education. If investors are well informed before they make investment decisions, they tend to be more aware of the risks of the products and of potential scams. Educational contents and warnings can be used to complement regulatory requirements and, to some extent, lessen the enforcement burden. To this purpose, the investor education toolkit describes a variety of investor education materials and initiatives that regulators can use to help educate retail investors about OTC leveraged products, their risks and unlicensed and/ or fraudulent firms in the sector.

Finally, the enforcement toolkit provides useful guidance on enforcement approaches to address the risks of firms illegally operating and offering the relevant products. Importantly, some of the enforcement tools described in this report demonstrate the effectiveness of domestic and international coordination in dealing with the risks of retail OTC leveraged products.

IOSCO members are encouraged to consider these measures in the context of their legal and regulatory framework and implement them in light of the specific risks that have been identified in their respective jurisdictions.

The overarching objective of this report is to identify and promote regulatory approaches that enhance the protection of retail investors who are exposed to retail OTC leveraged products. However, the nature of the products that are offered on an on-line and cross-border basis continues to evolve, and therefore, IOSCO members could consider applying some of the tools and approaches that are described in this report to other products which may raise similar retail investor protection concerns.

Appendix A: Examples of IOSCO members adopting the different investor education and enforcement measures and initiatives. Descriptions of product prohibitions on retail OTC leveraged products

This appendix presents an overview of investor education materials that IOSCO members have used to inform retail investors about the OTC leveraged products sector, including information about the distribution channels used. This includes examples of:

- i. Educational content on the relevant products developed by IOSCO members,
- ii. Particular practices adopted by IOSCO members to inform the public about unauthorised firms, fraudulent schemes and their trading platforms,
- iii. IOSCO members using different communication channels to inform retail investors about the risks of OTC leveraged products, and
- iv. IOSCO members forging partnerships with other regulatory bodies, consumer representatives and/ or trade associations.

The appendix also includes a detailed overview of enforcement measures and initiatives that different IOSCO members have used. These include examples of:

- v. Formal enforcement actions that illustrate the range of approaches adopted by IOSCO members to prevent binary options fraud, and
- vi. Enforcement actions that IOSCO members have taken against licensing or registration violations by firms.

Also included in the appendix are:

- vii. Descriptions of prohibitions to offer and sell the relevant products to retail investors

I. Investor education materials

Chart A below provides an overview of examples of investor education materials and initiatives by IOSCO members, listing the various communication channels used in each jurisdiction. Links are provided, where available. More detailed examples of investor education materials and initiatives that IOSCO members have developed or have adopted are given further below.

Chart A: Overview of examples of investor education materials and initiatives related to retail OTC leveraged products by IOSCO members.

Jurisdiction	Products sold	Educational Materials	Distribution Channels
Australia (ASIC)	Binary options, CFDs, leveraged forex	Webpages on leveraged forex trading, CFDs and binary options, promotions via home page, e-newsletter and social media, videos on CFDs and binary options, printed publications on CFDs, blacklist of firms retail clients should not deal with, public warning notices, online professional registers.	<u>MoneySmart website</u> , <u>ASIC website</u> , YouTube channel, <u>printed publication</u> , e-newsletters, social media
Belgium (FSMA)	None. Distribution of OTC binary options, CFDs and forex products to consumers has been banned in Belgium since 18/8/2016	Warnings	Website, social media
Brazil (CVM)	None	Warnings and alerts	Website, social media, in-person events, stakeholder outreach
France (AMF)	Binary options, CFDs, leveraged forex	Articles on forex and binary options in press, <u>TV and radio spots and videos</u> , <u>infographic</u> , <u>brochure on financial literacy</u> , blacklists of unlicensed forex and binary options websites, online campaign	Website, TV/radio, videos, social media, printed publication
Germany (BaFin)	Binary options, CFDs	General information for consumers	Website
Hong Kong (IEC/SFC)	Leveraged forex	Educational content on leveraged forex, booklets on equity-linked investment and how to understand Key Facts in sales documents and on the mechanism and investor rights related to the post-sale cooling-off	<u>Website</u> , print, hard copy publications

		arrangement that is required for unlisted structured products	
Israel (ISA)	None. CFDs (binary options banned as of 2018)	Warnings regarding risks of binary options and CFDs	Website, videos, posters, printed publication
Japan (JSDA)	Binary options, CFDs	Investor warnings	Website
Japan (FSA)	Binary options, CFDs, leveraged forex	Investor warnings	Website, hard copy publications
Malaysia (SC)	CFDs offered only to sophisticated investors as of 6 April 2018	Warnings about CFDs and binary options	In-person engagement and website
Netherlands (AFM)	Binary options, CFDs, leveraged forex	Warnings regarding risks of Binary Options and CFDs, educational content	Website, social media, publications
Ontario (OSC)	CFDs, leveraged forex. binary options banned	Investor warnings and alerts, educational materials on binary options, annual campaign with CSA	In-person outreach, website, social media, hard copy and digital publications
Poland (KNF)	Leveraged forex	Investor warnings	Website, social media, TV radio
Quebec (AMF)	None. CFDs and rolling spot forex; binary options banned	Warnings (including blacklists, <u>annual campaign with CSA</u>)	<u>Website</u> , social media, radio, print newspapers
Russia (CBR)	Binary options, CFDs, leveraged forex	Educational materials on binary options and leveraged forex	In-person outreach events, website, hard copy brochures and materials
Singapore (MAS)	Binary options, rolling spot forex	Press releases, investor education content on risks of binary options, forex trading and unregulated online platforms, consumer alerts, education campaign on avoiding investment scams.	Online (website, social media, influencers outreach), traditional mass media (radio, print newspapers) and ground outreach events.
Spain (CNMV)	Binary options, CFDs, leveraged forex	<u>Warning about speculative products</u> , educational content regarding risks of binary options and CFDs	Website, social media

Sweden (FI)	CFDs	Warnings regarding risks of binary options, leveraged forex and CFDs	Website, publications, media
UK (FCA)	CFDs, rolling spot FX; binary options regulated by FCA as of January 2018	Educational content regarding binary options and <u>leveraged forex</u>	ScamSmart website, social media
US (CFTC)	Binary options, leveraged forex	<u>Videos, investor advisories, RED List, earned media placement</u>	Website, social media, <u>blog, in-person outreach events, radio</u>
US (NFA)	Binary options, leveraged forex	<u>Brochure targeting retail investor trading forex</u> ; press releases on material disciplinary actions involving forex	Website, in-person outreach events, hard copy brochures and materials
US (FINRA)	Binary options	Investor alerts ²⁹ , <u>earned media placement</u>	Website, social media, in-person outreach, TV/radio
US (SEC)	Binary options	<u>Investor alerts and bulletins</u>	Website, social media

i. Examples of educational content about retail OTC leveraged products by IOSCO members

- JSDA Japan explains the risks and trading mechanism of CFD transactions on its website.³⁰
- The Investor Education Centre of the Hong Kong SFC has a dedicated page on its website which covers the basic facts about leveraged forex products, including their trading mechanism, common fallacies and FAQs.³¹
- The US NFA developed a brochure that specifically targets retail investors trading forex.³²
- ASIC's MoneySmart website in Australia provides educational material on OTC leveraged products that explains how these products work, their speculative nature, and the associated risks.³³ Website content is supported by YouTube videos, printed publications, an eNewsletter and social media channels.
- The AMF France and Bank of Russia have a dedicated section on forex and binary options including educational material, on their websites. Educational materials may help investors recognise fraud.

²⁹ <http://www.finra.org/investors/alerts/binary-options-follow-schemes-dont-lose-money-twice>

³⁰ <http://www.jsda.or.jp/sonaeru/risk/cfd/index.html>

³¹ <http://www.thechinfamily.hk/web/en/financial-products/investment/leveraged-forex/index.html>

³² <https://www.nfa.futures.org/investors/investor-resources/files/forex.pdf>

³³ <https://www.moneysmart.gov.au/investing/complex-investments/futures-and-options/binary-options>;
<https://www.moneysmart.gov.au/investing/complex-investments/foreign-exchange-trading>;
<https://www.moneysmart.gov.au/investing/complex-investments/contracts-for-difference>

- In March 2017, MAS Singapore issued a press release to consumers on the risks of trading binary options with unregulated platforms.³⁴ MoneySense, Singapore’s national financial education programme, carries consumer alerts on its website³⁵ and other media platforms (MoneySENSE Facebook and IG) to inform consumers about the risks associated with trading binary options and rolling spot forex contracts.
- The ScamSmart Programme of the UK FCA educates consumers about the risks of investment fraud. Its website explains how unlicensed forex trading and brokerage firms operate, how binary options scams work, ways to avoid a scam, and steps to take for investors who have been scammed.³⁶
- US FINRA published articles and investor alerts about binary options fraud and provided links to fraud advisories and alerts issued by the U.S. SEC and the U.S. CFTC.³⁷
- The U.S. CFTC used testimonials from victims of fraud to support educational messages. In particular, the U.S. CFTC produced two videos featuring victims of binary options fraud, explaining how binary options fraud frequently takes place and how customers can avoid being misled.³⁸

ii. Examples of particular practices adopted by IOSCO members to inform the public about unauthorised firms and to warn them of fraudulent schemes and their trading platforms

- In 2018, FSMA, the Belgian Minister of Economy and Consumers and the Federal Public Service Economy conducted an information campaign via different media (radio, print, online, social media) to warn the public against different types of online fraud, including online investment fraud arising from binary options.
- AMF France regularly issues media releases listing new websites offering binary options or forex trading for which no authorised investment services provider could be clearly identified.³⁹⁻⁴⁰
- In 2016, ASIC issued a media release to warn the public of an increase in providers (in particular binary options issuers) targeting Australian investors.⁴¹ In June 2018, ASIC produced an animated video explaining the risks associated with binary options. This was promoted on social media.⁴² ASIC’s MoneySmart also lists companies that investors should avoid, including unlicensed companies and fake regulators and exchanges.⁴³

³⁴ <http://www.mas.gov.sg/News-and-Publications/Media-Releases/2017/MAS-Cautions-Investors-on-Risks-in-Trading-Binary-Options-with-Unregulated-Platforms.aspx>

³⁵ <https://www.moneysense.gov.sg>

³⁶ <https://www.fca.org.uk/scamsmart/forex-trading-scams>; <https://www.fca.org.uk/scamsmart/binary-options-scams>

³⁷ <http://www.finra.org/investors/alerts/binary-options>

³⁸ <https://youtu.be/YaQgK-wJn5w>; <https://youtu.be/G5qfp7fANzk>

³⁹ http://www.amf-france.org/en_US/Epargne-Info-Service/Mise-en-garde/Par-date

⁴⁰ <http://www.amf-france.org/Epargne-Info-Service/Proteger-son-epargne/Listes-noires>; <https://www.abe-infoservice.fr/vos-demarches/se-proteger-contre-les-arnaques/les-listes-noires-des-sites-internet-et-entites-non-autorises>

⁴¹ <http://asic.gov.au/about-asic/media-centre/find-a-media-release/2016-releases/16-218mr-asic-crackdown-on-unlicensed-retail-otc-derivative-providers>

⁴² <https://www.youtube.com/watch?v=vdHTW4BeYAY>

⁴³ <https://www.moneysmart.gov.au/scams/companies-you-should-not-deal-with>

- SC Malaysia lists unlicensed offerings of binary options and CFDs on its website.
- The CNMV periodically publishes blacklists of unlicensed firm. In recent years, most of them have been found to offer binary options, CFDs and leveraged forex products.
- AMF Québec launched a dedicated page on its website warning investors of binary options websites that illegally solicit investors, stating: “Selling binary options to the general public is prohibited in Québec. No website is authorised to sell binary options in Québec” and inviting investors to notify the QAMF of any online binary options platforms offering the products in Québec.⁴⁴
- The website of CVM Brazil lists all unlicensed entities targeting investors in Brazil that are brought to its attention.⁴⁵ Publications informing investors about investment fraud and scams, and unlicensed offerings are also available on CVM Brazil’s website, as well as on its investor portal.⁴⁶
- Japan FSA has issued public warnings about unregistered entities (often located overseas), as well as a list of unregistered entities on which the JFSA has issued warnings. The names of registered entities are also made public on the website. JFSA has also set up an information desk for those investors who have been solicited by unauthorised brokers. It answers general questions, handles complaints regarding financial institutions and issues warnings to unauthorised brokers.
- MAS Singapore lists unlicensed entities on its Investor Alert List⁴⁷ to warn consumers about the risks of dealing with them. The information is disseminated via social media channels and where necessary, through more traditional media.
- The U.S. NFA issues a press release to the public when material disciplinary actions are taken against NFA members engaged in forex trading. Additionally, once action is taken against an NFA member, the supporting documentation becomes available to the public on the firm’s BASIC page.⁴⁸
- The U.S. CFTC created the Registration Deficient List (RED List) that includes mostly binary options and OTC forex sites that operate outside the U.S. but solicit U.S. customers via the web.⁴⁹The RED List is available on the U.S. CFTC’s SmartCheck.gov website and allows customers to check whether a firm with which they are considering investing has been included. In addition, the U.S. CFTC and SEC issued a joint Investor Alert to warn consumers about fraudulent schemes involving binary options and their trading platforms.
- The OSC published the names of a number of unauthorised binary option firms on its website. The OSC published an Investor Warning List (indicating, in many instances, that a particular firm is not registered to trade in securities in Ontario), as well as investor alerts regarding unlicensed binary option firms. The OSC website explicitly states: “No company is authorised to sell binary options in Canada” and invites

⁴⁴ <https://lautorite.qc.ca/en/general-public/fraud-prevention/binary-options-101/>

⁴⁵ www.cvm.gov.br

⁴⁶ www.investidor.gov.br

⁴⁷ www.mas.gov.sg/IAL.aspx

⁴⁸ The U.S. NFA’s BASIC system is a tool that customers can use before deciding to invest with a certain NFA member. The firm’s BASIC page shows any disciplinary matters taken against the firm by NFA, the U.S. CFTC and/or exchanges that they conduct business with: <https://www.nfa.futures.org/basicnet/>

⁴⁹ <https://smartcheck.gov/redlist/>

investors to contact the OSC in the event that they are approached by a binary options trading company.

- The U.S. SEC’s Enforcement Division issues litigation and press releases in connection with its enforcement actions to alert and educate the securities industry and investors. The SEC’s Investor Education and Advocacy (“OIEA”) staff use the Enforcement Division’s litigation and press releases as part of its investor outreach and education programmes.

iii- Examples of IOSCO members using different communication channels to inform retail investors about the risks of OTC leveraged products

- The Bank of Russia uses its financial literacy website as an effective distribution channel for its educational materials on binary options and leveraged forex products.⁵⁰
- ASIC delivers financial education for retail investors through its MoneySmart⁵¹ website. It also uses print publications, social media, including Facebook, Twitter and YouTube, eNewsletters and media.
- AMF France considers interviews and articles distributed through the press and TV to be the most effective way of reaching a wider audience, particularly people who are not familiar with the AMF. TV spots serve as the next best alternative since each video receives about 3 million views. AMF conducts annual evaluations of its messaging through focus groups, which show that consumers appreciate these videos and capture the warning messages effectively. AMF also found educational materials distributed through social media to be effective in reaching a large audience.
- Québec AMF found radio to be a very valuable media for their annual campaign on binary options, reaching more than one million people over the course of seven consecutive days.
- The OSC purchased a Google advertisement space warning consumers of risks of trading in binary options. When certain keywords were searched on the internet, the searcher was invited to ‘click’ on a link to the OSC’s website with information about the dangers of investing in binary options.
- ISA distributed creative postcards with warnings in public places and also produced two videos featuring a famous Israeli chef and a basketball coach who warn the public about the risks of investing in retail OTC leveraged products.
- FINRA published an article on binary option scams in the April 2017 edition of “AARP Bulletin,” which reached more than 23 million older Americans in the United States. Moreover, the article generated hundreds of calls to the FINRA Securities Helpline for Seniors.⁵²
- AMF France launched the mobile app “FinQuiz” in October 2017, a quiz to test knowledge of financial markets and improve financial literacy. Some questions help investors avoid scams or warn about binary options and forex products. The app is available for free at the App Store and Google Play and was downloaded by more than 6,000 people within the first month. New legislation in France also provides for a simplified procedure to block websites of illegal investment service providers.
- The US CFTC, ran a Google Adwords campaign that warned customers about binary options fraud and urged them to verify names against the RED List before registering with a binary options website. Google text ads are effective in providing information

⁵⁰ <http://fincult.info/>

⁵¹ <https://www.moneysmart.gov.au/>

⁵² <http://www.finra.org/investors/highlights/aarp-bulletin-features-gerri-walsh-fraud-squad>

exactly at the time when people are searching for specific keywords like “binary options” and the names of unlicensed or fraudulent firms. These advertisements can then direct investors to educational materials or warnings.

- In another example of a creative approach to attracting the attention of potential retail customers, AMF France launched in 2014 an online advertising campaign against forex trading. It used fake advertisements imitating the same style, language and promises used by firms seeking to lure people to online forex trading and revealed the satirical nature of the website with a pop-up window that alerted to the possibility of fraud and referred them to educational content on the AMF France website. This innovative campaign improved the AMF’s visibility and boosted traffic to its website. It also helped to attract press attention and raise public awareness of the risks of forex trading.⁵³
- MAS Singapore delivers financial education through MoneySense, the national financial education programme. Information is put up on the MoneySense website and disseminated via online, social media and traditional mass media (such as print and radio). Physical posters and brochures are printed and given out at different outreach events. Public education campaigns focusing on specific themes are rolled out where there are public concerns or interest in a particular product or an issue. MAS also issues press releases when media attention to a particular issue is required.

iv. Examples of IOSCO members forging partnerships with other regulatory bodies, consumer representatives and/ or trade associations

- Regulators and self-regulators in the U.S. issued joint investor alerts on binary options fraud.⁵⁴ They also link to each other’s investor education materials and alerts.
- ASIC maintains relationships with other government departments, industry associations, investor groups and consumer advocates to help spread consumer and retail investor messaging.
- In Brazil, the CVM and the Consumer Protection and Defence Authority/Ministry of Justice signed a MoU in 2010, and have been publishing financial consumer protection materials since then.⁵⁵ The Ministry of Justice coordinates the National Consumer Defence System, a system that integrates state and local consumer agencies in Brazil, facilitating the dissemination of information regarding unlicensed offerings to consumers
- AMF France, in partnership with the national consumer agency, produced short TV spots to warn about the risks of highly speculative trading in binary options and forex that were broadcast on national TV.⁵⁶ The AMF France also developed a brochure on

⁵³ http://www.amf-france.org/en_US/Actualites/Communiqués-de-presse/AMF/annee_2014?docId=workspace%3A%2F%2FSpacesStore%2F96c52a14-3900-464f-8fff-7d4700ff37e3

⁵⁴ E.g.: Joint US SEC and US CFTC investor alert on binary options fraud:
https://www.sec.gov/investor/alerts/ia_binary.pdf

⁵⁵ <https://investidor.cvm.gov.br/publicacao/ListaBoletim.html>

⁵⁶ https://www.youtube.com/watch?v=Ef_c-lfkiGk&index=2&list=PL5ULp4pSIJ90tbsnVqfpxwoPgwyE0jzHl;
https://www.youtube.com/watch?v=Ef_c-lfkiGk&index=2&list=PL5ULp4pSIJ90tbsnVqfpxwoPgwyE0jzHl;
https://www.youtube.com/watch?v=vdS2C_kRipw;
<https://www.youtube.com/watch?v=bdzyYPJWOog>

leveraged forex products in partnership with a French association that works on financial and economic literacy.⁵⁷

- The Japan FSA works with relevant entities such as The Financial Futures Association of Japan, the National Consumer Affairs Center of Japan, and the Central Council for Financial Services Information. Consumer warnings as well as other useful information (e.g. examples of fraudulent cases, explanations on the nature and risks of OTC leveraged products, an outline of relevant regulations and links to the FSA’s website) can be found on their websites.⁵⁸
- MAS Singapore issued a joint press release with the Singapore Police Force in May 2018 to advise the public to exercise caution when dealing with unregulated online trading entities.⁵⁹ MAS, through MoneySense, also collaborated with Singapore’s leading investor advocate, Securities Investor Association (Singapore), on a public education campaign titled “Beware! Investment Scams” in 2017.⁶⁰ The campaign incorporated experiential learning to highlight to consumers the red flags of common investment scams, and how they can “Ask. Check. Confirm” to avoid falling prey to such scams.⁶¹
- CNMV Spain issued a press release following an ESMA investor warning about forex trading.
- FSMA Belgium has an anti-fraud section on its website which, in addition to listing the websites of entities that are illegally active in Belgium, contains all investor warnings from FSMA, IOSCO, and ESMA.

⁵⁷ <https://www.lafinancepourtous.com/html/IMG/pdf/FOREX-IEFP-WEB.pdf>

⁵⁸ <https://www.shiruporuto.jp>

⁵⁹ <http://www.mas.gov.sg/News-and-Publications/Media-Releases/2018/CAD-and-MAS-warn-investors-about-trading-on-unregulated-online-platforms.aspx>

⁶⁰ www.bewareinvestmentscams.sg

⁶¹ Two “fake” investment schemes were set up online and marketed via print and online advertisements. The two schemes, offering investments in [island property](#) and [gold coins](#) respectively, were designed to mirror real-life investment scams. Users who visited the websites will be led to commit before learning that the schemes were scams and part of an educational campaign. Users can then navigate the sites to learn more about the red flags of investment scams.

Illustrative examples of educational materials produced about retail OTC leveraged derivatives by IOSCO members:

AMF France Website Section on Forex and Binary Options

Espace Epargnants

Accueil : l'AMF à votre écoute

Actualités

Protéger son épargne

- Eviter les arnaques
- Forex, options binaires : un marché à fuir
- Placements atypiques
- Faire les vérifications
- Listes noires

Les clés pour bien investir

Produits & supports d'investissement

Mises en garde

Autres infos & guides pratiques

Vidéos & outils

> Le médiateur de l'AMF

> Mises en garde

> Contacter Epargne Info Service


Imprimer
▶ l'article complet

Télécharger
▶ l'article complet en PDF


Protéger son épargne
Forex, options binaires : un marché à fuir

Forex, options binaires : un marché à fuir
Publié le 26 juillet 2017


Si investir dans le trading en ligne sur le Forex et les options binaires peut sembler séduisant, le risque d'y perdre beaucoup d'argent est grand. Ne vous laissez pas convaincre par les promesses de gains faciles et rapides, elles cachent souvent des arnaques ! Notre dossier.




Forex, options binaires : trading à haut risque !
Vous êtes intéressé par les sites sur le Forex et les options binaires vous proposant de vous former au trading en ligne en quelques jours, de compléter facilement vos revenus, voire même d'obtenir assez d'argent pour arrêter de travailler ? Prudence ! La martingale n'existe pas, vous risquez de perdre vos économies et de vous faire escroquer. > Lire la suite



Forex, options binaires : attention aux fausses promesses des escrocs !
De soi-disant cabinets d'avocats et professionnels de la finance ou encore personnes supposées mandatées par l'AMF vous contactez et vous proposez de récupérer l'argent que vous avez perdu sur le Forex et les options binaires : attention, il s'agit d'une arnaque ! > Lire la suite



Forex, options binaires : ils témoignent !
Parce que cela n'arrive pas qu'aux autres, découvrez les témoignages d'épargnants qui ont voulu se lancer dans le Forex et les options binaires. Arnaques, manipulations et menaces des conseillers. Le trading en ligne leur a fait perdre beaucoup d'argent ! > Lire la suite

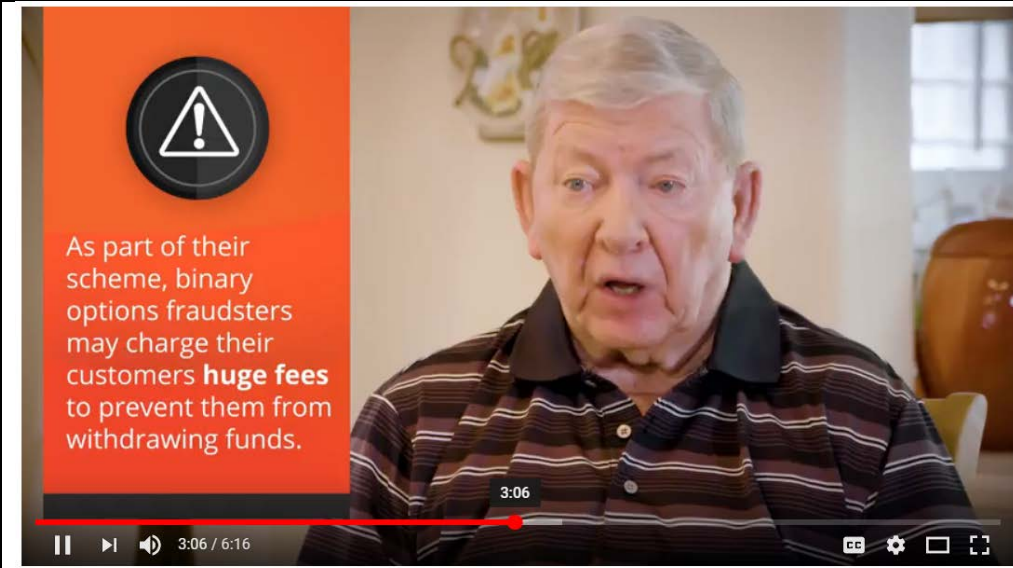


Forex, l'AMF se mobilise : « Le risque est au bout du clic »
« Découvrez le secret de la bourse et devenez riche », « Augmentez vos revenus de 200% par mois », « Gagnez 10 000 € en 1 semaine » : derrière ces promesses d'argent facile, ce sont vos économies qui vont s'envoler. L'AMF vous explique pourquoi le marché du trading en ligne est dangereux. > Voir la vidéo

US CFTC Videos on Binary Options Fraud



The Truth Behind Binary Options Fraud, Episode 1: Dissecting the Scam – CFTC SmartCheck




The Truth Behind Binary Options Fraud, Episode 2: Fraud on a Global Scale – CFTC SmartCheck

OSC Investor Warning on Binary Options on Website

OSC ONTARIO SECURITIES COMMISSION

About ▾ Securities Law & Instruments ▾ Proceedings ▾ News & Events ▾ Investors ▾ Industry ▾



No company is authorized to sell binary options in Canada

A growing number of websites and companies are making claims about how quick and easy it can be to make money by trading binary options. No matter what they say, the truth is that none of these companies can legally sell binary options to Canadians.

Businesses that are illegally offering Canadians binary options are operating all over the world. Investing with an offshore company is a high-risk activity that makes it nearly impossible to recover lost money if something goes wrong. If you invest in binary options, you could lose some or all of your savings.

ASIC Australia videos on binary options and CFDs, print publication on CFDs, webpage content on foreign exchange trading, CFDs and binary options



> Investing > Complex Investments > Foreign exchange trading

Foreign exchange trading

FX trades

Foreign exchange (FX or forex) trading is when you buy and sell foreign currencies to try to make a profit. This webpage outlines the risks of this strategy.

Before you put your money on the line, you should find out how forex markets and trading work. Do your own extensive research and consider getting professional [financial advice](#).

- What is forex trading?
- Risks of foreign exchange trading
- Dealing with FX providers
- Is forex trading right for you?
- Foreign exchange trading software programs, seminars and courses

What is forex trading?

Foreign exchange trading is when you attempt to generate a profit by speculating on the value of one currency compared to another. Foreign currencies can be traded because the value of a currency fluctuates, or its exchange rate value will change, when compared to other currencies.

FX trading is normally conducted through 'margin trading', where a small [collateral](#) deposit (a percentage of a total trade's value), is required to trade.

Warning

Foreign exchange trading is complex and risky. Even the most skilled and experienced traders can have difficulty predicting movements in currencies. Trading in international currencies requires a huge amount of knowledge, research and monitoring.

Risks of foreign exchange trading

AMF Québec Media Campaign on Binary Options⁶²

Improve your financial IQ





SPONSORED BY THE AUTORITE DES MARCHÉS FINANCIERS

The AMF advises investors to stay away from binary options

MEGAN MARTIN, PORTSMOUTH COLLEGE WORKS

Published on: March 23, 2018 | Last Updated: March 23, 2018 9:02 AM EDT



Personal finances
Insurance
Investments
Fraud prevention

[For more details >](#)



Binary options schemes offer quick returns but these funds will never be paid out. Investors could lose, losing everything with little chance of recovery. SUPPLIED


SHARE If you're on the hunt for investments with quick, easy, and high returns at any cost, you're likely vulnerable to fraudsters, and may fall into the common trap posed by binary options.

AMF France Brochure on Forex, Published in Partnership




l'essentiel sur ...

LE FOREX ou marché des changes




Le risque
est au bout du clic

En partenariat avec 

Qu'est-ce que c'est ?

Le Forex est le marché des changes (FOREign EXchange en anglais, marché des devises). C'est le plus grand marché au monde, mais il n'est pas régulé, contrairement par exemple au marché d'actions.

On y achète ou vend une devise en échange d'une autre avec différents objectifs possibles : payer un fournisseur étranger dans sa devise, se couvrir contre le risque de hausse d'une devise étrangère, faire de la pure spéculation...

 Quand vous voyagez en dehors de la zone euro, vous achetez des devises étrangères et participez indirectement au marché des changes.


Des instruments de spéculation risqués

Les sites internet vous proposant de miser sur le marché des changes mettent à disposition différents outils spéculatifs :

- les CFD (Contract for Difference) : le « trader » parie sur l'évolution d'une devise A par rapport à une devise B, avec une faible mise de départ. Par exemple, si le cours de la devise A monte, l'acheteur gagne le montant de la progression multiplié par l'éventuel effet de levier ;
- les options binaires : l'acheteur d'une option parie sur l'évolution d'une devise en versant une prime. Si son anticipation est bonne, il perçoit un gain déterminé au départ (sa mise + 75 %, par exemple). Mais si, à l'inverse, il se trompe, il perd sa mise de départ ;
- le « rolling spot forex » : le « trader » intervient réellement sur le Forex en achetant ou en vendant une devise, sa position étant tacitement reportée chaque jour (d'où le terme « rolling »). Son gain ou sa perte est multiplié par l'éventuel effet de levier.

Des promesses de gain...

Les épargnants sont très sollicités pour traiter en ligne sur le marché des changes.

 Les offres mettent en avant la possibilité d'un « effet de levier » afin de multiplier les gains ou les pertes (parfois jusqu'à 400 fois). Par la mise en jeu d'effets de levier très importants, les investisseurs peuvent perdre non seulement la totalité des sommes investies, mais également beaucoup plus.

L'effet de levier

Il permet d'obtenir une exposition importante sur un marché financier tout en immobilisant peu de capital. Les gains ou les pertes sont calculés sur la base du montant total de la position.

Ainsi, avec un apport de 100 euros, un levier de 400 permet de miser l'équivalent de 40 000 euros. Mais si la monnaie pour laquelle vous espérez une hausse perd finalement 10 % de sa valeur, votre perte s'élève à 4 000 euros hors frais, 40 fois plus que les 100 euros investis au départ...

L'imprévisibilité des cours et le risque de perte sont importants. Il est donc très difficile de générer des gains sur le Forex.

Pour les épargnants, la plus sage des décisions est donc d'éviter le marché des changes.

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<http://montrealgazette.com/business/local-business/the-amf-advises-investors-to-stay-away-from-binary-options> (March 2018).

Surtout des pertes !

Une étude exclusive de l'Autorité des Marchés Financiers a évalué les résultats des investissements des particuliers sur le Forex : **9 clients sur 10 sont perdants.**

Pire, plus les clients ont été actifs (plus ils ont passé d'ordres ou plus leurs mises ont été importantes), et plus les pertes ont été fortes. Pour ceux qui ont persévéré pour « se refaire », la perte s'est accrue ! Autrement dit, les « traders » les plus actifs ne tirent pas leur épingle du jeu...

Selon l'étude, de 2009 à 2012, 13 224 clients ont perdu au total près de 175 millions d'euros, tandis que les 1 575 clients restants ont gagné au total 13,8 millions d'euros...



89 %

des clients investissant sur le Forex via des services de trading agréés ont perdu de l'argent sur 4 ans*



10 900 €

montant moyen des pertes par client en 4 ans*



161 millions €

montant net perdu par les clients*

* Sur les plateformes autorisées interrogées par l'AMF (étude juillet 2014).

Soyez vigilants

Des escrocs derrière certaines offres...

De véritables escrocs se font passer pour des professionnels agréés.

Certains font de la publicité sur Internet et créent des sites ayant l'apparence de sites financiers sérieux. En réalité, votre argent est tout simplement détourné, et vos recours sont très limités en raison de la fréquente localisation à l'étranger de ces prestataires illégaux. C'est la raison pour laquelle l'AMF publie et met à jour régulièrement sur son site www.amf-france.org (rubrique « Mises en garde ») la liste noire des sites à éviter absolument.

Et que faire ensuite ?

Si vous avez été victime d'une escroquerie, la première chose à faire est de porter plainte au tribunal de grande instance du lieu de l'infraction et de contacter la DGCCRF au 39 39 ainsi qu'Info Escroqueries au 0811 02 02 17 (prix d'un appel local) ou sur www.internet-signalement.gouv.fr

Dans le doute, vous pouvez aussi contacter la plateforme Epargne Info Service mise en place par l'AMF en appelant le 01 53 45 62 00 (prix d'un appel local) ou en remplissant le formulaire prévu à cet effet sur le site de l'AMF.

Peu ou pas de recours

Un dédommagement sera très difficile, voire impossible. Les sites d'arnaque au Forex étant principalement basés à l'étranger, il est très compliqué de poursuivre les responsables en justice, même quand ceux-ci sont identifiés.

Quelques conseils

La martingale n'existe pas !

De nombreuses publicités sur Internet vous font croire que vous pouvez devenir « trader » en quelques jours, compléter vos revenus, voire même arrêter de travailler. Mais comme au casino, la martingale n'existe pas... Cette mise en garde vaut aussi pour d'autres offres spéculatives sur les matières premières, l'or...

Pas de rendement élevé sans risque élevé

Soyez prudent ! Aucun discours commercial ne doit vous faire oublier qu'il n'existe pas de rendement élevé sans risque élevé.

Vérifiez, vérifiez...

Pour savoir si une société (celle qui est derrière le site Internet) est agréée, c'est-à-dire autorisée à proposer ses services en France, les épargnants doivent consulter le site <https://www.regafi.fr>

Cette vérification est un premier réflexe à avoir avant toute décision d'investissement, quel que soit le produit financier.

 Derrière une société non autorisée se cache souvent une escroquerie : votre argent n'est pas réellement investi sur le Forex et vous ne pourrez pas le récupérer.



La finance pour tous est une association d'intérêt général ayant pour objectif de favoriser et promouvoir la culture financière des Français.

Auf 2013

II. Enforcement approaches and practices

v. Examples of formal enforcement actions that illustrate the range approaches adopted by securities regulators to prevent firms from illegally or fraudulently offering OTC leveraged products to retail investors

- In Québec, in cases where an individual or company is engaged in binary options fraud, the Québec AMF (QAMF) takes measures against the individual or company. For example, the *Tribunal des marches financiers* has issued *ex parte* prohibition orders aimed at stopping solicitation activities carried out mainly via social media. The QAMF demands that they immediately cease any action, advertising, solicitation, conduct or negotiation intended directly or indirectly to engage in business as a derivatives dealer or adviser with respect to Québec investors.
- The French AMF frequently has legal recourse to block unlicensed websites. In addition in 2016 it stopped a firm (on the basis of Article 62 of MiFID) that did not have a physical presence in France from offering the relevant products in its jurisdiction using the MiFID free provision of service passport.⁶³
- In June 2013, the U.S. SEC filed a civil enforcement action against Banc de Binary and its affiliates (“Banc de Binary”), alleging that Banc de Binary was engaging in an unregistered offering of securities and acting as an unregistered broker-dealer. The SEC reached a settlement with Banc de Binary in March 2016, where Banc de Binary and its co-defendants, without admitting or denying the allegations, agreed to a permanent injunction from such future violations, pay \$7.1 million in disgorgement and \$1.95 million in penalties to the SEC. The U.S. CFTC also filed a parallel action against Banc de Binary for violating the U.S. CFTC’s ban on off-exchange options trading by offering commodity option contracts to U.S. customers for trading, as well as soliciting, accepting orders and funds, and confirming the execution of orders from U.S. customers. International assistance in this case was received from the Cyprus Securities and Exchange Commission (CySEC), Israel Securities Authority (ISA), Ontario Securities Commission (OSC), Swiss Financial Market Supervisory Authority, and the UK FCA.
- In July 2016, ASIC obtained court orders restraining the unlicensed operators of binary options trading websites and associated companies (based in the Seychelles, Marshall Islands and the U.K.), from continuing to offer the services to investors in Australia. ASIC’s proceedings for final relief and penalties against the operators will proceed to trial in April 2019.⁶⁴
- In November 2016, the U.S. SEC filed a settled administrative action against EZTD, Inc., which was incorporated in the U.S. but principally based in Cyprus and Israel. EZTD, Inc. agreed, without admitting or denying the findings, to the entry of an administrative order finding that it had failed to properly register in the U.S. and made materially misleading statements concerning the profitability of investing in EZTD’s

⁶³ Article 62 of the Markets in Financial Instruments Directive of 2004 (“MiFID”) provided for a mechanism through which the host member state may take appropriate measures to protect investors within its territory in cases where a service provider acts in a manner that is clearly harmful to the interests of those investors. MiFID II contains an equivalent provision at Article 86 on “Precautionary measures to be taken by host Member States”.

⁶⁴ <http://asic.gov.au/about-asic/media-centre/find-a-media-release/2017-releases/17-391mr-asic-takes-further-action-in-allianz-metro-binary-option-trading-investigation/>

binary options, to cease and desist from future violations, a censure and to pay \$1.5m in disgorgement, \$58,000 in prejudgment interest, and a \$200,000 penalty.

- Recent U.S. CFTC actions include cases filed against: (i) California resident Jason B. Scharf, his worldwide web of companies (including CIT Investments LLC, Brevspand EOOD, CIT Investments Ltd., CIT Investments Ltd., and A&J Media Partners, Inc.) and Florida-based affiliate marketers Michael Shah and Zilmil, Inc. for unlawfully soliciting and accepting more than \$16 million USD in connection with illegal binary options contracts⁶⁵; (ii) two foreign web-based binary options firms, Vault Options, Ltd. and Global Trader 365, both Israeli web-based companies, for unlawfully soliciting and accepting more than \$1 million USD from at least 50 U.S. customers to trade off-exchange binary options contracts⁶⁶; and (iii) Neil Pecker of Longwood, Florida, and his company Vision Financial Partners, LLC (“Vision”) of Deerfield Beach, Florida, for fraud in connection with off-exchange binary options⁶⁷.
- In November 2012, in one of its initial binary options cases, the U.S. CFTC filed charges against two companies based in Ireland-Intrade The Prediction Market Limited and Trade Exchange Network Limited- for offering prohibited off-exchange commodity option contracts to U.S. customers. International assistance in this case was received from the Central Bank of Ireland.
- In 2015, the German Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) shut down Goldstar Investment Corp for the acceptance of public funds (deposit business) without having obtained permission from BaFin pursuant to section 32 (1) of the German banking act (Kreditwesengesetz – KWG). Goldstar Investment Corp “accepted monies from investors with which binary options were bought”.
- The OSC has assisted other regulators (including through technical assistance and information-sharing) in successfully bringing actions against firms offering binary options. In connection with decisions made by other regulators against persons or companies trading in binary options, the OSC has obtained reciprocal orders. The OSC has also obtained temporary cease trade orders against persons or companies trading in binary options. The OSC pursues both regulatory and criminal/quasi-criminal investigations, as required.
- In 2016 and 2017, the Belgian FSMA entered into a settlement agreement with four firms offering binary options and CFDs to retail investor in Belgium. These products were offered without the requisite prospectus and the advertising documents relating to the public offer were not submitted to the FSMA for approval. In 2018, FSMA’s independent Sanctions Committee imposed administrative sanctions on three firms offering binary options or CFDs in Belgium without the requisite prospectus and without having submitted the advertising documents relating to the public offer to the FSMA. One firm has appealed against the decision of FSMA’s Sanctions Committee. All these cases relate to offerings before the entry into force of the ban in Belgium (18/8/2016, see Chart A).

⁶⁵ International assistance in this case was received from the Anguilla Financial Services Commission and the Financial Supervision Commission of the Republic of Bulgaria.

⁶⁶ International assistance in this case was received from the ISA, CySEC, and the OSC.

⁶⁷ International assistance in this case was received from the UK FCA, CySEC, St. Vincent and the Grenadines - Financial Services Authority, OSC, New Brunswick Securities Commission, Cayman Islands Monetary Authority, British Columbia Securities Commission, Alberta Securities Commission, and the British Virgin Islands Financial Services Commission.

vi. Examples of enforcement actions that IOSCO members have taken against licensing or registration violations by firms. .

- The U.S. SEC and the U.S. CFTC have taken enforcement actions against firms or persons offering binary options without registration . U.S. securities laws requires that any broker or dealer that uses the mails or any means of interstate commerce to effect transactions to induce or attempt to induce the purchase or sale of securities must first register with the SEC. Regardless of their geographic location, firms that solicit U.S. customers to trade foreign currency (“forex”) or binary options are required to register with the U.S. CFTC, and binary options offered to the retail market must be traded on a registered exchange in order to be lawful. For retail forex transactions, registration is also required when conducted by certain categories of registrants, such as commodity pool operators, future commission merchants, and commodity trading advisors. Any binary options trading firm located in the U.S. that offers such instruments to foreign individuals is subject to the same requirements.
- In Japan, under Financial Instruments and Exchange Law (“FIEA”) a prohibition on the unrequested solicitation of retail customers has been implemented for OTC derivatives transactions, which include lawful binary options. Firms that solicit residents in Japan must be registered with the JFSA irrespective of their location. Pursuant to FIEA and the Cabinet Office Ordinance on FIEA, Type I Financial Instruments Business Operators are required to establish appropriate transaction methods with respect to the exercise period, exercise price, etc., for specified OTC option transactions with individual customers.

III. Descriptions of prohibitions to offer and sell the relevant products to retail investors

- Israel completely banned the offering of binary options from Israel – either to investors in Israel or abroad.
- In December 2017, Multilateral Instrument 91-102, Prohibition of Binary Options came into force in all Canadian jurisdictions other than British Columbia. The instruments, drafted by the Derivatives Committee of the CSA, prohibits the offering of binary options with a maturity of less than 30 days to individuals. The Instrument is intended to help protect investors from binary options fraud by prohibiting advertising offering, selling, or otherwise trading a binary option to an individual. It is also intended to reduce investor confusion about this form of product by making it clear that binary options are prohibited for individuals.
- In May 2016, the Belgian FSMA issued a regulation prohibiting the distribution of binary options derivative contracts whose maturity is less than one hour and derivative contracts with leverage (such as CFDs and rolling spot forex contracts) to consumers via an electronic trading system other than a regulated market or an authorised multilateral trading facility. This prohibition took effect on August 18, 2016.
- In Europe, the Markets in Financial Instruments Regulation (“MiFIR”) came into force in January 2018, introducing product intervention powers for national competent authorities (“NCAs”) and European Securities Markets Authority (ESMA) that allow the regulators to prohibit or restrict the sale of certain instruments where there are significant investor protection concerns or a threat to financial stability or orderly functioning and integrity of the markets. In June 2018, ESMA used its product

intervention powers to prohibit the marketing, distribution or sale of binary options to retail clients in Europe.⁶⁸

⁶⁸ ESMA has also used its product intervention powers to place restrictions on the marketing, distribution or sale of CFDs to retail investors. The restrictions consist of: leverage limits on opening positions; a margin close out rule on a per account basis; a negative balance protection on a per account basis; preventing the use of incentives by a CFD provider; and a firm specific risk warning delivered in a standardised way.

Appendix B - Summary of feedback received by IOSCO on the Consultation Report on retail OTC leveraged products

Introduction

IOSCO received nine responses to the consultation, which was published on 13 February 2018 for a two months consultation period. The respondents included market participants offering the relevant products and industry associations representing them in different jurisdictions. IOSCO also received a response from a trade body of financial planners.

Overall, respondents were supportive of improving investor protection in the retail OTC leveraged products sector and considered that the measures in the policy toolkit are broadly appropriate for addressing the specific risks arising from the offer and sale of the products to retail investors. Most respondents considered that prohibiting the relevant products should only be used as a measure of last resort, once all other measures have failed to ensure a sufficient level of protection for investors.

IOSCO has considered the feedback received in preparing the final report. Below is set out a summary of the key feedback received, alongside a response to some of the main points raised by respondents.

Summary of the key feedback to the consultation

Representation of risks

Respondents to the consultation broadly agreed with the representation of the risks arising from the relevant products and their offer and sale to retail investors and supported the retail investor protection aims of the mandate.

Several of the respondents pointed out that the most significant risk in the retail OTC leveraged products sector arises from unlicensed entities. Therefore, they welcomed the plans for publication of the toolkit on effective enforcement methods to mitigate the risks arising from unlicensed entities alongside the policy toolkit to improve the conduct of licensed firms offering the relevant products.

A number of respondents pointed out that in order to effectively tackle unlicensed entities who are a significant source of investor harm, IOSCO members would need to robustly enforce the requirements that they implement. In addition, respondents considered that a truly global regulatory approach in the sector would help to avoid regulatory arbitrage so that firms would not simply move to a jurisdiction with lower regulatory standards to ensure they can continue to attract clients.

Differences across the retail client population

Several respondents pointed out that there is a broad universe of retail investors ranging from sophisticated and highly experienced traders who understand the products and their risks to investors who are unsophisticated and with limited understanding of the products and their risks and low capacity for losses. Respondents offering the products themselves generally stated that their clients are mostly sophisticated and experienced traders who are well aware of the risks of trading the products.

All respondents agreed on the need to protect unsophisticated retail investors. Several also argued that the measures IOSCO members may wish to implement should appropriately take into account the different characteristics of the investors that wish to invest in the relevant products. These respondents considered that proportionate measures should allow the more sophisticated investors to continue trading the products.

For instance, several respondents considered that measure 2 (Minimum margin requirement) should be implemented according to the sophistication and experience of the client. Many also highlighted that implementing measure 3 (Negative balance protection) on a per position basis would restrict the types of trading strategies that the more sophisticated retail clients may wish to use (e.g. carrying out hedged trades and trading on a portfolio basis) and for whom the product may be considered as appropriate.

Other feedback

Two respondents stated that it is important that IOSCO is clear about the scope of products that are captured by the report.

One respondent recommended an additional measure to require firms distributing the products to be subject to fiduciary duties or a duty of care to their clients.

Summary of feedback for each proposed measure and IOSCO response

Measure 1: requirement for firms offering the relevant products to retail investors to be licensed

All respondents supported the requirement for firms offering the relevant products to retail investors to be licensed. Several of the respondents pointed out that unlicensed entities offering the relevant products to retail investors are a significant problem in the sector.

Respondents also considered that compliance with this requirement would need to be robustly enforced by competent authorities and welcomed the toolkit of effective enforcement methods to be published alongside the consultation toolkit.

IOSCO response: The feedback reinforces the considerable risk unlicensed entities in the sector pose to retail investors in the relevant products, which is highlighted in the consultation report under Chapter 2 describing the key risks of the products and the opening lines of measure 1. Moreover, the feedback is unanimously supportive of the measure itself.

To reflect the feedback about the need for IOSCO members to enforce the licensing requirement, IOSCO has made clearer the link to toolkit 3 on effective enforcement methods in the section setting out the risks arising from unlicensed entities. The importance of measure 1 has also been further highlighted in the final report.

Measure 2: Requirement for firms to incorporate a prescribed minimum margin requirement for retail investors

The majority of respondents were supportive of this measure and considered that appropriately set leverage limits are important for investor protection and for ensuring a level playing field for firms offering the products. Two respondents considered that leverage limits are not needed in instances where firms are required to offer negative balance protection, because this measure already offers a back-stop for client losses.

While the majority of the respondents agreed with the principle of implementing leverage limits, many stated that setting limits that were too restrictive creates the risk that the market for the relevant products would move to jurisdictions with less robust standards or that clients would start to trade similar, alternative products offered at higher leverage.

Several respondents suggested different appropriate levels of leverage for retail users of the products. Some proposed that leverage limits should be set based on the sophistication and experience of the client. Others considered that leverage limits should be set to prevent the

automatic close out of the client's position by the margin close out feature due to normal market volatility.

One respondent called for IOSCO to recommend where leverage limits should be set.

IOSCO response: In line with the feedback received, the guidance on applying measure 2 acknowledges that IOSCO members will need to balance the need for investor protection against allowing sophisticated clients who understand the products and can bear the losses to continue to trade the products when considering the level of minimum margin.

Moreover, the guidance under measure 2 suggests different factors that NCAs may wish to take into consideration when setting the appropriate level for the requirements.

As noted elsewhere in the report, the toolkit is intended to provide directional guidance for IOSCO members on different alternatives when considering whether to adopt or apply the measures. The toolkit is not designed to specifically prescribe the implementation of the measures in detail or the precise methodology IOSCO members could adopt when setting the leverage limits.

While negative balance protection can act as a 'back-stop' for client losses that limits the losses to the client's deposited funds, minimum margin requirements reduce the likelihood and volume of potential client losses before this 'back-stop' is reached. IOSCO therefore considers that the two measures can be used alongside one another and has reflected this in the report.

Measure 3: Negative balance protection

All respondents were supportive of this measure. Most of the respondents considered that the measure should be implemented on a per account basis so as to not restrict the trading strategies that more sophisticated investors are likely to adopt. Many respondents also highlighted the other disadvantages of implementing the measure on a per position basis, including encouraging risk taking by firms because the client downside is limited as well as high and unclear capital requirements.

One respondent called for the report to give more emphasis on the negative impacts of the measure where adopted on a per position basis. Another respondent suggested that where the measure is adopted on a per position basis, this should not be mandatory for the more sophisticated clients.

IOSCO response: IOSCO believes that the report appropriately sets out a balanced account of the advantages and disadvantages of applying the measure on either per account and per position basis.

Measure 4: Prescribed disclosures setting out the total costs of the product

All respondents were supportive of this measure. Some stated that in Europe, firms are already required to do this and that consistency with these existing requirements is important.

IOSCO response: As pointed out by the respondents, the introduction to the toolkit notes that several of the measures in the toolkit have already been adopted by some IOSCO members and where this is the case, it has been indicated in the report. Accordingly, the report notes that in Europe firms will need to disclose to the client the total cost of the product as part of enhanced disclosure requirements stemming from MiFID 2.

Measure 5: Disclosures of investor profit and loss ratios

All respondents were supportive of this measure and agreed that the measure would improve investor understanding of the product and its risks.

One respondent considered that the statistics cannot be fully harmonised and therefore they will not allow clients to make accurate comparisons between firms. They suggested that the standardised disclosures should avoid firm-specific statistics and instead focus on making more broad statements, such as: “these products are very risky- you can lose a lot of money”.

Another respondent suggested that messages encouraging self-appraisal such as "have you spent more than you intended?" would be more effective, because some investors will continue to believe in their chance to win despite seeing that the odds are against them.

One respondent considered that the disclosure about profit and loss ratio should be complemented with further information that allows the clients to make an informed choice of firms to trade with.

IOSCO response: The purpose of measure 5 is to provide a simple, firm-specific figure highlighting actual client outcomes. IOSCO members may choose to set harmonised standards to apply to firms within their jurisdictions to ensure that proposed statistics across firms offering the relevant products are comparable. General disclosures about the riskiness of the product may not be as effective.

Setting harmonised profit and loss ratio disclosure standards is also intended to improve the information clients have to compare the different firms offering the relevant products.

Measure 6: Adoption of fair pricing methodology and use of externally verifiable price sources

All respondents were supportive of this measure as improving transparency and ensuring that firms act fairly when executing their client orders. Some respondents considered that clients are unlikely to understand the implications of order execution to their investment outcomes.

IOSCO response: To reflect the feedback, further guidance has been added to the measure to state that firms should disclose their pricing methodology to clients in a way that is clear and easily understandable.

Measure 7: Enhanced disclosures around order execution

All respondents were supportive of this measure.

Measure 8: A ban or restrictions on certain forms of marketing and sales techniques for the relevant products

The majority of respondents agreed that the marketing of the products should be appropriately targeted. Only one respondent disagreed with the principle of this measure, stating that national regulators and ESMA in Europe have already sufficiently covered the marketing of the products. Several of the respondents stated that marketing and sales techniques such as cold calling, use of third party call centres and unbalanced and poor risk disclosures should be restricted by IOSCO members.

Some respondents noted that while they support the measure in principle, the measure should not limit marketing of the products to sophisticated investors that have a clear demand for the products. One respondent stated that generally limiting the electronic advertising of the products should not be considered by IOSCO members so as not to drive the marketing of the products to unlicensed entities only.

One respondent suggested that such complex products should be bought through advisers.

IOSCO response: Measure 8 seeks to restrict inappropriate marketing and sales techniques for the relevant products. This includes mass marketing the products to retail investors for whom

the product is unlikely to be appropriate. The purpose of the measure is to ensure that the relevant products are appropriately marketed and distributed.

Measure 9: A ban or restriction on the sale and/or distribution of the relevant products by intermediaries

The majority of the respondents did not agree with this measure, stating that a ban of the products will simply increase the number of unlicensed firms offering the products or move the market to jurisdictions with lower regulatory standards.

Many respondents argued that IOSCO members will need to accurately differentiate between sophisticated and unsophisticated investors in their approach and ensure that investors who understand the products and their risks are able to continue trading.

One respondent called for more efficient enforcement of the existing rules, adding that a ban will only be effective if IOSCO members enforce it.

Of the respondents who supported the measure, most thought it should only be considered as a measure of last resort, once all other measures have failed to ensure a sufficient level of investor protection to retail clients trading in the products.

IOSCO response: The report already describes that measure 9 may be used in scenarios where other measures are insufficient in mitigating the investor protection concerns arising from the products and encourages IOSCO members to consider, ahead of implementing this measure, whether the other tools included in the report would sufficiently mitigate the risks arising from the products. This has been further highlighted in the final report.

Appendix C- List of respondents to the consultation report on retail OTC leveraged derivatives

- Association Française des Marchés Financiers (AMAFI)
- CMC Markets
- Commerzbank AG
- Contracts for Difference Verband e.V.
- Deutsche Derivative Verband
- Financial Planning Standards Board Ltd
- IG Group
- Polish Chamber of Brokerage Houses
- Saxo Bank Group