



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (Product Intervention Order—Binary Options) Instrument 2021/240

I, Oliver Harvey, delegate of the Australian Securities and Investments Commission, being satisfied that binary options (as defined in the following legislative instrument) are a class of financial products that:

- (a) is available for acquisition by issue to persons as retail clients; and
- (b) has resulted in and is likely to result in significant detriment to retail clients;

make the following legislative instrument.

Date 1 April 2021

Oliver Harvey

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Product Intervention Order—Binary Options) Instrument 2021/240*.

2 Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

Note: The register may be accessed at www.legislation.gov.au.

3 Authority

This instrument is made under subsection 1023D(3) of the *Corporations Act 2001*.

4 Interpretation

(1) In this instrument:

Act means the *Corporations Act 2001*.

binary option means:

- (a) an arrangement that is an over-the-counter derivative in relation to which the following apply:
 - (i) the parties to the arrangement are:
 - (A) a person (*binary option provider*) who carries on a business of offering to issue, and issuing, derivatives of that type to other persons (*holders*); and
 - (B) a holder;
 - (ii) an amount is paid or payable by the holder to the binary option provider in consideration for the binary option provider entering into the arrangement;
 - (iii) under the arrangement, a condition (*condition*) is specified in relation to the value or amount of any of the following at or before a specified time (*expiry time*):
 - (A) an asset (including a financial product or a cryptoasset);
 - (B) a rate (including an interest rate or an exchange rate);

- (C) an index;
- (D) a commodity;

Note: For example, the condition may be that the value of a share exceeds a specified value at a specified time. Alternatively, the condition may be that the value of a share exceeds a specified value at or before a specified time.

- (iv) if the condition is satisfied and the arrangement has not been terminated earlier, a predetermined fixed amount, or no amount, is payable by the binary option provider to the holder;
 - (v) if, at the expiry time, the condition has not been satisfied and the arrangement has not been terminated earlier, a predetermined fixed amount, or no amount, is payable by the binary option provider to the holder; and
- (b) without limiting the scope of paragraph (a), includes such an arrangement where:
- (i) the holder has, or may have, a right to terminate the arrangement before the expiry time; and
 - (ii) if the arrangement is so terminated, the binary option provider must or may pay an amount to the holder (whether or not the amount is a predetermined fixed amount and whether or not the holder has a legally enforceable right to such a payment).

binary option provider: see the definition of **binary option**.

cryptoasset includes cryptocurrency.

financial product means either of the following:

- (a) a financial product (within the meaning of section 761A of the Act);
- (b) an ASIC Act financial product (within the meaning of section 1023B of the Act).

over-the-counter in relation to a derivative, means a derivative that is not able to be traded on a licensed market.

terminated in relation to a derivative includes the derivative being closed out.

Note: Unless a contrary intention appears, a term that is defined in section 761A of the Act has the same meaning in this instrument: see sections 761A and 761H of the Act.

- (2) For the purposes of this instrument, a reference to offering to issue a derivative includes a reference to inviting an application for the issue of the derivative.

Part 2—Order

5 Prohibitions on dealing in binary options in relation to retail clients

Prohibitions

- (1) A binary option provider must not issue a binary option to a retail client.
- (2) A person who carries on a business of arranging for the issue of binary options must not arrange for the issue of a binary option by a binary option provider to a retail client.
- (3) A person who carries on a business of applying for, or acquiring, binary options as an agent must not apply for, or acquire, a binary option from a binary option provider on behalf of a retail client.
- (4) A person who carries on a business of arranging for persons to apply for, or acquire, binary options must not arrange for a retail client to apply for, or acquire, a binary option from a binary option provider.

Application of prohibitions

- (5) Subsections (1) to (4) apply on and from 3 May 2021.
- (6) Subsection (1) applies only if one or both of the following apply:
 - (a) the binary option provider is:
 - (i) a body corporate incorporated or carrying on business in Australia; or
 - (ii) an Australian citizen; or
 - (iii) ordinarily resident in Australia;
 - (b) the issue of the binary option occurs in this jurisdiction, or an offer to issue the binary option, or to apply for the issue of the binary option, is received in this jurisdiction.
- (7) Subsection (2) applies only if one or both of the following apply:
 - (a) the person who carries on a business of arranging for the issue of binary options is:
 - (i) a body corporate incorporated or carrying on business in Australia; or
 - (ii) an Australian citizen; or
 - (iii) ordinarily resident in Australia;

- (b) the arranging for the issue of the binary option takes place in circumstances where:
 - (i) the issue of the binary option occurs in this jurisdiction; or
 - (ii) an offer to issue the binary option or to apply for the issue of the binary option is received in this jurisdiction.
- (8) Subsection (3) applies only if one or both of the following apply:
 - (a) the person who carries on a business of applying for, or acquiring, binary options as an agent is:
 - (i) a body corporate incorporated or carrying on business in Australia; or
 - (ii) an Australian citizen; or
 - (iii) ordinarily resident in Australia;
 - (b) the applying for, or acquiring, the binary option on behalf of the retail client takes place in circumstances where:
 - (i) the issue of the binary option occurs in this jurisdiction; or
 - (ii) an offer to issue the binary option or to apply for the issue of the binary option is received in this jurisdiction.
- (9) Subsection (4) applies only if one or both of the following apply:
 - (a) the person who carries on a business of arranging for persons to apply for, or acquire, binary options is:
 - (i) a body corporate incorporated or carrying on business in Australia; or
 - (ii) an Australian citizen; or
 - (iii) ordinarily resident in Australia;
 - (b) the arranging for the retail client to apply for or acquire the binary option takes place in circumstances where:
 - (i) the issue of the binary option occurs in this jurisdiction; or
 - (ii) an offer to issue the binary option or to apply for the issue of the binary option is received in this jurisdiction.

Note 1: The application of the orders in section 5 is subject to the limitations in section 1023C of the Act.

Note 2: Subject to the Court making an order staying or otherwise affecting the operation of the orders in section 5, the orders will remain in force for 18 months from the day this instrument commences: see subsection 1023G(2) of the Act.

6 Binary option providers to notify retail clients

A binary option provider that has issued a binary option to a retail client in the period of 12 months before commencement of this instrument in circumstances which would be prohibited by section 5 (assuming that the issue occurred at a time when the prohibition was in force under subsection 5(5)) must take reasonable steps to notify each such retail client of the terms of this instrument as soon as practicable and in any case within 15 business days after commencement of this instrument.