MFSA MALTA FINANCIAL SERVICES AUTHORITY

Circular

3 August 2026

ESMA Issues Public Statement on the Application of National Product Intervention Measures on Binary Options to Event Contracts

Background

The European Securities and Markets Authority (ESMA) has published a Public Statement as of 3 July, addressing the rapid growth of prediction markets and the increasing offerings of "event contracts".

The term contracts refer to agreements whose financial outcome fully depends on the occurrence or non-occurrence of a specified future event, providing either a fixed payout or no payout. Not all event contracts qualify as financial instruments, however only event contracts with an event question related to an underlying asset mentioned in Section C(4) to (10) of Annex I of MiFID II classify as derivatives, therefore being financial instruments. In such circumstances, the product falls within the scope of the temporary product intervention measures on binary options which were initially adopted by ESMA Decision (EU) 2018/795, and which were subsequently replaced by permanent national product intervention measures mirroring the ESMA temporary measures.

Nevertheless, this public statement serves as a reminder to investment firms to assess whether the national product intervention measures apply to the products they offer, considering the specific characteristics of those products. Such an assessment should be carried out for all financial instruments that share characteristics similar to those of event contracts, to determine whether the national product intervention measures are applicable.

Scope

ESMA specifies that the commercial name provided by firms (e.g. "event contracts") is irrelevant for the categorisation under MiFID II of products distributed, marketed or offered to clients, and firms must conduct a careful legal analysis of these products and their functions to check whether they fall within the scope of application of product intervention measures.

Investment Firms must conduct this careful legal analysis by always adhering to the overarching obligation to act honestly, fairly and professionally in accordance with the best interests of clients.

In particular, ESMA recalls that products with the following characteristics are likely to be considered binary options:

- Settlement in cash or the possibility of cash settlement;
- Payment occurring only at close-out or expiry;
- A payout limited to either a predetermined fixed amount or zero, depending on whether predetermined conditions are met or not.

ESMA clarifies that the potential for investors to receive coupons or rewards does not alter the binary nature of the underlying event contract. Hence, such products may still fall within the scope of the national product intervention measures.

Target Audience

This circular is addressed to investment firms that provide investment services and activities which are subject to MiFID II (Directive 2014/65/EU), in particular those involved in the manufacture, distribution, marketing or sale of financial instruments that may exhibit characteristics similar to event contracts, including products with binary outcomes offered to retail clients.

Way Forward

Investment firms should review their product governance, product classification, and distribution arrangements to ensure that any products offered as event contracts are properly assessed against the criteria applicable to binary options and the relevant national product intervention measures.

Nevertheless, investment firms should consider:

- The legal classification of event contracts and similar products;
- The appropriateness of the identified target market for such products;
- Compliance with national product intervention measures that prohibit the marketing, distribution, or sale of qualifying binary options to retail clients; and
- The effectiveness of governance and control frameworks in preventing the circumvention of regulatory requirements.

ESMA further reminds firms that where event contracts constitute financial instruments, the provision of investment services or activities in relation to those instruments requires the appropriate authorisation under MiFID II. This requirement applies irrespective of whether the services are provided to retail clients, professional clients, or eligible counterparties.

Contacts

Should you have any queries regarding the above, please do not hesitate to contact us via: csuinvestments@mfsa.mt.