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Prediction Markets and Event Contracts

Background

'Prediction markets' refer to a business model involving an online platform that enables users to enter and trade event-based contracts. 'Event contracts' refer to agreements whose financial outcome is binary - a fixed payout or no payout at all - and depend on a yes-or-no answer to a question about a future event. Event contracts exist for a wide variety of event questions including, but not limited to, sports, politics, entertainment, financial instruments and weather.

This circular is intended to provide clarity on the considerations to be assessed by potential operators when determining the regulatory classification of prediction market activities and event contracts.

Regulatory Classification

Determining the correct regulatory classification requires a thorough assessment of both the operator's activities and the characteristics of each specific event contract being offered. It is important to keep in mind existing frameworks were developed at a time when prediction markets and event contracts were not specifically contemplated.

This notwithstanding, on the 14 July 2015 the Malta Financial Services Authority ('MFSA') has issued a [notice](#) to applicants for a Category 3 Investment Services Licence that would like to carry out binary options trading which stated that:

"...a bet/option on the outcome of an event other than one which is of a financial markets nature, even if of a binary nature (for example a bet linked to a double outcome such as a win or a loss in a sporting event) shall not be considered an instrument for the purposes of the Act".

Similarly, the ESMA [Public Statement](#) on the application of the national product intervention measures on binary options to event contracts, issued on the 3 July 2026, stated that:

"Not all event contracts are financial instruments. Only event contracts with an event question related to an underlying mentioned in Section C (4) to (10) of Annex I of MiFID II classify as financial instruments"; and

“Event contracts qualifying as financial instruments are derivatives and fall within the scope of the temporary product intervention measures on binary options which were initially adopted by ESMA Decision (EU) 2018/7952 and which were subsequently replaced by permanent national product intervention measures mirroring the ESMA temporary measures. This means that the marketing, distribution or sale to retail clients of event contracts that meet the definition of financial instruments is prohibited.”

Therefore, some - but not all - event contracts are financial instruments. Event contracts may also classify as [i] a bet under national gambling legislation, and/or, [ii] for event contracts taking the token form and that are not financial instruments, as crypto-assets regulated under MiCA.

I. Possible Authorisation under MiFID II¹

Where an event contract classifies as a financial instrument, the provision of services and activities in relation thereto would necessitate an authorisation in terms of MiFID II.

In fact, the ESMA Public Statement states that:

“...the provision of investment services and activities concerning financial instruments in the EU requires an authorisation in accordance with MiFID II, irrespective of the category of clients to whom services are provided. As a consequence, the distribution of such event contracts even only to non-retail clients requires this authorisation.”

II. Possible Authorisation under Gambling Frameworks

Given the endless possibilities of the events underlying event contracts and the similarity of the activity to betting, prediction markets could also conceptually be captured under gambling laws.

Should operators seek licensing through the gaming route, one key limitation remains - there is no harmonised gambling framework at an EU level. In practice this means that, unlike MiFID II which provides a single regime for authorisation and passporting rights, gambling regulation in the EU remains largely a matter of national law at the discretion of Member States.

¹ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU

III. Possible Authorisation under MiCA²

Operators deploying prediction markets via blockchain infrastructure should also consider any implications related to the applicability of MiCA.

MiCA regulates the issuance of and dealing in crypto-assets but does not seek to regulate gaming services or financial instruments which are already within the scope of MiFID II and MiFIR.

Accordingly, a prediction market may require authorisation under MiCA if it offers a regulated service such as the custody and transfer of crypto-assets. However, this excludes prediction market operators whose crypto-asset services are provided in a fully decentralised manner, as these would fall outside the scope of MiCA entirely.

The Overlap with Binary Options

A binary option is defined as any cash settled derivative in which the payment of a fixed monetary amount depends on whether one or more specified events in relation to the price, level or value of the underlying occurs at, or prior to, the derivative's expiry.

In simple terms, a binary option is a derivative that meets three criteria:

- i. Cash-settled - it pays out in money, not a physical asset;
- ii. Fixed Payout - it only provides for payment at its expiry; and
- iii. Binary Outcome - payment is limited to a predetermined fixed amount (or zero) if the underlying meets a specific condition.

In July 2018, ESMA imposed a prohibition banning the marketing, distribution or sale of binary options to retail investors, primarily due to investor protection concerns given their inherently risky, complex and speculative nature.

ESMA's restrictions were not renewed after the 1 July 2019, on the basis that most national competent authorities had adopted similar product intervention measures which are permanently embedded within national frameworks. Locally, such measures were included in the MFSA's Conduct of Business Rulebook.

In the Public Statement of the 3 July 2026, ESMA states that:

² Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937

"...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 functioning, in order to check whether they may fall within the scope of application of product intervention measures. Firms must conduct this careful legal analysis by adhering at all times to the overarching obligation to act honestly, fairly and professionally in accordance with the best interests of clients, to which they are bound.

Consequently, as event contracts with a binary outcome and binary pay-out are likely to be derivatives that are financial instruments, they are likely to fall in scope of the product intervention measures. In some cases, an investor may receive a 'coupon' or 'reward' representing the interest earned on the funds paid. The existence of such 'coupon' or 'reward' does not change the binary nature of the event contract itself."

Conclusion

The MFSA reiterates that, in determining the relevant regulatory classification, prediction market operators should undertake: [i] a thorough analysis of their activities, as well as [ii] a case-by-case assessment of the characteristics of each specific event contract being offered. Depending on the outcome of these assessments, prediction market operators should ensure that they are in possession of the necessary regulatory authorisations and abiding with the requirements of the applicable framework/s.

It should also be noted that prediction markets may provide users with access to a range of event contracts that differ in their classification. This could trigger the application of multiple regulatory frameworks simultaneously.