

To the attention of:

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Cc:

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Milan, April 30th, 2018

Considerations regarding the ESMA intervention measures concerning binary options

As is known the ESMA has launched a “call for evidence” followed by the announcement of intervention measures that would imply the prohibition of marketing, distribution or sale of CDF and binary options to retail investors, within the meaning of Article 40 of Regulation 600/2014 (MiFIR).

ACEPI fully shares the reasons and the protection requirements for retail investors at the roots of these measures, which are perfectly in line with what have been previously discussed during a number of Consob meetings (Divisione Emittenti) over the past years.

Nonetheless, the definition of “binary option” explained in the ESMA document of March 27th, 2018 (“Additional information on the agreed product intervention measures relating to contract for difference and binary options”) is partially different from the one originally contained in the “call for evidence” and has raised perplexity in the financial community, because of the uncertainty about the exact limits and scopes of the definition as well.

ACEPI, with this current document, intends to communicate its own considerations and expectations concerning possible corrective intervention measures by the supervisory authorities.

ACEPI considers inappropriate to treat equally the following two types of instruments:

- “securitized binary option traded on MTFs or regulated markets”, that do not imply a direct relationship between issuers and investors
- “unsecuritized binary option traded on proprietary B2C platforms”, that for their part, necessarily imply a direct relationship (potentially dangerous) between providers and investors.

With particular reference to the Italian market, a similar scope of application of the measures proposed by ESMA could imply an extension of the ban on investment in the securitized derivatives so-called “corridor” which have been recently introduced (and are negotiable on Borsa Italiana S.p.A.’s Sedex).

We strongly believe that this very same definition is not applicable to other securitized derivatives (securities incorporating options), included the ones of “digital” type.

Overlooking the substantial and objective structural and market differences (as illustrated below) between securitized and unsecuritized binary options would entail the following consequences for

the future: (i) disincentivize investments and efforts by all the market stakeholders to guarantee an enhanced investor protection both in terms of set-up and fairness; (ii) induce a race to the bottom in the quality of offered services and products.

ACEPI reminds that the need for an ESMA intervention stems mainly from the observation of structural situations (such as the existence of “unmanageable conflicts of interest”) and inopportune behaviors, in respect of the investors’ needs and the safeguarding requirements, related to “unsecuritized binary option traded on proprietary B2C platforms”.

On the contrary, the pluri-annual experience in France and Germany regarding “securitized binary options traded on MTFs or regulated markets has not highlighted objective elements of concern over the investor protection.

The same applies to the more recent Italian experience concerning “securitized binary options that are traded on the SeDeX market of Borsa Italiana”.

In particular, ACEPI wishes to highlight that the current set of offering and trading conditions of securitized binary options traded on the SeDeX market of Borsa Italiana are structurally very different, providing roles and conditions that allow a proper management (and in some cases an actual cancellation) of the conflict of interest and prevents them also by allocating to third parties (non-related to the issuers) roles and activities that are crucial for the protection of final investors.

It is the intermediary’s responsibility (not the issuer one) to adequately identify the profile of their investors.

Moreover it falls within the responsibility of Borsa Italiana (not of the issuer):

- The creation, provision and management of a trading-platform and the definition of its market model.
- The definition of Market Maker obligations.
- The supervision of the effective compliance of Market Maker with their obligations.
- The supervision of orderly trading on the market;
- The management of incidents (e.g. order-cancellations).
- The appropriate dissemination of information to the market (notably as regards the corporate actions affecting underlyings).

In order to avoid conflicts of interests on the SeDeX market of Borsa Italiana, the choice was made for an “Order Driven” market-model that (with respect to the “Quote Driven”) does not guarantee the monopoly to the Market Maker on the orderbook (with its related economic benefits) and consequently allows investors to obtain possible best execution resulting from the matching of the trading orders of other investors (and not of the Market Maker).

Considering the specific features of the securitized binary options traded on the SeDeX market of Borsa Italiana S.p.A., the following must be noted:

- they give rise to the provision of updated KIDs in accordance with the reference legislation (PRIIPs);
- they are classified for a distribution to Advanced Investors according to the target market as defined by the corresponding manufacturer;

- they are currently issued with a reasonable time to maturity and could be subject to a rule, to be jointly defined by Consob and Borsa Italiana S.p.A., setting-out a minimum time to maturity (e.g. 1 month) at the time of their admission to trading;
- they are issued within issuing programs approved by a EU national competent authority.
- the advertising or promotional activities is subject to the prior review by EU supervisory authorities.

According to the above considerations, ACEPI expects that:

- A. The ESMA ban should not concern the “securitized binary options traded on regulated markets or MTFs” (and in particular the SeDeX market of Borsa Italiana S.p.A.) as these have characteristics and benefit from a set-up that adequately supervises the protection of the investors’ interests.
- B. In case of an application of the ESMA ban to products that are already traded on regulated markets and MTFs, there should be no requirement to delist these products or submit them to a “bid-only” for the market-maker (in the interests of their investors).
- C. In case of an application of the ESMA ban, the admission to trading on regulated markets or MTFs should remain open to products whose trading would be exclusively open to Advanced Investors in an “execution only” mode with a prohibition of any type of placing, marketing and advertising in general.
- D. In case of expiry of the ESMA ban (without it being renewed), Consob (in coordination with Borsa Italiana S.p.A. and possibly also market participants) shall define the minimal characteristics of “securitized binary options” so that these instruments could be admitted to trading on the SeDeX market of Borsa Italiana S.p.A. (i.e. with a minimum one-month time to maturity at the date of their admission to trading).

ACEPI hereby notifies its availability to sit in a meeting on the theme and to participate to wider technical round tables.

We remain at your disposal for every clarification you might consider appropriate in relation to the present document. To this end, we include below the contact of reference:

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Respectfully yours,

Associazione Italiana Certificati e Prodotti d’Investimento – ACEPI



The President