Report on the IOSCO Survey on Retail OTC Leveraged Products

Final Report

The Board
OF THE
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General Introduction

The IOSCO Board approved a mandate for the IOSCO Committee for Regulation of Market Intermediaries (Committee 3) on certain retail OTC leveraged products in July 2015. The work plan included a survey of Committee members on current and proposed regulations relating to products that are not exchange-traded (hereinafter "OTC"), are commonly leveraged and are marketed to retail investors (or the general public), as well as market trends and practices and challenges faced by IOSCO members in supervising the relevant market and protecting investors.

The mandate focused on the following categories of OTC leveraged products that are actively marketed to retail investors in a large number of jurisdictions, both domestically and on a cross-border basis:

- Rolling-spot forex contracts are contracts where the payout is based on the fluctuation of foreign exchange rates and the initial maturity of two business days is automatically extended one business day at a time if the contract is still open at the close of trading on the second business day. This product family includes economically equivalent leveraged forex contracts;[1]
- Contracts for differences (CFDs) are contracts where the pay-out is based on the fluctuation of any of a variety of underlying financial rates and prices and which stay open until closed by one of the parties;
- Binary options are contracts where the payout, based on any of a variety of underlying financial rates and prices, is either zero or a fixed amount or a specified percentage of the price (amount invested) of the option.

This particular market sector has been subject to significant regulatory scrutiny in a number of jurisdictions because of the complex and risky nature of the products and the frequently cross-border dimension of the activity that is predominantly internet-based. Recent research reports in several national markets have shown that a large majority of investors in these products very often lose money.

Some jurisdictions have seen numerous investor complaints, including in relation to unauthorized and illegal activity, which is of great concern to these regulators since such activity may undermine confidence both in the markets and in the ability of regulators to protect retail investors. In relation to authorized firms, supervisory work and customer complaints have identified common themes concerning the nature of marketing and the quality of disclosures to less sophisticated retail clients, high leverage (in jurisdictions where it is not limited) and operational issues such as the integrity and fairness of pricing and order execution as well as conflicts of interest management in a number of jurisdictions.

In preparing this fact-finding report, Committee 3 has consulted with the IOSCO Task Force on OTC Derivatives Regulation, the IOSCO Committee on Enforcement (Committee 4) and the IOSCO Committee on Retail Investors (Committee 8) before finalizing the report.

1 All such products are referred to in this report as either "leveraged forex products" or "rolling spot forex contracts".

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Executive Summary

The Committee 3 mandate on retail OTC leveraged products envisaged a survey of Committee 3 members focused on three particular types of products that typically[2] are not listed or traded on an exchange, and are offered and sold to retail investors. These are rolling-spot (or leveraged) forex contracts, contracts for differences (CFDs)[3] and binary options (together, the "relevant products").

Committee 3 members were surveyed on their experiences with the relevant products, applicable regulations and supervisory concerns. Twenty-one responses, listed in the Annex to this report, were received by December 2015, addressing the following points.

a) The relevant products

As stated in the Introduction, the mandate focused on certain OTC leveraged products that are actively marketed to retail investors in a large number of jurisdictions. This particular market segment has been subject to significant regulatory scrutiny in a number of jurisdictions because of the complex and risky nature of the products and the frequently cross-border dimension of the activity that is predominantly internet-based.

Responses to the survey indicate that some or all of the relevant products are offered and sold to retail investors in each of the reporting jurisdictions. All three families of products are not marketed in every jurisdiction, however, and the distribution of some of the products to retail investors is prohibited in certain jurisdictions.

It is permitted in all reporting jurisdictions to sell OTC leveraged forex contracts to retail investors, provided the applicable regulations are satisfied.

In the United States, OTC leveraged forex transactions are governed by the Commodity Exchange Act, which gives the US CFTC jurisdiction over such transactions entered into with retail investors.[4] Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, CFDs and binary options may be classified as swaps or security-based swaps. In those instances, they may only be offered to retail investors if the transaction takes place on a registered exchange; in addition, to the extent the CFD or binary option is classified as a security-based swap, the offer and sale must be registered under the U.S. Securities Act in order to be offered to retail investors. Binary options may also be classified as non-security-based

2 Some of the relevant products are traded on exchanges in three respondent jurisdictions. See Section I.3 below.

3 For the purposes of the present IOSCO work, CFDs and leveraged forex products have been distinguished from one another, although these products are not individually defined in all jurisdictions. For the same purposes, CFDs include financial spread bets that, while being regulated in the same way as other CFDs by the UK FCA, are legally gambling contracts under UK law for tax purposes.

4 In the U.S., the SEC rule permitting broker-dealers to enter into or offer to enter into a retail forex transaction with retail customers expired on 31 July 2016. As such, broker-dealers are no longer allowed to enter into OTC leveraged forex transactions with retail customers. See Section II.1 of the report below for details.

swap securities (also known as "options on securities"), in which case they are regulated by the SEC.[5]

In Québec, binary options have not been authorized by the Québec AMF to be sold to retail investors, whereas CFDs and rolling spot forex contracts have been authorized for sale to retail investors by qualified persons.

In Turkey, the Turkish CMB has decided not to allow binary options to be sold to retail investors.

In Belgium the FSMA has recently issued a regulation prohibiting the distribution to consumers of any of the relevant products via an electronic trading system other than a MiFID (the Markets in Financial Instruments Directive) trading venue. In France the Parliament is expected to prohibit electronic advertising to retail investors regarding certain highly risky and complex products; this prohibition will cover many of the relevant products and may take effect before the end of 2016.

In most reporting jurisdictions the three families of products are considered to be derivatives, although in certain jurisdictions some of the products (either one or more of the three product families, or subsets of a family depending on the characteristics of the particular product) are considered to be securities.[6] In one reporting jurisdiction, the United Kingdom, binary options are currently considered to be gambling contracts and not financial products, i.e. they are neither securities nor derivatives and consequently are not subject to financial regulation.[7] In Ontario, all the relevant products are currently regulated as securities and will be regulated as derivatives in the near future. In Québec, the three families of products are considered derivatives. In Switzerland, after the implementation of the Financial Market Infrastructure Act in the beginning of 2016, all relevant products qualify as derivatives; the Act has also created a more level playing field by extending the scope of financial regulation, so that unregulated firms are no longer able to offer and sell these products.

Around half of the respondents to the survey provided estimates of the size of the markets in at least one of the relevant products in their jurisdiction, principally in terms of the number of active investors. Four larger markets (United Kingdom, Turkey, Germany and Poland) report over 100,000 active investors while the US CFTC reports 55,000 active retail forex investors in the United States. Australia reports fewer active retail forex investors than the United States but more such investors than five other jurisdictions (Hong Kong, France, Netherlands, Romania, Hungary) which report less than 25,000. In addition, Japan reports JPY 550 trn of outstanding underlying in leveraged forex products, while Spain reports the sale of €288bn in total underlying nominal value in CFDs in one year, and France estimates that at least four million trades representing €200bn in aggregate nominal value in CFDs and rolling spot forex contracts are carried out yearly.

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5 See Section II.1.

6 All three types of relevant products are considered to be derivatives or are expected to be considered as such in the near future by all respondents. In Brazil, the relevant products are also legally characterized as securities. In the UK it is expected that binary options will become derivatives in the coming months. In Hong Kong, the classification of some of the named relevant products may result from the new OTC derivatives regime currently under development. See Section I.2 below for details.

7 UK binary option providers are subject to UK Gambling Commission licensing and requirements.

These figures tend to demonstrate, both in terms of notional amounts and numbers of investors, that the retail OTC leveraged products market is quite significant, at least in certain jurisdictions.

b) The firms offering the relevant products

Regarding the relevant firms, each reporting jurisdiction requires financial licensing or registration, or it is anticipated that such a requirement will go into effect in the near future, in order to be able to offer or sell any of the relevant products to retail investors (to the extent that such offers are allowed at all in the particular jurisdiction).

Several jurisdictions indicate, through their survey responses, that the numbers of such firms have been rising in recent years.[8] Some responses distinguish between a few larger, often longer-established firms with a relatively broad product mix and significant market share who are present in a number of markets, and a number of smaller firms who may specialize in only one of the relevant product families such as leveraged forex or binary options. In addition, a number of jurisdictions note the growth of smaller firms that operate on a cross-border basis, often without a physical presence in the jurisdiction of the investors, and that supervisory concerns tend to focus on this latter group of non-domestic firms.

In a number of jurisdictions including the United States, Canada, Mexico, Brazil, France, Hungary, Belgium, Netherlands, Spain and Singapore, there have been instances, numerous and on-going in certain jurisdictions, where the relevant firms have been based abroad and lacked the license or registration needed to legally offer or sell the relevant products to retail investors. Several responses highlight the difficulty in identifying or tracking unlicensed foreign firms that may provide false addresses or use anonymous domain registration for their websites. In addition, several jurisdictions refer to the highly problematic growth of cross-border business by firms located in countries where the offer to local customers is forbidden but the offer to foreign investors is not subject to licensing and supervision. It is also pointed out that many of the unlicensed firms that purport to offer these products and target retail clients are simply scams.

As noted below, however, enforcement actions have been brought against unregistered firms in several jurisdictions.

More generally, regarding both licensed and unlicensed relevant firms, responses to the survey further indicate that firms often trade as principal/counterparty for all of the relevant products, taking the other side of the client's trade ("dealing desk" or "market maker" model), although agency models ("non-dealing desk") and mixed models also exist. Depending on each firm's size and particular business model, hedging strategies may differ significantly.

While binary options share features of traditional OTC options contracts (or combinations of such contracts), rolling spot forex contracts and CFDs are offered on margin, i.e. with leverage, in a similar way to futures contracts. In a number of jurisdictions (see below), steps have been taken to cap the maximum level of leverage permitted to be offered to retail clients. In markets

[8] A major exception is the United States, where the number of retail leveraged forex firms has decreased significantly since the implementation of a new regulatory framework in the early 2000's. See Section II.1.

where leverage is not limited by regulation, firms offer very diverse levels, which often vary with the underlying of the relevant products; several survey responses indicate that some relevant firms offer leverage in their jurisdiction exceeding 200:1 for some of the forex contracts and CFDs.

Many respondents report that automatic margin calls and, in particular, automatic close-outs of insufficiently collateralized positions, are becoming more common in the market.[9] Many relevant firms offer stop-loss features that can help limit downside risk for clients, although such mechanisms vary from firm to firm. Several jurisdictions note that stop losses do not always protect the client from losing more than the initial amount deposited, especially in more volatile market conditions, unless a guaranteed stop loss is used, which carries an additional cost for clients.

Several respondents (outside of the United States) also report that relevant firms in their jurisdiction, in particular the smaller, newer firms, may outsource important parts of their business, including the trading infrastructure/IT systems (which alternatively may be simply acquired from third parties instead of being outsourced), marketing/promotional activities (e.g. call centers), client onboarding, control functions and safeguarding of client money. Several jurisdictions also report that the use of white labelling[10] in this market segment is common.

c) Marketing methods

A majority of the responses emphasize that marketing of the relevant products is often cross-border (all EU members as well as Switzerland, Brazil, Mexico, Australia, Ontario and Québec), using on-line advertising, social media, expert blogs and other internet fora. Some relevant firms also use spam emails and cold calling (although these are prohibited in some jurisdictions), as well as on-line “training” or “seminars” that are presented as ways to teach novice investors how to earn profits by trading the relevant products. Several jurisdictions have also seen the sponsoring of sports teams develop in this area, as well as cash bonuses credited to the accounts of clients who “sponsor” additional clients and help the firm to sign them up.

Approximately one-half of reporting jurisdictions – the majority of EU respondents as well as Australia and the United States (CFTC and the National Futures Association or NFA) – indicate that promotional techniques and messages may be aggressive and/or misleading; in some of these jurisdictions, such behavior is prevalent primarily with unregulated firms, with the smaller regulated firms or regulated firms lacking physical presence in the jurisdiction. According to the same one-half of reporting jurisdictions, not only is advertising frequently imbalanced, highlighting the possibility of considerable gains and minimizing or concealing the risk of equally considerable losses, but also more innovative marketing techniques are employed to attract investors. For example, a number of jurisdictions report that at some relevant firms and for some or all of the relevant products offered, clients or potential clients will have recourse to “demo accounts” (where a prospect trades “virtually” before going on to open a live trading account), “coaching” (“personal attention” from an “expert trader”) or

9 Some responses gave examples of firms closing out client positions with no prior margin call.

10 White labelling is generally understood to refer to a situation where one firm outsources most or all of a particular service or activity to another firm while appearing to its clients to be providing the service or performing the activity itself under its own name or brand.

benefit from "free bonuses" (with many strings attached) or "copy trading" (where a client copies the trades of a "guru trader"). All these techniques are used to attract new clients.

Several survey responses highlight the important role of introducing brokers and call centers (sometimes based abroad) in promoting the services of the relevant firms. For example, the German BaFin notes that the larger the firm offering the relevant products and the greater its market share, the more likely it is that the marketing messages will not be misleading and that marketing/distribution will be maintained in-house instead of being outsourced to third parties. The UK FCA points out that it is increasingly common for smaller, newer firms to rely heavily on outsourcing of mass marketing to unsophisticated consumers.

Some responses highlight not only the regular use of misleading marketing materials, but also the extensive and intensive nature of the marketing activities undertaken. The French AMF notes that for the first half of 2015, the number of new advertisements (TV, radio, internet) for speculative trading (CFDs, forex, binary options) represented 46% of all new advertisements in the financial domain (including banking and insurance products), and 56% of all new advertisements for financial instruments (securities and derivatives). The German BaFin notes that investment firms based in another European Union jurisdiction, although small in size, may use up to 200 introducing brokers simultaneously.

d) Regulation

The regulation in reporting jurisdictions is quite heterogeneous.

In the United States, out of the three relevant OTC product families, only OTC leveraged forex products and OTC binary options that are classified as non-security-based swap securities can generally be offered to retail clients. OTC leveraged forex products may be offered by CFTC-registered and NFA member firms. The firms offering such forex products must comply with a strict regime including substantial capital requirements, a cap on leverage offered, a prohibition on using credit cards and periodic public disclosure of the percentage of loss-making and profit-making accounts at each firm. In the United States, CFDs may not be offered to retail customers OTC, but may only be offered and sold when the transaction is effected on a registered exchange or, with respect to CFDs that are security-based swaps, when the transaction is effected on a national securities exchange and in a registered offering. Binary options that are options on securities may be offered to retail investors OTC under the federal securities laws if the offerings are made in compliance with the registration requirements of the U.S. Securities Act or if exemptions from such registration are available.[11]

Outside the United States, restrictions on the marketing and/or distribution of the relevant products have been introduced recently in Belgium and are planned in France. In Belgium the FSMA has issued a regulation prohibiting the distribution to consumers of any of the relevant products via an electronic trading system other than a MiFID trading venue (regulated market or multilateral trading facility); this prohibition took effect on 18 August 2016. In France the Parliament is expected to prohibit electronic advertising addressed to retail investors regarding certain highly risky and complex products that the AMF would be empowered to define; this prohibition will cover many of the relevant products and is likely to take effect before the end of 2016.

[11] See Section II.1 of the report below.

In addition to the aforementioned regulations in the United States, Belgium and France, the offer and sale to retail investors of one of the three relevant OTC products – binary options – is not allowed in two reporting jurisdictions, although in different ways. In Turkey, a general prohibition on retail offers of binary options has been decided by the Turkish CMB. In Québec, by contrast, where the offer of any OTC derivative is conditional upon prior authorization by the Québec AMF both for firms that must become qualified persons and for products that must be specifically and individually approved before they are offered to the public, no request to authorize binary options has so far been received by the Québec AMF.

In the European Union, MiFID (Markets in Financial Instruments Directive) standards apply with regard to licensing, conflicts of interest, fair and not misleading information, suitability/appropriateness, best execution and protection of client assets. Certain EU Member States have implemented additional national standards including a cap on leverage for forex products (in Poland) and a requirement for intermediaries to obtain a signed document whereby the client acknowledges that the relevant product is not deemed appropriate for her/him (in Spain). Furthermore, the new EU Regulation on "PRIIPs" will introduce a requirement to provide a standardized pre-contractual "key information document" for all "packaged retail and insurance-based investment products" that will apply to OTC derivatives; the "KID" will be required to contain information on the risk classification as well as a "comprehension alert" for complex products marketed to retail investors.[12]

In Ontario the relevant products are currently regulated as securities when offered to retail investors and subject to the requirement to publish a prospectus. The Ontario Securities Commission has granted relief from the prospectus requirement to a number of registered firms to allow them to offer CFDs, forex contracts and other OTC derivatives on the basis of similar disclosure to exchange-traded options and futures.

Leverage limits or minimum margin requirements have been implemented in a number of jurisdictions. In addition to the aforementioned US and Polish leverage limits, Hong Kong, Singapore, Turkey and Japan also set minimum margin deposits (which amounts to capping leverage) for forex products. In addition, the Japan FSA requires firms to set a maximum loss limit with each leveraged forex client, and the FFAJ (Financial Futures Association of Japan) requires a minimum maturity of 2 hours for binary options. For binary options, the FFAJ also publishes the profit/loss ratio of the clients of each firm on a monthly basis.

Several jurisdictions also require transactions in some or all of the relevant products to be reported either to the regulator, a self-regulatory organization or a trade repository.

In a number of jurisdictions it is contemplated that the applicable regulation in this area may be strengthened in the near future. The Swiss FINMA refers to a major reform project (beyond the Financial Market Infrastructure Act mentioned above) that is intended to align Swiss financial regulations with future and upcoming EU regulations including MiFID II and is likely to enter into force in 2018. In Australia the federal government has announced that it will consult with stakeholders on the development of a new ASIC intervention power that could be used to modify products, or if necessary, to remove harmful products from the marketplace. Some or all retail OTC derivatives may be caught in new legislation and regulation currently

[12] Regulation (EU) 1286/2014.

being developed in Hong Kong, Singapore and Canada. In Québec, as of June 2016, it is required that a person registered as a qualified person disclose to the regulator and to that person's counterparties the percentage of relevant client accounts that were profitable for the counterparties during the previous fiscal year. In Turkey it is envisaged to prohibit trade bonuses.

e) Investor complaints, supervisory concerns and responses

A number of different concerns reflecting investor complaints about both the relevant products and firms are highlighted in the responses to the survey. The two concerns mentioned most often (each concern was reported by 10 respondents) relate to (i) unregulated firms, generally based abroad, and (ii) issues relating to the quality (or integrity) of order execution. Next in terms of the number of respondents mentioning the concern, are difficulties related to the withdrawal of client funds, the poor performance of products (client losses) and aggressive or misleading marketing and sales practices (8, 8 and 7 responses respectively). [13]

In addition, several regulators raised the management of conflicts of interest, as well as credit and market risk posed by the relevant firms and business continuity planning, as additional areas of concern. For example, the UK FCA describes in its response to the survey the various conflicts of interest inherent in different trading, hedging and marketing models, which may be poorly identified and managed, and the Belgian FSMA is particularly concerned about certain remuneration arrangements (reverse incentive schemes) where third party service providers may see the fees they receive increase in line with client losses. More generally, several responses mention deficiencies in governance and compliance policies and procedures.

Firms acting without the necessary authorization or registration and who are conducting illegal and sometimes fraudulent activity (pure scams) in retail markets are a source of significant concern for a number of jurisdictions. Some survey responses refer in particular to jurisdictions that do not license firms that only market and sell the relevant products to non-domestic investors. Preventing and sanctioning such activities may be difficult for regulators, since such firms usually operate via websites that are not only hard to identify as being operated from a particular jurisdiction but also may be out of reach in practice for many regulators. However, in a number of cases IOSCO members have been able to take enforcement action against unauthorized firms (US CFTC and SEC), shut down or block illegal websites (French AMF), require unlicensed firms to block access to their website from local IP addresses as a way for the firm to be removed from the regulator's published blacklist (Québec AMF) or require unregistered entities to register (Ontario Securities Commission).

With regard to regulated firms, a number of jurisdictions have undertaken supervisory activity in recent years. The Australian Securities and Investment Commission has increased its level of scrutiny of new license applications and as a consequence has not been able to grant an Australian Financial Services License in the industry for over two years because applicants have not been able to demonstrate that they meet Australian requirements. It has also increased its surveillance of existing regulated firms in its jurisdiction. The US NFA has banned the use of credit cards to fund customer accounts of its forex dealer members (FDMs), and has recently adopted rules requiring these firms to increase their capital to take into account the risk

13 In addition to Sections V and VI of the report, some of these issues as well as additional concerns are mentioned in various other parts of the report.

associated with leveraged forex transactions between these firms and eligible contract participants (ECPs), including the foreign affiliates of these firms. Additionally, the NFA has required banks and other depositories holding FDM accounts to report the daily balance in those accounts to the NFA which the NFA then compares and reconciles with the daily calculation of each FDM's liability to clients that the FDM is required to report to the NFA.

In the European Union, several developments are noteworthy. The Dutch AFM has investigated the activities of firms claiming to offer only spot forex trading (not subject to licensing), leverage on forex products has been capped in Poland, and the Spanish CNMV has examined firms' risk warnings and disclosures as well as the extent of clients incurring losses. As mentioned above, the Belgian FSMA has recently introduced, and the French AMF plans to introduce in the very near future, very significant restrictions on the distribution/advertising of all or some of the relevant products. In addition, the French AMF has launched an original marketing campaign using fake advertisements as well as a mystery shopping exercise on retail leverage forex contracts and binary options sold on-line in France, while the UK FCA has looked at relevant firms' client onboarding practices and, separately, best execution arrangements.

In addition, many IOSCO members have issued investor alerts or educational material to explain to retail customers the key risks associated with the relevant products and the firms that offer them, and/or have published warnings about specific entities (including "blacklists") and scams identified by intelligence gathering or investor complaints.

A small number of competent authorities have published research in this area.[14] The French AMF undertook a quantitative study to assess the performance of investments made by a large panel of individuals. The results demonstrate that trading in CFDs and leveraged forex products is the source of significant losses for an overwhelming majority of individual investors in France, with an average rate of clients losing money over a four-year period in excess of 89%. The study also indicates that in France, investors who trade the most, tend to lose the most. The same applies to those who continue trading over time, indicating there is apparently no learning curve in this market segment for the vast majority of investors.[15]

A number of survey responses put forward a variety of regulatory and supervisory approaches deemed capable of mitigating the concerns reported. Several call for more intense supervision and enhanced international cooperation in this market sector.

In this regard several European respondents mention the work currently underway at ESMA to improve practices and compliance of European firms offering and selling the relevant products, in particular on a cross-border basis, through enhanced cooperation among national competent authorities and the development of focused guidance on this particular market segment.

Summary of the responses to the survey

I. The products

a) Types of relevant products and size of the market sector

[14] See Section IV.6 on the investment performance of the relevant products.

[15] See Section IV.5 of the report.

Some or all of the relevant products[16] are sold to retail investors in every reporting jurisdiction.

It is permitted in all reporting jurisdictions to offer and sell leveraged forex contracts to retail investors, provided the applicable regulations are satisfied.

In the United States, where initial rules were established by the US NFA in the early 2000s and a specific regime under the Commodity Exchange Act was introduced in 2010 to regulate the sale of rolling-spot forex contracts to retail investors, the US NFA reports 6.7 million transactions in retail OTC forex contracts for the month of October 2015, and more than 55,000 active retail forex customers. Under the Dodd Frank Act, it is generally illegal to offer or sell, or effect transactions in, binary options that are swaps or security-based swaps or CFDs to or with retail investors in the United States, unless applicable requirements are met (See Section II.1 below).

The Québec AMF authorizes each firm for each type of OTC derivative under the qualification regime detailed in the Québec Derivatives Act. Rolling-spot forex contracts and CFDs have been authorized and may be legally offered to the public including retail investors by a person registered as a qualified person, but binary options have not to date been authorized by the Québec AMF.[17] Unlicensed firms, however, illegally offer binary options, as well as CFDs and forex products, in Québec.

In Ontario, CFDs, leveraged forex contracts and binary options, when offered to retail investors, are currently considered to be securities and therefore may only be sold to retail investors through registered dealers. Ontario Securities Commission staff are not aware of any registered dealers currently offering binary options. OSC staff are aware of a number of unregistered (and usually offshore) platforms offering binary options (as well as CFDs and leveraged forex contracts) to retail investors.

In Mexico, none of the three relevant product types (or equivalent products) is commonly offered by licensed Mexican institutions to retail investors, but such products are commonly offered by foreign firms on their websites according to the Mexican CNBV response to the survey.

In Brazil, CFDs and binary options are the most common of the relevant products marketed to retail investors. The Brazilian CVM reports that these products are offered by foreign firms unauthorized to solicit business in Brazil.

In Australia, all three relevant product types are marketed and sold to retail investors.[18] The relevant forex contracts are often referred to as “margin FX”. According to recent reports, 49,000 Australian individuals placed at least one margin FX trade in the twelve months to

[16] As explained in the Introduction, the relevant products are rolling spot forex contracts (also called leveraged forex transactions/products), CFDs and binary options.

[17] The Québec AMF has to date received no request from a qualified person to authorize binary options.

[18] The Australia Securities and Investments Commission reports having observed several types of binary options including Ladder, Target, Hi-Lo, One Touch and Tunnel.

November 2015. The number of individual investors who actively traded in CFDs in the twelve months to May 2016 was 37,000.[19]

In Singapore, more licensed firms offer CFDs and leveraged forex contracts to retail investors than binary options which are currently limited to those that only reference debentures, stocks or shares according to the Monetary Authority of Singapore.

In Hong Kong, as at 30 September 2015, there were approximately 12,000 clients, mostly retail, who traded leveraged forex products through non-bank financial intermediaries. CFDs and binary options are not currently offered to retail investors.

In Japan, all three product types are sold to retail investors. In terms of volume the most popular products by far are leveraged forex products with JPY 550 trillion of outstanding underlying as of end September 2015, according to the Japan FSA survey response.

In Turkey, CFDs and leveraged forex products are allowed, and the latter are quite widespread among retail investors with almost 110,000 forex trading accounts. Binary options on the other hand are not allowed to be offered or sold to retail investors, by decision of the Turkish CMB.

All three relevant product types are also marketed to retail investors in Switzerland, although the Swiss FINMA has no data on the size of the Swiss market.

All three product families are marketed to retail investors in Germany. The German BaFin estimates that there are 70,000 to 100,000 active traders in CFDs and leveraged forex products, and up to 30,000 in binary options, with the overall market growing at an annual rate of 4-5%.

In Spain, CFDs are the main type of OTC retail leveraged product that is sold to retail clients. In 2014 CFDs representing some €288bn in total underlying nominal value were sold to retail investors according to the Spanish CNMV.

In Poland, CFDs, leveraged forex products and different types of options are widespread in the retail market. The 8 firms licensed by the Polish KNF to trade in leveraged forex products have more than 107,000 clients, of which over 30,000 are active investors in these products. Some options are very short-term, and some products called “options” are difficult to classify as a financial product, in particular those whose pay-out may depend on randomly chosen numbers (similarly to slot machines in casinos).

In the United Kingdom, there are an estimated 135,000 active users of CFDs (including spread bets) and rolling spot forex contracts;[20] the UK FCA estimates the number of clients trading binary options is around 15,000 although the number of overseas firms offering these products combined with the FCA not having powers over binary options providers makes any estimate very difficult. The FCA response provides interesting detail about the numerous features available for relevant products: underlying assets, leverage (see Section II. 3 below), minimum

19 Reports provided by Investment Trends Pty Limited. For the purposes of the report, retail FX trading was defined as taking a leverage d position on a currency pair in order to gain from currency movements. The definition did not include normal unleveraged currency conversion for international investment, trade or travel purposes.

20 The UK FCA notes that firms propose both OTC futures and options ”lookalikes” in their offerings of CFDs and rolling spot forex products.

initial deposit levels (€100 being a common starting level for forex products), pre-trade risk assessment,[21] trade sizes,[22] order types and direct market access trading, as well as pricing[23] and how firms tend to hedge their exposures (see Section II.2 below).

In France, it is estimated that there are 22,000 active investors[24] in rolling spot forex products and CFDs, almost all of whom are retail clients. Aggregate traded nominal value (including leverage) in these two product families is reported to be at least €200bn per year, based on French AMF research published in October 2014, and is thought to be probably much higher; at least 4 million trades take place per year, and probably many more. No statistics are currently available on binary options that are also widely marketed in France.[25] The French AMF response provides considerable detail about the features of the three families of relevant products offered in France: underlyings, order types, leverage and automatic close-outs (see Section II.3 below), trade sizes, trading costs, maturities,[26] and direct market access ("level 2" trading) in particular.

In the Netherlands, CFDs and binary options are commonly sold to retail investors. The number of active clients in mid-2014 is estimated by the Dutch AFM to be around 18,000.
In Romania, the most popular of the relevant products is CFDs. The number of active clients is estimated at 1,000. A variety of order types, maturities, trade sizes and fee arrangements exist, according to the Romanian FSA.

In Hungary, all three relevant product types are sold to retail investors. For 2013, the Hungarian MNB reports that turnover by licensed Hungarian firms reached HUF 17.3bn and the number of clients exceeded 15,000.

In Belgium, all three product families have been mass marketed and sold to retail investors, estimated to be more than 5,000. The minimum investment amount for most online trading

[21] UK firms typically check that the account has sufficient net equity, i.e. cash +/- profit or loss on open positions, to cover the initial margin on a new position before executing the trade.

[22] The UK FCA notes that trade sizes as well as margin requirements have decreased since the introduction of automated trade closing processes and are now down to one-hundredth of an equivalent futures contract for CFDs on equity indices for example.

[23] The UK FCA notes that firms trading as principal in the main set their own pricing but do so based on the pricing of the underlying market, taking into account the firm's usual spread, mark-up or commission: for forex a blended and widened bid/offer spread from price feeds supplied by the interbank spot foreign exchange market; for equities, pricing based on prices from the primary exchanges; for indices and commodities, pricing based on futures market prices. Firms other than those acting as principal (or matched principal) act as introducers or agents; where the client trades on the same spread as that received by the direct clients of the core provider, the introducer will typically receive volume-based rebates; in other cases the end client may receive a widened spread, the "add-on" going to remunerate the introducing broker or agent.

[24] The French AMF points out that the methodology used by the Investment Trends survey that is the source for this statistic very likely underestimates the activity of unregulated firms.

[25] In addition to the various types of binary options reported by the Australia Securities and Investments Commission, the French AMF also mentions Up/Down as well as Countdowns, Sprints and Turbo Options.

[26] For binary options observed in France the expiry ranges between 15 seconds and 30 days, although longer maturities for some contracts are offered by some firms. For the vast majority of binary options, however, the maturity is less than 24 hours, according to the French AMF response.

platforms was very low, i.e. €100-200, prior to the introduction of the new distribution rules in August 2016 as described more fully in Section IV-1 below.

b) Characterization of the relevant products

All three families of relevant products are characterized as OTC derivatives in most reporting jurisdictions, although some product families may not necessarily be subject to the same rules as other OTC derivatives.[27] In addition, some of these products are legally deemed to be securities in some jurisdictions, entailing potentially heterogeneous consequences in terms of the applicable rules and investor protection.[28]

Information on jurisdictions where some or all of the relevant products are not characterized as (OTC) derivatives is summarized below.

In the United States, rolling-spot forex contracts, although generally considered to be OTC derivatives, are subject to a specific regulatory regime.[29] CFDs are classified as either swaps or security-based swaps, depending on the underlying reference asset of the CFD. Binary options may be classified either as swaps or security-based swaps or non-security-based swap securities (i.e. options on securities).

In Ontario, the relevant products are generally regulated as "investment contracts" and therefore securities when offered to retail investors. These products also fall under the definition of derivatives and it is anticipated that in the future they will be regulated as derivatives, as is already the case in Québec.

In Brazil, the relevant products are legally securities, although they are also considered to be derivatives for the purpose of applying derivatives regulation.

In Singapore, CFDs that reference underlying shares or debentures, as well as binary options that reference debentures, stocks or shares, are characterized as securities.

In Hong Kong, firms trading in "leveraged foreign exchange contracts" that may include binary options on forex, constitute a separate regulatory category. Whether firms dealing in or advising on other derivative products such as CFDs or other types of binary options would be subject to regulation would depend on whether such products fall under the definition of securities or futures under the current regime or the definition of OTC derivatives under the new regime in the future.

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[27] In some jurisdictions, some of these products that are typically OTC instruments may be traded on an exchange. See Section I-3 below.

[28] To the extent that securities and derivatives are not subject to the same requirements in a given jurisdiction. In many jurisdictions, for example, prospectus requirements will only apply to securities, while the requirements to report a transaction or the conditions under which a transaction may be conducted off-exchange will differ depending on whether the transaction involves a security or a derivative.

[29] The same leveraged forex contracts, if contracted with non-retail counterparties (eligible contract participants) in the United States, are considered to be swaps.

In Switzerland, after the implementation of the Financial Market Infrastructure Act in the beginning of 2016, all relevant products qualify as derivatives. However, rolling-spot forex contracts only qualify as derivatives under the presumption that the rolling is customary in the market.

In the United Kingdom, rolling spot forex contracts and CFDs are considered as designated investments, falling under financial regulation by the UK FCA. Although spread bets are also considered as designated investments for regulatory purposes, they are gambling contracts for the purposes of tax law and therefore exempt from income or capital gains tax, making them attractive to UK investors. Binary options by contrast are currently treated as gambling contracts for *both* tax and regulatory purposes (and UK providers thereof are licensed by the UK Gambling Commission) although the UK's Finance Ministry (HM Treasury) has consulted publicly on bringing the latter instruments (where they relate to other financial instruments, indices, currencies or commodities) under financial regulation, probably no later than January 2018.

In the European Union generally, all three families of relevant products are OTC derivatives. In some Member States, however, such as Romania, the legislation does not clearly capture rolling-spot forex contracts and binary options.

c) Application of financial regulation

In almost all reporting jurisdictions, the relevant products are subject to financial regulation, or will be in the very near future.

A significant exception is the purely gambling contract status of binary options in the United Kingdom, pending expected legislative reform on this point (see above and below).

In Singapore, binary options will be within the remit of the Monetary Authority of Singapore (MAS) if the underlying is a share for example but not if the underlying is foreign exchange, interest rates or commodities, although the MAS has issued a proposal for a new licensing regime on OTC derivatives that will cover all these products.

In Switzerland, as mentioned in Section I.2 above, whereas the relevant products are today unregulated, they will all be derivatives under the recent Financial Market Infrastructures Act.

d) Application of non-financial regulation

In a very few reporting jurisdictions, some of the relevant products may be subject to gambling laws, either solely or concurrently with financial legislation.
As mentioned in Section I.2 above, in the United Kingdom, spread bets, which are a CFD product particular to the UK, are legally gaming contracts for tax purposes although for regulatory purposes they are designated investments and regulated by the UK FCA.

Also in the United Kingdom, binary options are gambling contracts and the providers are licensed by the Gambling Commission. These products are however expected to move under UK FCA jurisdiction in the near future, probably by January 2018. Since binary options are nonetheless considered to be financial instruments in other EU jurisdictions, licensed financial institutions in other Member States can sell them to UK investors using the MiFID[30] passport.

The Dutch AFM notes that it has discussed the regulatory classification of binary options with the national gambling authority that considers that its powers to regulate cross-border offerings to retail clients are much more limited than those of the AFM. When the Dutch AFM refused to license a firm wishing to offer binary options on the basis that the product was a gambling contract and not a financial instrument, it lost the appeal by the applicant in the Dutch Court.

In Poland foreign entities have set up "forex trading terminals" in places near gambling houses and casinos. The Polish KNF notes that it has proven difficult to determine whether these "options" are financial products, gambling contracts or mere scams.

e) Exchange trading and clearing of the relevant products

The vast majority of reporting competent authorities state that such products are not traded on exchange or centrally cleared in their jurisdiction.

There are however three exceptions:

In Romania some CFDs are traded on a regulated market (SIBEX) and centrally cleared.

In Japan some CFDs and leveraged forex products[31] are traded on an exchange and centrally cleared.

In the United States some binary options and some CFDs[32] are (or have in the past been) listed and traded on registered exchanges or designated contract markets such as the Chicago Board of Options Exchange, Nadex (North American Derivatives Exchange) and the New York Stock Exchange. Binary options can also be cleared through the Options Clearing Corporation and can be traded in a regular securities account.

The Australian Securities Exchange formerly offered listed CFDs, but this service is no longer available, given the established predominance of OTC trading of these products in Australia.

II. The firms

a) Types and number of firms offering the relevant products

To the extent that such offers are allowed at all in a particular jurisdiction, each reporting jurisdiction requires licensing or registration of the relevant firms, or it is anticipated that such

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30 Markets in Financial Instruments Directive, i.e. currently Directive 2004/39 of 21 April 2004 of the European Parliament and of the Council, which will be replaced by Directive 2014/65 of 15 May 2014 as of January 2018.

31 Such listed CFDs and leveraged forex products are subject to rules similar to those applicable to OTC derivatives in Japan.

32 These CFDs are swaps regulated by the CFTC, not security-based swaps that are regulated by the SEC.

a requirement will go into effect in the near future, in order to be able to offer any of the relevant products to retail investors.[33]

Jurisdictions report a variety of types of firms offering the relevant products, including firms that are large and small, domestic and foreign (the latter often unlicensed), typically specialized in the relevant products although some offer a broader range of products.

In the United States, any firm offering off-exchange leveraged forex products to retail investors (and acting as counterparty) must be registered with the US CFTC, typically either as a retail foreign exchange dealer (RFED) or a futures commission merchant (FCM).[34] Such firms must also be US NFA forex dealer members (FDMs). As of October 2015, there were 6 such firms (futures commission merchants and retail foreign exchange dealers FCMs/RFEDs) with liabilities to customers ranging from $1.2m to $182m.[35] Any firms offering such products without being registered are acting in violation of the US federal laws. The same is true, in most cases, for those firms offering off-exchange CFDs or off-exchange binary options to retail investors. CFDs and binary options may only be offered to retail investors in the United States in the following circumstances:

i) Where the CFD or binary option is a swap and the transaction takes place on a recognized exchange, in which case it will be handled by a CFTC-registered futures commission merchant on behalf of the retail customer;
ii) Where the CFD or binary option is a security-based swap and as such regulated by the SEC and the offer and sale is registered under the U.S. Securities Act, and the transaction is effected on a national securities exchange;
iii) Where the binary option is a security other than a security-based swap and the offering is registered under the U.S. Securities Act, or offered pursuant to an applicable exemption under the U.S. Securities Act.[36]

Firms in Québec that wish to create or market a derivative are required to be a qualified person and to offer derivatives to the public through a registered dealer. Currently the Québec AMF has authorized five entities, generally small and specialized and two of which are affiliates of

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33 The situation in Hong Kong is somewhat complex and evolving. Under the current regime, firms dealing in or advising on products (which may be options or derivatives in other forms) that have underlyings being securities or futures are required to be licensed. Under the new regime for OTC derivatives currently under development, it is possible but not certain that some of the named relevant products may be covered, entailing a requirement to be licensed.

34 On 20 May 2016, the SEC issued a notice stating that the rule permitting a broker-dealer to enter into or offer to enter into a leveraged forex transaction with a retail customer would expire on 31 July, 2016 and that broker-dealers would be prohibited from offering or entering into such transactions. See https://www.sec.gov/rules/final/2016/34-77874.pdf.

35 This current count is sharply down from 52 firms acting as counterparties to retail forex customers in 2007 (together holding $1.3bn in customer funds), prior to the introduction of a new, much stricter regime in 2010. Today these firms are typically RFEDs or FCMs, who must register as NFA FDMs. The NFA also regulates entities and individuals who market these products by soliciting retail customers and then introduce customers to the FDMs; this larger group of "forex firms" including introducing brokers (as well as certain commodity pool operators and commodity trading advisors that manage customer accounts authorized for trading these products) totals 181 currently.

36 In addition, it is allowed in the United States to sell swaps and security-based swaps, including CFDs and binary options, off-exchange to eligible contract participants (ECPs), i.e. persons who are not retail investors.

a foreign entity, to offer rolling-spot forex contracts and CFDs; no firms have been authorized to offer binary options. The Québec AMF reports in its survey response that it is challenging to obtain reliable information about unregistered foreign firms as these often provide fake business addresses. Unregistered firms mostly sell binary options, made as simple as possible in order to attract investors; this is illegal since no qualified persons have been authorized to offer binary options to the public in Québec. The offer of binary options has, however, been on the rise for the past three years. Such foreign firms appear to be located in or connected to a variety of different jurisdictions in the world.

In Ontario, 10 investment dealers/IIROC members (Investment Industry Regulatory Association of Canada) have been granted exemptive relief allowing them to offer CFDs and leveraged forex contracts to retail investors on a prospectus-exempt basis. The Ontario Securities Commission reports an increasing number of unregistered foreign firms and methods employed by such firms to escape identification such as virtual office services and anonymous domain name registration for websites. Such offshore firms often purport to be licensed for "EU cross-border securities offerings" and typically operate through several entities in different geographical locations.

In Mexico, all licensed Mexican intermediaries may offer any of the relevant products (or economically equivalent products) to retail investors, but in practice rarely do so. The products are principally offered in Mexico through foreign websites, outside the regulatory scope and enforcement reach of the Mexican CNBV.

The firms offering these products in Brazil are small, specialized foreign firms. According to the Brazilian CVM, such firms appear often to be based in a variety of different jurisdictions throughout the world. The Brazilian CVM adds that although foreign firms wishing to market and sell the relevant products to Brazilian residents must be registered, none has applied for registration at the CVM. Locally incorporated firms that did apply for registration have not complied with all applicable rules and therefore have not been authorized by the Central Bank and the CVM to conduct the relevant business.

Some 70 licensed firms, foreign and domestic, large and small, broad-based and specialized, offer the relevant products in Australia. According to the Australia Securities and Investments Commission, a dramatic increase in the number of overseas controlled entities entering the Australian market has been observed in recent years.

In Singapore, regulated firms offering CFDs and leveraged forex contracts vary in size and comprise both domestic and foreign-origin firms; the latter are required to have a physical presence in Singapore. There are 12 licensed firms offering leveraged forex trading and 11 licensees offering CFD trading to retail investors as at end June 2015. Some are focused on the relevant products while others offer a wider range of instruments.

In Hong Kong, 42 firms are licensed to conduct leveraged forex trading (September 2015). There is a mix of different firms, domestic and foreign, part of a larger financial services group or smaller, specialized, independent firms marketing and selling leveraged forex contracts in Hong Kong.

In Japan, properly registered firms may market and sell the relevant products, and it is illegal for unregistered firms to sell these products to retail investors in Japan. According to the Japan FSA, there is a mix of different types of firms.

In Turkey, only domestic licensed investment firms can offer leveraged forex products or CFDs. The number of such firms offering leveraged forex products is 36; CFDs on the other hand are much more recent products and the volume is not yet significant according to the Turkish CMB.

Both regulated firms such as banks and unregulated firms, including foreign firms, offer the relevant products in Switzerland to date. The Swiss FINMA points out that the implementation of the Financial Market Infrastructure Act in 2016 will reduce the unlevel playing field by extending the scope of financial regulation in Switzerland, so that only regulated firms will be able to offer and sell these products.

Most firms active in Germany are specialized in one or more of the three relevant product families and not based in Germany. Some 30 relatively large firms, 8 of them domestic and a few foreign firms with branches in Germany, are the main providers of services relating to forex products and CFDs, while 10 exclusively non-German firms passport services relating to binary options into Germany. Three large firms together account for over half of the CFD and leveraged forex markets according to the survey response from the German BaFin. At the same time, the landscape is also characterized by large numbers of small, new firms trying to penetrate the market.

A small number of licensed firms offer the relevant products, mostly CFDs, in Spain. Out of 27 active credit institutions and 56 active investment firms, only 4 and 13 respectively offered these products in 2014 according to the Spanish CNVM. Most of the firms are primarily active in the relevant products; a minority of firms also offers other instruments.

In Poland roughly one-half of the authorized firms offering the relevant products are small, local firms; the other half of the firms are Polish subsidiaries of a foreign financial services group. Some authorized firms market the products not only in Poland but also abroad, chiefly in the European Union.

The UK market is considered to be mature regarding the relevant products and active clients, yet the number of firms in the market has grown rapidly in recent years. It includes two large and long-established businesses that together hold a significant share of the UK market, as well as some medium-sized firms and a number of recently emerging smaller firms. 104 firms are authorized by the UK FCA to conduct their primary or sole activity in CFDs and/or rolling spot forex contracts; 57% of these 104 firms have been authorized in the past five years. The FCA notes that the growth is due in part to the market going online (allowing global reach) and has been particularly strong from 2010, once automated close-outs replaced manual margin calls, which allowed a move to higher leverage and lower minimum account size. The FCA believes that only a handful of UK firms offer binary options, and that most of these also offer CFDs (including spread bets) and leveraged forex products. The 142 non-UK firms that provide services in the relevant products in the UK under the European MiFID passport tend to be relatively small.

In France, most of the firms offering the relevant products are foreign and small, although 4 larger and more established firms together hold a market share that probably exceeds 50%. The firms tend to be specialized in these products, and some are specialized in one of the three relevant product families. Only 10 firms are established in France and supervised by the French authorities, including 5 French legal entities and 5 branches of European firms using the

European MiFID freedom of establishment passport; 3 of the French legal entities are white label firms. In addition, 70 European firms offer the relevant products in France using the MiFID free provision of services passport, with no physical presence in France. Although unregulated firms based outside the European Union have a relatively small market share, they are very numerous (326 in October 2015) and represent the majority of customer complaints received by the French AMF.[37]

Although one Dutch firm is licensed to sell the relevant products, the Dutch AFM mainly observes firms based in another European Union Member State that use the European MiFID passport to sell CFDs and binary options in the Netherlands. Most of these firms are headquartered either in the UK or in Cyprus, although the AFM also notes firms from Luxembourg and Gibraltar. Firms are typically small, specialist firms.

In Romania, CFDs are generally offered by the largest financial institutions in the market, according to the Romanian FSA. Firms authorized in other European Union Member States also offer CFDs as well as rolling spot forex contracts.

Licensed Hungarian firms typically cooperate with larger, international firms to offer the relevant OTC leveraged products. The Hungarian MNB reports that there are many unlicensed firms illegally offering such products in Hungary, especially rolling spot forex contracts.

To date, one Belgian credit institution has been authorized to offer CFDs and rolling spot forex contracts to the Belgian public. One credit institution and one investment firm from another European Union Member State have offered CFDs and leveraged forex products to the public via their Belgian branch. All other firms active so far in Belgium are either licensed in another European Union Member State and offer their products through the MiFID free provision of services passport (22 in all, 17 of which from Cyprus), or are acting illegally in Belgium.

[37] The French AMF transmits the files of unlicensed firms to the public prosecutor since such activity is a criminal offense in France.

b) *Business models of the relevant firms*

Jurisdictions report a variety of trading models, including agency models, principal models, mixed models and white labelling models, as well as different hedging models, outsourcing models and branding models.[38]

The CFTC and NFA report that in the United States, most firms offering off-exchange leveraged forex contracts use a combination of hedging models: a straight-through processing model where the firm will hedge the customer transaction immediately with a liquidity provider, and a dealing desk model where the firm will try to hedge the transaction internally before going to a liquidity provider. Although some US firms offer a third party platform, for example MetaTrader, to their clients as well as white labelling to other firms, the use of white labelling and outsourcing by these US firms is not common; most US firms have created in-house trading platforms and back office systems.

In Québec and Ontario most registered firms acting in the relevant sector have adopted a principal model, taking the opposite leg of the transaction with the client, and generally use white-labeling services. Unregistered firms appear to be generally small with little structure, and tend to replicate the same business under different names. The Québec AMF adds that it is possible that a few actors are offering turnkey platforms and that many of the visible operators are only involved in marketing and customer relations, so that the perception of multiple platforms may be false.

The Ontario Securities Commission notes that online firms trading in the relevant products generally purport to be regulated, often in the European Union, although they typically operate through several entities located in different jurisdictions (website operator, back office services provider, marketing affiliate, etc.) and may use either one or several brand names or trading names.

The Mexican CNBV reports that only a very small number of the relevant products have been sold by locally registered firms. No information is available on the business models of foreign firms illegally offering the products in Mexico.

The foreign firms illegally offering the relevant products in Brazil tend to use a mixed model. No further information is available to the Brazilian CVM.

The Australian Securities and Investments Commission reports that all varieties of business models for trading the relevant products are present in Australia. The most common are: the market maker model where the licensee carries some market risk and uses various liquidity providers to determine the best bid and offer at which it is willing to trade, sometimes via its own proprietary software product; the white label model where the licensee brands another entity's product (such as the MetaTrader platform) and back-to-back hedges each trade (or the majority of trades) with the white label provider (the fastest growing model that typically outsources many of the primary functions to this same latter entity); the introducing broker

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[38] White labelling is generally understood to refer to a situation where one firm outsources most or all of a particular service or activity to another firm while appearing to its clients to be providing the service or performing the activity itself under its own name or brand.

model where the licensee passes all trades to another entity and receives a rebate; the advisory model where the licensee offers expert advisor systems and copy/mirror trading.[39]

Most Singapore firms that offer the relevant products trade on a principal basis. Outsourcing of key activities such as trading infrastructure is more common with smaller firms that utilize white-label platforms according to MAS. .

Firms engaging in leveraged forex trading in Hong Kong have adopted a range of business models: dealing desk models, non-dealing desk models and white-labelling models. Other than the practice of white labelling, outsourcing is not common according to the Hong Kong SFC.

In Japan, all types of business models including dealing desk models, non-dealing desk models and white labelling models are present in the relevant sector.

In Turkey, the Turkish CMB reports that three types of firms exist in this sector: market makers where the licensed firm (using either a dealing desk model or non-dealing desk model) is always the counterparty to the transaction with the client; white labelling firms; introducing brokers.

All types of business models in this market sector are known in Switzerland; the predominant model is the principal model according to the Swiss FINMA.

In Germany, the relevant firms have both dealing desk and non-dealing desk business models; firms adopting the latter model tend to outsource trading infrastructure to so-called “bridge providers” i.e. firms providing IT tools enabling to connect clients to liquidity providers. White labelling services are used both by introducing brokers promoting the services of investment firms and by investment firms themselves seeking to multiply their presence in the market.

Some Spanish firms offering the relevant products have their own platform; there are also platforms that can be used by several firms. In addition, the Spanish CNMV reports that some firms use several commercial names. The increase in internet platforms has led to the development of new functionalities, beyond desktop software to web-based and mobile applications. The websites usually allow the client to open an account online and begin to trade immediately.

Most Polish firms act as principal in their relationship with investors in the relevant products, although some firms act as agents between the client and the entity that ultimately executes the client order. Outsourcing of IT systems, especially by leveraged forex firms, is relatively common according to the Polish KNF, although white labelling is not widely practiced.

In the United Kingdom, the vast majority of firms offering CFDs (including financial spread bets) and rolling spot forex contracts are specialist firms. Some of the larger firms are broadening their activity base but such diversification is in the early stages; few firms predominantly offer social/copy trading. The large firms typically act as counterparty to their client trades, streaming prices online and often not hedging each individual trade before filling the client order; they aggregate trades and only hedge when they exceed the level of market risk set by the Board (thereby avoiding paying away spread until that point). Medium or smaller-sized firms, on the other hand, will not fill the client order until the trade is hedged

[39] See Section III.9 for an explanation of this type of service, also referred to as “social trading”.

either with a prime broker in the interbank market or through intragroup arrangements with a parent or sister company in another jurisdiction.[40] Authorized firms that white label a CFD provider platform usually do so in order to offer such products in addition to their more traditional share and fund dealing services.[41]

The French AMF has only observed dealing desk and non-dealing desk models in the relevant market sector. The non-dealing desk model is limited to rolling spot forex and CFDs on equities. Some firms use both models. White labelling is common; some traditional on-line brokers extend their range of products and services in this way. Non-French firms, many of them unregulated and based outside the European Union, use very unsatisfactory white label platforms; the French AMF notes major concerns about the proliferation of this type of firm.

In the Netherlands, while most firms active in this sector have their own single electronic platform, it has been observed by the Dutch AFM that some firms use more than one commercial name and have more than one platform, while some platforms may be shared by more than one firm. Clients can generally open an account online and begin trading immediately. Several firms offer a white label program, which may increase the counterparty risk of the client because her/his counterparty is not the financially stronger underlying firm.

For firms offering the relevant products in Romania, such products are usually part of a diversified product/service offering. Some firms however have adopted the white label model or introducing broker model, using an online trading platform themselves or directing clients to such a platform.

Both principal (dealing desk) and agency (non-dealing desk) models are found in Hungary in this market sector. White label partnerships also exist, as well as tied agents established in Hungary of foreign financial firms that offer the relevant products.

The only firm authorized in Belgium has until now used an agency model, transmitting its client orders to a credit institution in another European Union Member State, maintaining client accounts and undertaking marketing activities. As for the other market players, the Belgian FSMA gathers, based on complaints received, that many firms have adopted a principal model while acquiring key functions from specialized platform providers. In addition, some firms have outsourced certain activities such as call centers outside the European Union. The FSMA is particularly concerned about certain remuneration arrangements (reverse incentive schemes) where third party service providers may see the fees they receive increase in line with client losses.

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40 The UK FCA notes that where intragroup hedging arrangements are used, it is important to consider the financial strength of the intra-group counterparty, the degree (if any) of regulatory oversight the counterparty is subject to, and the validity of pricing that such arrangements generate.

41 The UK FCA response describes so-called A book and B book trading models. The former, more common among larger firms, aggregates market exposures created by client trading and hedges net exposure to avoid breaches of internal risk limits which may be higher or lower depending on the firm's risk appetite. The latter, often found in smaller firms, supposes a higher risk appetite for the balance sheet of firms that wish to take the other side of all or most client trades; typically these firms prefer to run a market risk against a large portfolio of small clients rather than against a smaller number of larger clients, which is less risky for the firm. The FCA notes that the conflict of interest is most severe in the latter case because the firm will target smaller clients and encourage them to trade on high leverage in order to maximize firm profitability, so that the revenue model relies on clients losing money.

c) *Key features of trading facilities offered to investors*

Jurisdictions report a broad range of features associated with the sale and trading of the relevant products, including commonly high leverage levels offered to retail clients and the prevalent use of automatic close-outs.

In the United States, CFTC and NFA rules limit leverage on OTC leveraged forex products to 50:1 for major currency pairs (minimum 2% margin) and 20:1 for other currency pairs (minimum 5% margin). The US NFA can increase minimum margin levels based on market volatility, and has done so recently for certain currencies. The relevant firms commonly offer stop losses, and some claim to automatically liquidate customer positions having fallen below minimum margin levels.

The Mexican CNBV reports that foreign websites active in the relevant market sector and accessible to Mexican investors offer varying levels of leverage depending on the firm and the product. The CNBV has observed leverage as high as 500:1. Some of the websites also offer stop losses, margin calls and close-outs.

Foreign firms marketing the relevant products on-line in Brazil offer leverage ranging from 5:1 to 2000:1, according to the Brazilian CVM. Some offer stop-loss features.

In Australia common leverage levels offered range from 10:1 to 500:1 in the relevant products. The level offered depends on the firm and the particular product. Typically, the smaller entities offer the higher leverage levels. The more established, reputable firms tend to have varying leverage rates depending on the product and the client, according to the Australian Securities and Investments Commission. The majority of firms offer stop losses for an additional fee, although the type of mechanism varies: some firms will guarantee an execution at the next available price while others will guarantee a price. The majority of firms implement margin calls and offer the client the opportunity to top up the account, so that the close-out occurs only if the client does not meet the specified margin call in the specified timeframe.

Leverage levels in the relevant products vary from firm to firm in Singapore. Most firms offering CFDs and/or leveraged forex contracts employ some form of automatic margin calls, stop losses, forced liquidations and close-out mechanisms for risk management purposes, although these features vary from firm to firm.

In Hong Kong, licensed firms engaging in leveraged forex trading are required to set the initial margin and maintenance (variation) margin level for clients at not less than 5% and 3% respectively of the gross principal value of the contract. Such firms are also required to set out in the client agreement the circumstances in which the contracts may be closed out without the client's consent. In addition, as a risk management measure, some firms have implemented forced liquidation policies; some firms may also employ automatic margin calls and close-out mechanisms. Subsequent to the sudden surge of CHF exchange rates in January 2015, the Hong Kong SFC reports that some firms have tightened their margin requirements as well as their forced liquidation policy for volatile currencies.

Japanese regulations concerning leveraged forex products and CFDs include leverage limits and stop losses, although in practice it is observed that firms often apply stricter limits on leverage and stop losses than required by the rules, according to the Japan FSA.

In Turkey, leverage for rolling spot forex contracts and CFDs is limited by regulation to 100:1, and leverage levels up to this cap are offered to retail investors. Stop losses and margin calls are determined contractually between the firm and the client.

Stop losses, automatic margin calls and close-outs for the relevant products are known in Switzerland. They vary from firm to firm. A reduction of the leverage levels proposed to investors has been observed over the past few years according to the Swiss FINMA.

In Germany, the leverage of CFDs and forex products varies between 40:1 and 200:1 in the vast majority of cases; typically, leverage does not exceed 200:1. The German BaFin emphasizes that only the so-called guaranteed stop loss orders ensure that a position is closed at a predefined price, not a "next available" price, and the latter ordinary stop-loss mechanism has proved to be an inadequate risk management tool in a volatile market environment. In Germany positions are automatically closed when they fail to meet the contractual margin requirements, since contractual terms and conditions generally stipulate that margin calls by the firm are voluntary. BaFin points out that in Germany, a larger firm that is an essential market participant for the relevant products, tends to limit leverage to 100:1 and to ensure that losses incurred by clients cannot exceed the initial amount invested, precluding any calls for additional margin.

In Spain, leverage as high as 400:1 has been observed by the Spanish CNMV for some relevant products. Stop losses are generally available. Margin calls and close-outs vary from firm to firm.

The Polish KNF reports that the relevant products are typically very short-term in Poland. Stop losses are offered. Automatic margin calls are typically triggered when the level of margin falls to 30% or 50% of the initial margin. A cap on leverage of 100:1 for forex products was introduced recently.

The UK FCA provides considerable detail on the characteristics of relevant products and services in its response to the survey. The response notes that the usual maximum leverage offered is 200:1, although higher levels have been observed (500:1 for one domestic firm, 2000:1 for one overseas firm), with higher leverage generally associated with smaller dealing size and retail clients with less money to invest. Not all firms however offer these high levels and some vary leverage offered based on factors such as the volatility and liquidity of the underlying market. Several firms have also been observed to have lowered levels in their forex contracts since the Swiss Franc unpegging event in January 2015. The UK FCA notes nevertheless that overall, leverage offered has increased from 2010 onwards, as firms have moved from making margin calls (allowing a client a given time to fund the position) to automated close-outs (where the client's net equity falls below the initial margin requirement or some percentage of such margin, typically between 50% and 20%). The UK FCA also notes that firms consistently offer lower margin to their clients than the conditions available for equivalent futures contracts (in commodities and equity indices in particular), and that leverage is highest in forex products and CFDs on indices, these being the products where the firms seek to encourage client order flow in order to be able to aggregate trades and capture the spread.[42]

[42] The UK FCA highlights that the spread is the primary source of revenue for most firms and most products in this market sector, since firms wrap their retail price around the narrower wholesale pricing (supplied by their investment bank counterparties for forex for example) on which they can potentially execute hedge trades.

Features of the relevant products vary from firm to firm in France, for example the types of stop-losses available and the conditions of automatic close-outs.[43] The French AMF has observed the following leverage levels: up to 400 for forex products on the most liquid currency pairs; up to 400 for CFDs on equity indices; 200 for CFDs on commodities; 100 for CFDs on bonds; 20 for CFDs on individual equities. Some firms active in France lowered leverage levels for certain rolling spot forex contracts and CFDs after the Swiss franc crisis in January 2015.

In the Netherlands, several order types in the relevant products are offered, including stop-loss orders, trailing stop-loss orders, and guaranteed stop-loss orders. The Dutch AFM points out that only the latter order type eliminates "gap risk" and client losses due to "slippage", although such a guarantee requires payment of an additional fee because the risk is assumed by the firm instead of the client.

In Romania the features of relevant products and services vary from firm to firm. The highest level of leverage available is with respect to CFDs on foreign exchange rates. Clients are generally allowed the opportunity to transfer additional margin to their account before the positions are closed; failing that, positions are automatically closed according to Romanian FSA regulations.

In Hungary leverage of 100:1 is usual in the relevant market segment. Stop losses, automatic margin calls and close-outs are available.

Leverage of 200:1 in the relevant products has been observed in Belgium. The Belgian FSMA points out that stop losses are generally available but they do not guarantee that no loss will be incurred. The FSMA has observed automatic close-out of positions when the sum of cash on the client's account and the value of her/his open positions is equal to or less than 20% of the required margin.

d) Presence of authorized/registered firms and unauthorized/unregistered firms

The majority of jurisdictions report illegal offerings of the relevant products by unlicensed or unregistered firms, in addition to offerings by authorized/registered firms.

In the United States, the firms that are operating in the OTC retail leveraged forex market are overwhelmingly registered with the US CFTC and are forex dealer members of the US NFA. It is illegal to offer or effect off-exchange transactions with US retail investors in CFDs, or in binary options that are either swaps or security-based swaps. The US SEC points out, in addition, that if a trading platform is offering or effecting transactions in binary options and collecting commissions, it may need to be registered as a broker-dealer.

[43] The French AMF notes as an example of diverse market practice that one of the main CFD providers in France has 3 levels of margin calls before cutting the position of the client. It monitors at 90%, then 110%, then 150%; and close-out occurs automatically at 150% (so that the account stays positive, the client losing less than the total deposit). The levels are calculated as follows: required margin (marked to market)/net marked to market value of the account (including total costs after a hypothetical close-out).

The Mexican CNBV reports that locally licensed Mexican firms do not appear to regularly offer the relevant products in Mexico. Such products are however illegally offered on foreign websites accessible to the Mexican public.

In Brazil no local firm has so far been licensed to offer the relevant products. As for foreign firms, both firms licensed in their home country and firms operating apparently without any license whatsoever have been observed to offer these products in Brazil, according to the Brazilian CVM.

In Australia, absent an exemption, it is a criminal offense for an unlicensed firm to provide financial services. There have been instances of such illegal offerings of the relevant products to retail investors in Australia. In addition, the Australia Securities and Investments Commission reports that a number of licensed Australian firms use their license as a marketing tool to promote their services abroad, particularly in Asia, including in circumstances where the service is being provided from overseas (by the foreign subsidiary of an Australian firm for example) to overseas investors, despite the fact that such overseas services are not within the scope of the Australian regulatory system.

Only appropriately licensed firms can market and sell CFDs and leveraged forex products in Singapore. The Monetary Authority of Singapore has received information and complaints about unauthorized overseas firms offering online trading services in these products to Singapore retail investors via the internet, which is a regulatory offence.

Only firms with the required license can market or sell securities, futures or leveraged forex contracts in Hong Kong. Firms trading in leveraged forex products are required to be licensed in Hong Kong. However, whether firms dealing in or advising on any other derivative products would fall under Hong Kong’s regulatory regime would depend on whether such products fall under the definition of securities/futures contracts under the current regime or the definition of OTC derivatives under the new regime.

Firms selling the relevant products in Japan are required to be registered. Unregistered firms are subject to criminal prosecution. The Japan FSA gives warning to such unregistered firms that market or sell their products in Japan, and publishes on its website the names of those entities and the services they seek to provide in Japan.

In Turkey, 32 intermediaries are licensed to offer leveraged forex transactions; 26 intermediaries and three banks are licensed to offer CFDs.

Regarding the relevant market segment in Germany, the BaFin highlights the use of tied agents and, especially, the sometimes extensive recourse to introducing brokers, noting that investment firms based in another European Union jurisdiction may use up to 200 introducing brokers simultaneously. Depending on the exact services provided by such introducing brokers, some of these unlicensed brokers may need an authorization from BaFin.

The Spanish CNMV has received many complaints about unauthorized firms offering the relevant products in Spain.

Only firms registered with the Polish KNF are allowed to offer the relevant products in Poland. The Polish KNF notes that recently some unregistered firms have begun offering leveraged forex products to Polish investors, and that some firms based outside Europe market such forex products using Polish versions of their websites.

The UK FCA estimates that it receives approximately 100 reports each year about unauthorized entities offering CFDs and states that the vast majority of the unauthorized entities reported to the FCA are operating scam websites. They do not appear to be authorized anywhere within the EU, and although they typically claim to be based in a Member State of the European Union, they appear to be domiciled outside Europe, with no physical presence in the region. The UK FCA mentions a recent case of fraud using identity confusion: a UK licensed firm set up a new firm with an almost identical name based outside the United Kingdom, controlled by same non-EEA based entity as the UK firm and that provided both firms with websites and trading platforms, and the UK firm redirected most clients to the new firm where clients subsequently had difficulty withdrawing their funds. The UK FCA has published 16 and 22 alerts respectively for unauthorized businesses and cloned firms purporting to be offering CFDs or rolling spot forex products in the 12 months ending August 2016.

In France all the relevant products are subject to financial regulation; firms must be authorized in France or another Member State of the European Union. Unauthorized firms are acting illegally; the French AMF publishes a black list of such firms and transmits the files to the public prosecutor.

The Dutch AFM has observed both licensed firms and unlicensed firms selling the relevant products in the Netherlands. Many investor complaints about illegal activity in this area have been received by the Dutch AFM.

In Romania, CFDs are sold by locally registered firms, while rolling spot forex contracts and binary options are offered by illegally acting unregistered firms according to the Romanian FSA.

In Hungary, white label partnerships between local firms and firms from other European Union jurisdictions are important in the relevant market segment. Unauthorized local firms typically have an introducing broker agreement with firms from other European Union jurisdictions.

Both authorized and unauthorized firms have marketed or sold the relevant products in Belgium. The Belgian FSMA has observed cases where the same website has been used both by a licensed and unlicensed firm. The FSMA has received many complaints: 244 in 2015 and 129 in the first half of 2016. Most complaints (70-75%) involve firms having no license to operate in the European Union, in particular firms located in third countries that require no licensing of firms that refrain from selling to domestic clients.

In Switzerland, both regulated and unregulated firms have been able to legally offer the relevant products until recently (see Section II.1 above). In the absence of any specific investigation or other work on this particular market segment, the Swiss FINMA is unable to provide data.

III. Marketing

a) Marketing methods used to sell the relevant products

Respondents generally report that the main marketing channel is internet solicitation.

Marketing may occur via the firm's website, internet advertisements (such as pop-ups, banners and sponsored advertisements on search engines), social media such as Facebook and LinkedIn, expert blogs and specialist forums, and "educational websites". Such blogs, forums and educational websites, some respondents point out, are apparently independent but often involve associates of relevant firms posting supposedly "objective" comments in an attempt to steer investors to their websites and trading platforms.

Traditional mass media are also cited by some respondents as a marketing channel but are often seen as less important than internet solicitation.

The UK FCA notes that the firms selling the relevant products are as much IT firms as they are investment firms, given that most business models revolve around IT-driven online trading platforms and the use of online tools such as search engine maximization as a potent marketing technique.

The UK FCA also observes some mass-market brand advertising and social media being used to expand the market in the United Kingdom. The FCA points out that CFDs (including spread bets) and similar products (as opposed to the mere "image" or "brand" of a firm) may be advertised only on specialized financial channels according to the code promulgated by the UK Broadcast Committee of Advertising Practice. By contrast, the Japan FSA highlights that some firms involved in enormous volumes of leveraged forex transactions actively advertise on general Japanese TV, referring in the advertisements to their large market share.

Sponsoring of sport events or teams is also a marketing channel used by firms to provide brand exposure in a number of European jurisdictions as well as in Australia. The French AMF has observed this in the Tour de France, Formula One car racing and most recently football. The jerseys of the five most successful French soccer teams now carry advertisements for Cyprus-based binary option platforms.

Other marketing channels mentioned in the survey responses are emails and cold calling and telephone spam (either by employees of the firm or via third party call centers); it is reported by some jurisdictions that such solicitations appear to be more or less targeted. Some respondents note that unsolicited emails and unsolicited telephone calls relating to the relevant products are prohibited in their jurisdiction (see Section IV.1 below).

Several respondents mention seminars and webinars (see Section III.7 below), and special events such as trading competitions that are used to attract and boost business.

In some reporting jurisdictions, firms also use introducing brokers, affiliates or partners to generate "referrals" and also to acquire lists of investors who have expressed an interest, often from "educational" websites. Some responses highlight the difficulty experienced by supervisors in identifying and assessing the activity of such introducing brokers or "arrangers". The German BaFin notes that some investment firms established in another European Union

Member State, although they are small in size, may use up to 200 introducing brokers simultaneously to market the relevant products.[44]

The UK FCA describes two remuneration models for introducing brokers or "arranging" firms: those who make the introduction and take no further part in the relationship and who receive rebates from the core provider, and those who provide some ongoing client support and may earn additionally from some combination of widened spread, commission or funding fees.[45] It also notes the conflicts of interest inherent in many partnership arrangements where introducing brokers and others act as agents, because of the way in which they are remunerated, e.g. through receipt of a portion of revenue from a "B book" trading model in which the firm acting as principal avoids hedging all or part of the volume of client trades (typically smaller trades) in order to capture client losses as a profit for the firm, instead of financing back-to-back trades to hedge their principal position.[46]

Similarly with regard to the intensity of marketing activities, the French AMF notes a very high proportion of advertisements relating to the relevant products. In France, for the 1st semester 2015, the number of new advertisements (TV, radio, internet) for trading in these products represented 46% of all new advertisements in the financial domain (including banking and insurance products), and 56% of all new advertisements for financial instruments (securities and derivatives).

Some respondents note a difference between the marketing of registered firms and unregistered firms, the marketing of the latter being often more problematic because of material representations and omissions in the information disseminated.

The Hungarian MNB notices a difference between marketing by domestic firms and cross-border marketing, the latter being more active; it also notes particular online marketing techniques (remarketing) where Facebook and Google sites log the internet activities of users and collect personal information without any consent (gender, age, marital status, websites visited) which is then used to target new potential clients.

The German BaFin notes that the larger the firm offering the relevant products and its market share, the more likely it is that the marketing messages will not be misleading and that marketing/distribution will be maintained in-house instead of being outsourced to third parties such as call centers. Similarly, the French AMF notes that aggressive marketing is more likely on the part of smaller players, be they regulated or unregulated firms.

The Québec AMF points out that, as far as unregistered firms are concerned, investors complain about being harassed by the firm's representative over the telephone just minutes after opening an account.

The Belgian FSMA highlights the similarity with marketing in the gambling industry and the fact that marketing is central in the business model of many firms requiring the continuous attraction of new clients, given that the average client has a short relationship with the firm.

[44] They may also need a BaFin license, depending on the precise services provided (see Section II.4 above).

[45] The UK FCA also points out that some introducing brokers in the UK hold a power of attorney over client accounts (see Section III-9 below).

[46] See Section II-2 above for a description of A book and B book trading models.

b) Types of promotional messages used by the relevant firms

The aggressive and/or deceptive nature of the marketing by some of the relevant firms is noted by a number of respondents, although the prevalence of such behavior varies from jurisdiction to jurisdiction and often varies depending on the type of firm (local or foreign, large or small, regulated or unregulated), as mentioned in the previous Section.[47]

Several jurisdictions mention promotional messages that emphasize inter alia the benefits of (high) leverage, the low transaction costs ("tight spreads" or "more competitive pricing"), the advantage of a "no dealing desk model" (suggesting no conflicts of interest with the clients), the advanced nature of the trading platform ("secure" and "fast") or the fact that trading is open to "beginners with no financial know-how or experience".

Several jurisdictions also mention messages of the "get rich quick with no risk" type e.g.,"one click, 60 seconds, 85% profit" (French AMF example) or "guaranteed monthly profit rate of 10%" using a "secret trading method" (US CFTC example).

Other jurisdictions mention educational tools and demo accounts that are used to convince investors to start trading and that are seen as marketing techniques since they suggest that no prior financial knowledge is required and encourage investors to simulate transactions without involvement of their actual assets, implying a lower degree of emotional involvement. According to the NFA, in the United States, once a demo account is opened, potential clients are incited via emails or calls to open a live account.

c) Types of investors targeted by the relevant firms

Most reporting jurisdictions mention retail investors as the target market. However, there are some nuances:

- According to several authorities, retail investors are targeted without distinction, including unsophisticated retail investors;
- The French AMF notices a difference between market leaders, who tend to use appropriate channels (specialist websites, TV channels or newspapers not used by the general public) and smaller platforms who use all available marketing methods to target the general public indiscriminately;
- The UK FCA notes that until the recent past, CFD firms have typically targeted the more financially sophisticated investors in the United Kingdom, indeed a specific demographic group (typically an early-40s male, white-collar worker),[48] but that some broadening of the target market is now observed towards potential clients with lower disposable income and assets and less investment experience;

[47] Misleading or aggressive marketing tactics are mentioned in responses from the United States, United Kingdom, Québec, Brazil, Australia, Hungary, Romania, France, Poland, Belgium, Netherlands, Spain and Germany.

[48] The UK FCA estimates that 75% of investors in equity CFDs have previously traded equities.

- The Swiss FINMA reports that in Switzerland retail as well as institutional investors are targeted.

The Australia Securities and Investments Commission, Mexican CNBV and Brazilian CVM state they have no specific information on the types of investors targeted in their jurisdiction.

d) Objectives of investors

Almost all respondents state that speculative purposes are behind the totality or the majority of the sales of the relevant types of product in their jurisdiction.

Nuancing the views of the vast majority of respondents, the Hong Kong SFC mentions the possibility of such products being purchased for hedging purposes, while the Hungarian MNB states that CFDs may be purchased either for speculative purposes or as an alternative to shares.

e) Advisory versus non-advisory sales

More than half of the reporting jurisdictions state that non-advisory sales make up the larger share of the distribution of the relevant products.

Almost all jurisdictions, however, specify that other types of sales also take place, citing one of various forms of "advisory" services (broadly understood): personal recommendations, online chat advice, copy-trading, robot-trading, mentoring/coaching, trading on behalf of clients using a power of attorney, and portfolio/money management services.

In Turkey sales of the relevant products are considered to be advisory to a great extent by the Turkish CMB.

Several respondents mention a grey area between advisory and non-advisory sales. The Québec AMF notes that some firms offer mentors or coaches to induce the client to trade more frequently or to induce more risky trading. The Romanian FSA mentions that the relevant firms in their jurisdiction provide general services such as market analyses, although such services are not personalized and stop short of investment advice proper. The French AMF notes that those firms with a physical presence on French soil are wary of providing investment advice, but that sometimes their sales personnel overstep their mandate and offer advice to clients.

The Belgian FSMA highlights that the nature of the services provided may change through frequent contacts as the relationship between the investment firm and the investor evolves from non-advisory to advisory. The FSMA adds that the outsourcing of marketing communications to a third party call center acting on behalf of the trading platform may imply that, legally speaking, the investment services, including potentially investment advice, are provided by the call center, which invariably does not possess the required license.

f) Sales channels for the relevant products

Almost all reporting jurisdictions state that the relevant products are purchased either exclusively online or predominantly online.

The Hong Kong SFC and the Hungarian MNB note that other sales channels may be used.

The Romanian FSA reports that many relevant firms operate exclusively remotely via telephone or internet, without any physical presence in Romania.

Several respondents offered specific comments about the trading platforms. The Dutch AFM notes that Dutch investors are used to transmitting orders online. The Swiss FINMA and the Spanish CNMV stress the importance of mobile apps. The Spanish CNMV also notes that the platform may either be specific to the investment firm, or it may be shared between several investment firms.

Telephone is the most frequently used alternative means of contact used for sales, with approximately one-third of respondents specifically mentioning it. The Belgian FSMA mentions that online trades are often generated by prior telephone contact. The UK FCA adds that smaller firms more frequently communicate with clients by telephone on the basis of call lists they have purchased, with the result that such calls are not technically cold calls (which are restricted in the United Kingdom).

The UK FCA also points out that although the market is predominantly online, face-to-face contact also occurs, either with high net worth clients or to generate leads, in particular by so-called "educators" who are a significant source of lead generation and in some cases are closely associated to the firms offering the relevant products, although their business, which is close to that of an introducing broker or financial promoter, does not always clearly constitute a regulated activity in the United Kingdom.

The US CFTC mentions that solicitation as well as payment are typically done online. In addition, firms and individuals that carry out illegal schemes often use educational seminars to meet clients and to obtain payment.

Several respondents stress the reliance by online firms on credit card payments by clients.

g) Seminars and training offered to investors

Nearly all jurisdictions answered that in order to attract clients, the relevant firms frequently organize free seminars or webinars on investing in financial instruments generally including some or all of the relevant products, as well as seminars and webinars exclusively focused on one or more of such products. In addition, most firms offer prospective clients the possibility of opening a demo account, and many firms distribute newsletters.

These so-called educational tools are used as an argument to convince the potential clients that they can easily learn how to trade. For many competent authorities this is not really "training" for potential investors. The Belgian FSMA points out that such tools cannot replace a suitability or appropriateness test.

The US CFTC reports that in the case of Commodity Pool Operators and Commodity Trading Advisers offering money management services, educational seminars may be used to solicit customers.

The German BaFin reports that educational tools are chiefly used to "educate" potential clients who have failed the appropriateness test, i.e. whose knowledge and experience have been assessed as insufficient for the type of transaction envisaged. Such potential clients receive the required warning but are also encouraged to enhance their skills, through such "educational" tools, so as to be able – according to the marketing communications – to trade successfully.

h) Bonuses and other incentives offered to investors

A large number of reporting authorities state that some of the relevant firms offer many kinds of incentives and promotions.

The practice of bonus systems is inspired by the online betting industry. Some firms marketing the relevant products offer "welcome bonuses" (for any account opening) as well as bonuses based on the invested amounts (volume bonuses), for example, or as additional amounts of "virtual cash" under certain conditions. The use of bonus systems is mentioned by a majority of respondents.

The French AMF points out that one of the main issues about bonuses is that the client typically has to invest 20 or 30 times the amount of the bonus to have the right to withdraw the money. The Belgian FSMA notes that it receives many complaints from investors unable to recover their money due to the conditions applicable to bonuses.

In a few jurisdictions such as Romania and France, the respondents report that bonuses are offered only or chiefly by unregulated firms and/or regulated firms acting without a physical presence in the territory.

The Australia Securities and Investments Commission notes that, in addition to the more common forms of bonuses, in Australia some relevant firms advertise "no deposit for the first trade" or "money back for introducing other traders".

The Polish KNF reports that firms offer gifts like tablets or phones to attract new clients. The firms claim the gifts enhance the client's ability to contact the investment firm.

The German BaFin notes that in the majority of cases involving bonuses which have been observed so far, bonuses are offered by binary option providers acting on a cross-border basis, in order to persuade inexperienced retail clients to speculate in the relevant products by lowering the psychological threshold to invest in products that they may not fully understand.

The Turkish CMB has proposed a draft regulation that would prohibit bonuses in Turkey.

The French AMF notes the development of a recent practice involving client referrals whereby cash bonuses are credited to the accounts of clients that "sponsor" additional clients and help the firm to sign them up.

i) Offers of copy trading, mirror trading and social trading

Copy trading, mirror trading and social trading services allow the client to choose an "expert" trader whose trades will either be proposed to the client (who must confirm her/his wish to enter into similar individual trades) or automatically duplicated on behalf of the client (which is likely to be a form of discretionary portfolio management).

Approximately one-half of all reporting jurisdictions, including jurisdictions in Europe, North and South America as well as Hong Kong, Singapore and Australia report that firms offer these kinds of trading services in the relevant products.

The US NFA states that most forex dealer members as well as introducing brokers work with copy traders and promote them on their websites. When a customer chooses to follow one of multiple "leaders" proposed by the firm, the trades of the latter are replicated on the account of the customer based on a "letter of direction" whereby the customer permits the firm to place the trades.

In some jurisdictions such as Singapore and Switzerland, such services are primarily offered to retail customers by unregistered firms.

Similarly, the Québec AMF notes that platform operators and robot providers appear to be related parties, and that in general neither is an authorized firm.[49] In addition, firms do not appear to be concerned about the contractual legality of duplicating the trades of an "expert" in the account of a customer; they do not bother to have the client sign a power of attorney or mandate.

The UK FCA describes two models of introducing brokers with a power of attorney from clients and that accordingly provide advisory and/or portfolio management services ("advice" being more common in the United Kingdom than a discretionary management service): those who charge commission on both the opening and closing leg of the trade (30 bps applied to the full consideration of the trade is common), and those who charge performance fees (and do not share in loss-making trades). It is observed that both these models are conflicted, the first encouraging the introducing broker to churn, the second encouraging the introducing broker to close prematurely any profitable trades in order to crystallize the additional fee income.

The Polish KNF has observed discretionary management of retail portfolios of OTC forex derivatives, which typically leads to clients losing all or most of their money.[50]

49 Totally automated platforms – providing a service akin to portfolio management – are not allowed in Canada.

50 See also Section VI-1.

IV. Regulation

a) Prohibitions of certain relevant products and activities in certain jurisdictions

In the United States, the Dodd-Frank Act prohibits the off-exchange sale of CFDs and binary options (where they are deemed to be swaps or security-based swaps) to retail customers (See Section II.1 above). Only eligible contract participants (ECPs) can purchase such products off-exchange. Any firm offering or effecting transactions in these products off-exchange to or with retail investors would be in violation of the US federal laws.

Also noteworthy is that in Québec, the offer of OTC derivatives is conditional upon prior authorization from the Québec AMF both for firms that must become qualified persons and for products that must be specifically and individually approved before being offered to the public. At the present time, the Québec AMF has not authorized any binary options, although this situation is distinct from a prohibition. On the other hand, the Québec AMF has authorized some qualified persons to offer leveraged forex products and CFDs.

The Turkish CMB has decided not to allow binary options to be sold to retail investors.

It should also be pointed out in this section that Belgium has recently introduced a prohibition on retail distribution in this area. On 26 May 2016, the Belgian FSMA issued a regulation prohibiting the marketing to consumers of any of the relevant products via an electronic trading system other than a regulated market or an authorized multilateral trading facility; this prohibition took effect on 18 August 2016, following approval by royal decree. In addition, a number of distribution techniques were prohibited from the same date, as described in Section IV-4d below.

In France the Parliament is expected to prohibit electronic advertising to retail investors regarding certain highly risky and complex products that the AMF would be empowered to define. Such advertising will include emails, internet pop-up banners, radio and television. This prohibition will cover many of the relevant products and may take effect before the end of 2016.

b) Key elements of prudential and organizational requirements applicable to the firms

In addition to requiring the relevant firms to be authorized, licensed or registered by the respective competent authority (to the extent that retail sales of the relevant products are permitted), several respondents reported on their capital, liquidity and organizational requirements, as well as requirements relating to risk management, internal controls, outsourcing, business continuity and recordkeeping.

In the United States, with respect to leveraged forex products offered to retail investors, the US CFTC requires relevant firms to hold net capital amounting to no less than USD $20m plus 5% of the futures commission merchant’s or retail foreign exchange dealer’s total liabilities to retail forex customers in excess of $10m. The US NFA recently increased the capital requirements for its forex dealer members (FDMs) to take into account the risks associated with transactions with foreign dealers and the firm's affiliates. FDM capital requirements are now the sum of the following:

- 5% of all liabilities the FDM owes to retail forex customers and eligible contract participants (ECPs) that are not an affiliate of the FDM or a dealer that exceed $10mn;
- 10% of all liabilities the FDM owes to ECP counterparties that are an affiliate of the FDM but not a dealer;
- 10% of all liabilities that ECP counterparties that are an affiliate of the FDM and that are acting as a dealer owe to their retail customers and ECP counterparties;
- 10% of all liabilities the FDM owes to ECP counterparties acting as a dealer that are not an affiliate of the FDM.[51]

Also in the United States, in addition to the margin requirements set by the CFTC and the NFA (see Section IV.3 below), the NFA notes various sections of its regulatory guides that apply to its forex dealer members (FDMs). The NFA reports a number of recent enhancements to its rules including enhanced requirements on risk management programs that FDMs are required to adopt, and certain margin requirements that have been tightened.[52]

Where a US broker-dealer registered with the SEC and member of FINRA effects transactions in securities, including security-based swaps and options on securities (which would include some binary options), it must comply with all applicable broker-dealer requirements.[53]

In Australia, firms are required to have adequate financial resources to provide the financial services covered by the firm's license. For firms who deal in retail OTC derivatives and are not prudentially regulated by the Australian Prudential Regulatory Authority, the Australia Securities and Investments Commission reports that the financial requirements they must meet include a solvency requirement and a net tangible asset requirement.

In Hong Kong, leveraged forex traders are required to have HK$30m of paid-up share capital and HK$15m of liquid capital.

Under MiFID, organizational requirements on risk management, outsourcing, business continuity and recordkeeping apply for the European Union member states. MiFID also refers to the Capital Requirements Directive[54] for the relevant prudential requirements, including those on capital and liquidity. The capital requirements for different types of investment service providers are divided into three different classes - €50k, €125k and €730k in minimum start-up own funds - depending on the firms' business models and the activities they carry out.

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51 For the two latter capital requirements, liabilities include those related to certain retail commodity transactions.

52 The NFA's Forex Regulatory Guide (of over 100 pages) can be found on the NFA's website.

53 On 20 May 2016, the SEC issued a notice stating that the rule permitting a broker-dealer to enter into or offer to enter into a leveraged forex transaction with a retail customer would expire on 31 July, 2016 and that broker-dealers would be prohibited from offering or entering into such transactions.

54 Directive 2013/36 of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms; see also Regulation 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms.

In addition to a minimum capital requirement of 50m JPY, Japanese firms are subject to a capital ratio requirement.

MAS sets the base capital requirements for licensed firms carrying out regulated activities in Singapore. The requirement is S$1m for firms that are non-clearing members or non-exchange members for dealing in securities (including trading of CFDs with underlying assets that are securities or securities indices) and S$5m for firms which are exchange clearing members. The base capital requirement for leveraged foreign exchange firms is S$1m. MAS also requires regulated firms to have a physical presence in Singapore, and any firm intending to deal in OTC derivatives with retail investors must have a minimum 5-year track record as a requirement for licensing.

c) Key elements of business conduct requirements applicable to the firms

In addition to requiring the relevant firms to be authorized, licensed or registered by the respective competent authority, the business conduct rules mentioned by respondents typically require the firms offering the relevant products to:

- Ensure their financial promotions are not misleading;
- Carry out appropriate know-your-customer procedures;
- Assess the appropriateness of the product and the suitability of the advice given to the client;
- Issue clear disclosures that enable the client to make an informed decision on the product or service, including appropriate risk warnings;
- Ensure client orders are executed on the best terms available;
- Ensure client money and assets are appropriately accounted for and safeguarded, depending on local legislation and regulation;
- Operate effective organisational arrangements to manage conflicts of interest; and,
- Enter into a written agreement with the client before the provision of services.

The SEC and FINRA have described in their joint response that, in addition to general business conduct obligations applicable to broker-dealers in areas such as suitability, know your customer, disclosure and communication to the public, under the US federal securities laws broker-dealers have a duty of fair dealing, which requires that their prices bear a "reasonable" relationship to prevailing market prices. FINRA also notes that its rules on best execution apply, and that other FINRA rules address the concept of a reasonable mark-up as well as fee structures that present potential conflicts of interest.[55]

Also in the United States, the Commodity Exchange Act gives the US CFTC jurisdiction over OTC foreign currency futures and options transactions as well as certain leveraged foreign currency transactions offered to or entered into with retail customers. The CFTC notes that commodities for future delivery, except forex, must be transacted on an exchange in the United States. The CFTC has addressed off-exchange retail foreign exchange transactions through rules issued in 2010, which cover such areas as recordkeeping and reporting, the fairness and transparency of the price formation process, prohibited transactions (the relevant firms must

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[55] See also Section II.1 above for the conditions under which a US broker-dealer would be able to offer some of the relevant products to retail investors.

inter alia ensure that client trades take priority over proprietary trades) and advertising requirements.

In Ontario, CFDs, leveraged forex contracts and binary options, when offered to retail investors, are currently considered to be securities and therefore may only be sold to retail investors through registered dealers. In view of the leveraged nature of these products, these firms are generally required to register as investment dealers and become members of the self-regulatory organization (SRO), the IIROC, although this may change under the new registration regime for derivatives dealers that is being developed by the Canadian Securities Administrators. As investment dealers and IIROC members, these firms are subject to comprehensive regulatory requirements including requirements relating to business conduct, proficiency, capital adequacy and margin requirements. The business conduct rules include rules relating to “know-your-client” (KYC), “know-your-product” and suitability requirements. However, in view of the fact that these products are typically operated by investment dealers through “order-execution-only” platforms, KYC and suitability requirements are generally assessed at the account level and on an ongoing basis rather than on a trade-by-trade basis.

The Australia Securities and Investments Commission reports that it requires firms to comply (on a comply-or-explain basis) with, inter alia, a “benchmark” on client qualification providing that firms offering leveraged forex contracts or CFDs to retail investors must implement a policy setting out the minimum client qualification criteria and the processes in place to prevent unsuccessful applicants from opening a trading account.

The Hong Kong SFC, the French AMF and the UK FCA note restrictions on cold calling (including unsolicited promotional emails in France) with respect to the relevant products, among others, in their jurisdiction. The Japan FSA also mentions a restriction on some types of solicitation, including unrequested solicitation.

The conduct of business rules of the European Union Member States derive from EU legislation, namely MiFID, which includes provisions to cover the above sale and marketing aspects of all financial instruments including the relevant products.

The Spanish CNMV reports that in Spain, over and above the MiFID provisions, there is a domestic requirement providing that where the firm’s assessment of the potential client’s knowledge and experience in relation to a financial instrument including any of the relevant products concludes that the product is inappropriate, the firm must have the client sign a declaration to confirm that she/he has been warned that the product is inappropriate before being allowed to trade. The firm must also provide the client with an enhanced, standardized risk warning in these same circumstances.

The UK FCA mentions its guidance on product governance and design, which is intended to apply to all regulated firms involved in the supply of products or services to retail customers. The guidance focuses on product provider responsibilities including identification of the target audience, design of products to meet the target audience’s needs, stress-testing of new products to ensure they are capable of delivering a fair outcome for the relevant investors and robust product approval processes for all new products; as well as on the distributor’s responsibilities including distribution to the appropriate target market identified by the product provider.

d) *Specific rules applicable to the relevant products and firms in the reporting jurisdictions*

With a number of notable exceptions, the majority of the respondents do not have specific rules applicable to the sale and marketing of these types of products in addition to the general conduct rules described above. The exceptions are described below.[56]

1) Leverage limits and margin requirements[57]

In the United States, the CFTC imposes maximum leverage limits on futures commission merchants (FCMs) and RFEDs serving as counterparties in off-exchange forex transactions with retail customers. Currently leverage on OTC forex products is limited to 50:1 for major currency pairs (minimum 2% margin) and 20:1 for other currency pairs (minimum 5% margin). The NFA is authorized to set specific leverage limits for firms that are at least as stringent as those by the CFTC. The NFA recently modified its leverage requirements to require the relevant firms to have the same margin requirements/leverage limits for eligible contract participants (ECPs) that they have for retail customers. The NFA can increase minimum margin levels based on market volatility, and has done so recently for certain currencies.

In Ontario and Québec, IIROC members that offer CFDs or leveraged forex contracts to investors are subject, as a condition of membership, to the same margin rates as are prescribed in IIROC rules for futures contracts on the applicable underlying interest.

In Japan there is a 4% minimum margin requirement for rolling spot forex contracts. The minimum margin requirement for CFDs varies between 2% and 20%, depending on the type of underlying.

In Hong Kong, the SFC imposes minimum margin requirements for firms engaging in leveraged foreign exchange trading. The minimum requirements are 5% initial margin and 3% maintenance margin (variation margin).

The Monetary Authority of Singapore imposes margin requirements for firms which offer CFDs and leveraged forex trading. The level of the margin requirement depends on the type of product and the underlying, e.g. 10% for equity CFDs if the equity belongs to an index, 20% for equity CFDs if the equity does not belong to an index (this margin is adjusted to take into account non-guaranteed stop loss and guaranteed stop loss), and 2% for leveraged forex transactions (this rate may be raised to 5% in the future). The relevant MAS regulation also sets out the acceptable types of collateral to be used as margin.

In Turkey there is a maximum leverage rate of 100:1, and therefore a minimum margin of 1% for all leveraged transactions contracted by retail investors, including forex products and CFDs. The Turkish CMB has the authority to change this rate or to designate a distinct rate for each type of product.

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[56] The Australia Securities and Investments Commission notes that although there are no specific rules covering the relevant products (other than guidance on disclosure in relation to these products and trade reporting requirements applicable to all OTC derivatives), product features such as leverage may be taken into account in determining whether an Australian firm complies with its general licensee obligations.

[57] See also Section II.3 above on market practices in relation to leverage, stop losses and close-outs.

In Poland a leverage limit of 100:1 on forex-related derivatives (minimum margin of 1% of the nominal value of the financial instrument) that are offered to retail clients was imposed, beginning in July 2015.[58]

2) Specific disclosure rules

The US CFTC notes that RFEDs, as well as FCMs and introducing brokers active in retail leveraged forex products, are required to inform customers: (i) of the inherent risks in the transactions; (ii) that trades are done off-exchange; (iii) that deposits with forex dealers have no regulatory protections; (iv) of potential conflicts with paid solicitors; and (v) that past performance does not guarantee future results. Furthermore, the CFTC reports on separate disclosure requirements applicable to commodity pool operators (CPOs) and commodity trading advisors (CTAs) including specific customer warnings on the risks and losses associated with leveraged off-exchange transactions. CPOs and CTAs are also required to disclose on past performance, including the largest declines in the pool's asset value during the last five years.

The Ontario Securities Commission reports that issuers, dealers and other market participants offering CFDs are subject to the prospectus requirements of Ontario securities law. OSC staff have indicated in public guidance that, in certain cases, the prospectus requirement may not be well tailored to these types of products and will generally support requests for exemptive relief by registered investment dealers from the prospectus requirement to allow them to offer these products on the basis of alternative disclosure requirements applicable to exchange-traded options and futures. These alternative disclosure requirements require firms to provide investors with appropriate risk disclosures about the nature and risks of the product as well as meaningful financial disclosures about the counterparty to the investor's transaction.

The Australia Securities and Investments Commission has issued guidance to Australian providers of the relevant products on their disclosures to retail clients. The seven benchmarks issued cover areas such as margining practices and managing exposures to market risk from client positions. The Australia Securities and Investments Commission expects firms to comply with the benchmarks on an 'if not, why not' basis.

In Singapore, firms cannot open a CFD trading account for a client, unless the client has been provided with a separate risk disclosure and signed a declaration confirming that she/he understands the nature and contents of the disclosure.

In Japan, firms are required to provide customers with documents explaining the structure and risks of the relevant product before and upon conclusion of the contract, as well as provide a statement of margins received and outstanding balance of transactions at least once every three months.

In Turkey, an investment firm who is the counterparty to a client's leveraged trade must disclose this to the client, along with the fact that the loss incurred by the client results in a profit obtained by the firm.

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58 This limit on leverage applies to all leveraged financial instruments that are not cleared by a CCP and that are offered to Polish retail investors, including CFDs.

In Belgium, any firm, domestic or foreign, that intends to offer any of the relevant products is required to issue a prospectus approved by the Belgian FSMA and containing information that allows the investor to make an informed choice about the product. Thereby, Belgium has extended the scope of the Prospectus Directive that initially applies only to the public offering of securities, to the public offering of all financial instruments including OTC derivatives. The relevant firms are also required to submit all their marketing materials for approval by the FSMA before publication.

The Polish KNF notes the guidance issued on the conduct of investment firms in the leveraged forex market, particularly focusing on MiFID rules on disclosures provided to clients.

The Spanish CNMV notes the requirement to provide an enhanced, standardized risk warning to clients in certain circumstances (see Section IV.2 above).

3) Reporting requirements

In the United States, NFA Forex Dealer Members (registered as FCMs or RFEDs with the CFTC) are required to report trade data to the NFA on a daily basis for all trades that are placed by customers. The NFA also indicates in its survey response that it has recently required banks and other depositories holding on deposit the funds of clients of Forex Dealer Members to report the balances to the NFA on a daily basis, in addition to the total liabilities owed to clients that FDMs are also required to report daily.

The Québec AMF and the Ontario Securities Commission require all OTC derivatives transactions to be reported to a trade repository which has been recognized or designated by the respective provincial regulator. In addition, the Québec AMF requires firms registered as qualifying persons to report annually to the regulator the number of contracts and their notional value as well as the percentage of profitable customer accounts. The OSC is currently reviewing firms' compliance with the relevant reporting requirements.

The Australian Securities and Investments Commission reports that from December 2015, Australian firms that issue or deal in CFDs or margin FX are required to report to a trade repository (licensed or prescribed by the Australian Securities and Investments Commission) information such as: (i) the economic terms of the transaction; (ii) product, transaction and entity identifiers; (iii) information on whether the transaction is centrally cleared; and (iv) valuation and collateral information.

The Monetary Authority of Singapore is requiring firms that trade in OTC derivatives to report trades, using a phase-in approach. Currently, this requirement includes OTC derivatives that reference interest rates, credit and foreign exchange.

The Hong Kong SFC notes that licensed firms are required to report to the SFC details of their proprietary derivative positions (including CFDs and binary options) in their monthly financial returns, and that firms engaging in leveraged foreign exchange trading are also required to report certain information such as their foreign exchange positions in these same financial returns.

In Japan, licensed firms are required to report most of their OTC derivatives transactions (as defined in the Financial Instruments and Exchange Act) to the Japan FSA.

In Turkey investment firms are required to report all leveraged foreign exchange transactions, as well as margin statistics of such transactions, to the Istanbul Settlement and Custody Bank. It is planned to extend this requirement to CFDs.

In Switzerland, the Financial Market Infrastructure Act which came into force in the beginning of 2016 introduced specific requirements concerning derivatives trading, including a requirement to report derivatives transactions, including trades in the relevant products, to a trade repository, authorized by FINMA.

The French AMF notes that in France firms are required under French rules to report to the French AMF all trades on OTC derivatives with a single underlying asset which is listed on a regulated market, such as a CFD on a French equity.

In Germany forex contracts carried out on an exchange are currently required to be reported to the German BaFin.

In Hungary, licensed firms report to the Hungarian MNB on a monthly basis all open OTC leveraged trading positions (trades with leverage equal to or greater than 10:1), as well as all trading positions closed during the month.

In EU Member States, the European Market Infrastructure Regulation[59] requires reporting of all OTC derivatives to an approved or recognized trade repository. Furthermore, MiFIR[60] will require comprehensive reporting of OTC derivatives to national competent authorities, subject to equivalent data already being transmitted to a trade repository.

4) Other specific rules

The US CFTC specifically requires the relevant firms to implement internal rules and procedures designed to ensure fair and objectively established settlement prices for retail forex transactions.

The US NFA notes a specific requirement for its Forex Dealer Members to apply slippage settings uniformly regardless of the direction in which the market has moved since the time the customer submitted the order.

The Hong Kong SFC requires firms to set limits on the size of the leveraged forex position which each client may establish.

Rolling spot forex firms in Japan are required to agree and set a loss limit for their client transactions, and implement the necessary close-out transactions when the loss reaches the agreed limit. Regarding CFDs, the JSDA (Japan Securities and Dealers Association) has set "loss-cut" levels that vary with the time interval (within 1 minute/within 10 minutes) and the underlying (e.g. 2% for CFDs on stock indexes and an interval of 10 minutes). Regarding

[59] European Market Infrastructure Regulation, i.e. Regulation 648/2012 of the European Parliament and of the Council on OTC Derivatives, Central Counterparties and Trade Repositories.

[60] Regulation 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.

binary options, the FFAJ (Financial Futures Association of Japan) has issued guidelines which impose a minimum duration/maturity of two hours.

In Belgium, in addition to the prohibition on retail distribution of the relevant products (Section IV-1 above), certain distribution techniques have also been forbidden with respect not only to the relevant products but to all OTC derivatives that may be offered to consumers via an electronic trading system other than a MiFID trading venue (regulated market or multilateral trading facility). Such prohibited distribution techniques include the payment of compensation to clients who introduce new clients, the granting of cash bonuses that cannot be withdrawn at any time, the use of external call centers to market products, the use of credit cards to make payments to the firm, and the use of third-party providers of software or other services where such third party provider is remunerated on the basis of profits made by the firm or losses incurred by its clients.

e) *Regulation of copy trading, mirror trading and social trading*[61]

Several of the respondents note that no specific rules or regulatory framework apply to social/copy/mirror trading as such, and that firms offering such services must be appropriately authorized/registered, depending on the nature of the services provided.

The Ontario Securities Commission issued guidance in its 2013 annual report on auto-trading, mirror investing and trade copying services, finding in the two instances examined that the activity was “advisory” in nature and subject to registration.

The Australian Securities and Investments Commission considers copy/social trading will at times be a managed discretionary account service, depending on how the service is offered.

Several European respondents note that, according to advice from the European Securities and Markets Authority, social/copy trading is considered to be the provision either of investment advice or of portfolio management services, depending on whether the customer retains and uses discretion to act or not on the trading signals received from the firm, and that firms carrying out such activities should be authorized accordingly.

The German BaFin notes that depending on the design and precise arrangements, such services may be characterized as order transmission or portfolio management, in the latter case provided either by the operator of the trading platform or by the lead trader or “expert”.

While social/copy/mirror trading is currently not covered by regulation in Turkey, a new draft regulation by the Turkish CMB proposes the same approach as that taken in the EU.

f) Information on the investment performance of the relevant products

The majority of the respondents note that information on the investment performance of the relevant products is not publicly available in their jurisdiction.

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61 See Section III.9 for an explication of this type of service.

The US NFA requires Forex Dealer Members to disclose to prospective clients the number of active accounts trading through the firm and the proportion of them that are profitable. Firms typically disclose 70% of client accounts to be unprofitable on a quarterly basis, according to the NFA.

The Ontario Securities Commission notes that although such information is not publicly available, they understand that most retail investors in Ontario suffer significant losses when trading CFDs and leveraged forex products.

In Québec, as of June 2016, all qualified persons authorized to offer any of the relevant products are required to report to the regulator on an annual basis the percentage of all relevant client accounts that were profitable for their counterparties during the previous fiscal year. The same information must also be disclosed to the counterparties to the relevant transactions.

In Japan, the Financial Futures Association of Japan (FFJA) publishes on its website information on trading volumes, payments, accounts and clients' profit/loss ratio on binary options on a monthly basis. The FFAJ also publishes monthly trading volumes and positions on rolling spot forex contracts. The JSDA (Japan Securities and Dealers Association) publishes similar monthly statistics on CFDs.

The Turkish CMB requires investment firms to publish the profit/loss ratios of their customers who trade in leveraged forex products and CFDs on their websites.

While there is no obligation in France to publish such information, the French AMF notes their study assessing the performance of a large panel of retail clients investing in CFDs and rolling spot forex over a four-year period.[62] The study found that the overwhelming majority (89%) of retail investors in these products experienced losses over this period, with the average loss per client totalling €10,900. The study also found that investors who trade the most (whether measured by number of trades, average trade size or cumulative volume), lose the most, as do those who continue trading over an extended period, which tends to demonstrate the absence of a learning curve in such speculative trading.

The Spanish CNMV reports the results of a thematic review in 2014 of the most active CFD firms in Spain, showing that between 75% and 85% of clients suffered losses.

The Polish KNF notes data from their annual forex market survey. The latest survey found that 80% of active clients in Poland lost money on their investments in the leveraged forex market in 2014, for a total amount of losses exceeding PLN440mn (more than €100mn).

g) Possible and planned amendments to regulations

The US NFA notes that its amended rules including strengthened risk management standards and increased capital requirements are effective since 4 January 2016 (see Sections IV.2 and IV.4 above). Additionally, the NFA has required banks (since 2014) and other depositories (since 2015) holding FDM client funds to report the daily balance in those accounts to the NFA

[62] Study of investment performance of individuals trading in CFDs and forex in France, AMF. October 2014. See http://www.amf-france.org/technique/multimedia?docId=workspace%3A%2F%2FSpacesStore%2F9bf2caa8-1ce4-4832-85f4-4dffcace8644&famille=PIECE_JOINTE

which the NFA then compares and reconciles with the daily calculation of the FDM's liability to clients that the FDM is required to report to the NFA.

The Québec AMF and the Ontario Securities Commission are currently developing, together with the other members of the Canadian Securities Administrators, a national regulatory regime for derivatives dealers, advisers and other derivatives market participants.

The Australian Securities and Investments Commission reports that the Australian Government is currently considering the results of its public consultation in relation to the Government's proposed client money reforms. The reforms aim to improve protections for client money that is held by intermediaries in relation to derivatives. Under the current legislative and regulatory framework, it is possible for such funds to lose their status as client money and with it, the associated client protections provided under the law. In addition, the Australian Government has announced that it will consult on providing the Australian Securities and Investments Commission with financial product intervention powers which will enable it to modify, or if necessary, ban harmful financial products where there is a risk of significant consumer detriment.

The Monetary Authority of Singapore is proposing regulatory changes to enhance the framework for unlisted margined derivatives offered to retail customers in Singapore. The key proposals include increased minimum margin and base capital requirements and improved customer money controls for firms offering OTC leveraged products to retail customers. As mentioned above (Section I.3), the MAS has also issued a proposal for a new licensing regime on OTC derivatives that will cover a broader range of binary options of a financial nature.

The Hong Kong SFC is implementing a new licensing regime for firms engaging in OTC derivative products. As a result, firms dealing in or advising on a product that falls under the definition of OTC derivative product will require to be licensed unless they are exempted. The Hong Kong regulator is also consulting the public on certain proposed changes to the capital rules for licensed corporations dealing or trading in OTC derivatives.

The Turkish CMB notes a draft regulation involving major changes to leveraged transactions and OTC traded products, including a prohibition on bonuses.

The Swiss FINMA notes that in addition to the Financial Markets Infrastructure Act, which will implement obligations in the field of financial market infrastructure like the EMIR in the European Union and the Dodd-Frank Act in the United States, the Swiss are currently seeking to harmonise Swiss financial regulations with existing and upcoming EU regulations including MiFID II.

Respondents from Member States of the European Union state that MiFID is being recast as MiFID II and is due to come into effect in January 2018. MiFID II will introduce changes to the existing regulatory framework governing investment services and financial instruments including the relevant products, for example by enhancing the existing rules on disclosures, introducing new European-wide rules on product governance and attributing new powers to ESMA and the national competent authorities on product intervention. The German BaFin notes that the new product intervention powers could be used, for example, to regulate leverage or stop-loss mechanisms in relation to the relevant products.

The Hungarian MNB reports that it has required Hungarian investment firms, within the ICAAP regulatory framework based on the European CRD4/CRR framework, to increase their capital effective March 2016, to take into account the higher level of risk associated with the relevant products offered through white label platforms. The second pillar of the ICAP framework empowers the MNB to determine additional capital requirements for special risks, and the offering of the relevant products, especially under a white label business model, has consistently been considered to constitute an additional risk. The result of this new requirement is that the five relevant Hungarian firms had to increase their capital by nearly €2m in total.

In France, as mentioned in Section IV-1 above, the French AMF has proposed to ban electronic retail advertisements on some or all of the relevant products. Legislation is likely to be enacted before the end of 2016, and will require implementing measures including provisions to be adopted by the French AMF on the scope of the advertising ban in terms of products covered.

The Romanian FSA is considering issuing new provisions on risk warnings for the relevant products.

V. Investor complaints

Responses from a number of jurisdictions on the topic of investor complaints show that the activities of unauthorized/unregistered firms are a particular concern. These jurisdictions report that unlicensed firms are often involved in offering the relevant products (or operating scams related to these products), and the number of complaints related to them is clearly increasing in several jurisdictions.

With regard to authorized firms, the most common complaints across jurisdictions are product performance (investor losses incurred), order execution issues, clients not understanding the product or service provided (and its risks), difficulties in withdrawing funds, aggressive/misleading marketing, and price or trade manipulation. The table below shows the types of investor complaints mentioned by 3 or more IOSCO member jurisdictions in their survey responses, and the number of member jurisdictions (not the number of complaints registered) that stated in their responses that they have received such a type of complaint. Inclusion of a member jurisdiction in the table below does not necessarily indicate, however, that each issue is of major concern in the individual jurisdiction.

Subject of complaint	**Number of member jurisdiction respondents registering complaints (with 3 or more respondents)**
Unauthorized business activity	10
Authorized business activity	
Order execution issues (including requotes, forced liquidations and execution of stop losses)	10
Difficulties withdrawing funds	8
Product performance (e.g. losses incurred)	8
Price or trade manipulation	7
Aggressive sales techniques, misleading marketing	7
Clients not understanding the product or service provided	6
Inadequate information	5
Operational issues (e.g. with performance of IT platform)	4

Charges	3
Margin calls	3

Several jurisdictions provided interesting detail about investor complaints.

In the United States, the SEC has brought charges against a Cyprus-based firm for offering and selling binary options to US investors without first registering the offering as required and acting as unregistered broker when offering and selling the products, and the CFTC has taken enforcement action against firms marketing the relevant products in the United States that have failed to register with the CFTC. In addition, both the SEC and the CFTC have received numerous complaints of fraud associated with websites that offer the opportunity to buy binary options through web-based trading platforms and have taken enforcement action. The complaints received relate to illegal activity and fall mostly into the following three categories:

- Refusal to credit customer accounts or reimburse funds to customers (e.g. by ignoring customer emails and telephone calls);
- Identity theft (some complaints allege e.g. collection of customer credit card information, which may then be used by a third party to attempt to withdraw the funds);
- Manipulation of software to generate losing trades for customers (e.g. by extending the countdown to expiration until the customer's winning trade becomes a loss).

The US NFA mentions concerns that the vast majority of clients trading leveraged forex products have very little experience and low-income levels. The NFA reports receiving numerous complaints about Forex Dealer Members, although the number of complaints has dropped as the number of FDMs has decreased over the past few years. Recent complaints relate principally to trading platform issues and improper handling of accounts (e.g., margins and liquidations). The NFA also notes that it receives complaints from overseas clients since many FDMs have foreign affiliates (who are not allowed to do business with US customers) and it is not always clear to the customer which entity holds her/his account.

Both the Québec AMF and the Ontario Securities Commission indicate that complaints involving the relevant products are increasing in Canada. The OSC notes that 80% of the relevant firms added to the list of unregistered entities over the past two years have been soliciting business without any registration in any jurisdiction, while 16% were registered in a jurisdiction outside Ontario.

Although no compiled data are available in Brazil, the Brazilian CVM observes that complaints about the relevant products outnumber complaints about Ponzi schemes.

The Australian Securities and Investments Commission has received a number of complaints about retail OTC derivatives products. The data is not publicly available.

The Japan FSA reports that the reasons for complaints in this market sector include unrequested solicitations, lack of explanation about risks, inappropriate forex rates and unregistered firms selling leveraged forex products.

Between January 2014 and September 2015, the Monetary Authority of Singapore received 96 complaints from retail investors in relation to the relevant products. The most common reasons for such complaints are unregulated entities conducting regulated activities, disputes over order execution and pricing policies, contractual matters and issues relating to the withdrawal of customer funds.

The Turkish CMB indicates that customer complaints about leveraged forex transactions are increasing and relate to order execution, bid/ask spreads, stop-losses and operational issues related to the trading platforms.

The French AMF provided the total number of complaints received through its investor helpline, broken down by type of relevant product (rolling-spot forex, CFDs, binary options), and also split between complaints about regulated and unregulated firms. The French AMF notes that 74% of all investor complaints received in 2014 related to the relevant products, and that this figure reached 88% in the first half of 2015. Respectively 64% and 78% of investor complaints over these two periods concern firms that are unlicensed in the European Union. In terms of absolute numbers, the French AMF reports having received 2053 complaints (alleging client detriment) between January 2014 and June 2015 referring to unlicensed firms offering the relevant products. In addition, the AMF received 177 reports during the first half of 2015 of alleged illegal or non-compliant behaviour (without any client detriment alleged) by unlicensed firms. The comparable data with respect to licensed firms (licensed by the competent authority in France or in another EU Member State) are 291 and 23, respectively.

The Belgian FSMA reports receiving 244 complaints or questions during 2015 (129 in the first half of 2016) about online offerings of forex products and binary options, the majority of which involved firms lacking any authorization in the European Union. The complaints relate *inter alia* to frequent and aggressive cold calling, inability to withdraw client money or to contact the firm, opaque bonus systems, trades executed without client instructions, debiting of the client's credit card without client approval, malfunctioning of the trading platform, and rapid accumulation of losses. Many of these complaints relate to unlicensed firms located outside the European Union in countries where it is prohibited to offer the relevant products to domestic investors, but not to foreign investors, and where there is no licensing requirement as long as all business is done with foreign clients.

Between September 2012 and September 2014, the Dutch AFM received 65 investor complaints regarding illegal activities by unauthorized providers of binary options or CFDs. Most involved unauthorized firms offering binary options, as well as aggressive marketing, inadequate client information and difficulty withdrawing funds in particular.

The Spanish CNMV has received 46 complaints in writing about unauthorized providers of the relevant products.

The German BaFin notes that is has received approximately 100 complaints to date regarding firms licensed in another European Union Member State and providing cross-border services in the relevant products into Germany using the passport.

The UK FCA estimates that it receives approximately 100 reports each year about unauthorized entities offering CFDs in the United Kingdom. In the year ending 31 March 2015, the UK Financial Ombudsman Service took on 295 complaints cases on CFDs (including 98 on spread betting) involving authorized firms. Few of the complaints were upheld after assessment; most of the successful complaints related to erroneous or misleading information, or firms adjusting the prices of trades retrospectively.

VI. Supervisory concerns, challenges and responses

a) *Concerns mentioned by the reporting jurisdictions*

In addition to concerns that reflect the investor complaints mentioned in the preceding Section, many respondents consider that the relevant products are not suitable for most retail investors who are unfamiliar with their features and unable either to assess risks or withstand losses. In addition, the fact that the offer and sale of these products is predominantly internet-based and often cross-border, making it difficult for national authorities to supervise, and also a highly profitable activity, appears to attract (at least in some jurisdictions) not only poor practice and non-compliant behavior by regulated firms, but also fraud and other illegal activity, as attested to by the large and growing number of unregulated firms active in many jurisdictions, many of which firms are located in countries requiring no license provided that domestic investors are not targeted.

In this context, the majority of reporting jurisdictions noted the following issues: frequently poor internal governance and compliance (for authorized/registered firms), conflicted business models (in particular as regards the dealing-desk model and remuneration of sales staff and third-party service providers), aggressive marketing and sales practices (such as misleading advertising and unrequested solicitations), and difficulties in supervision and enforcement because of the web-based cross-border nature of the business.[63]

The French AMF notes that it considers rolling spot forex contracts and CFDs to be the most dangerous products because the investor can lose more than the initial stake. The French AMF also notes, however, that it is receiving more and more complaints about binary options which seem to result from the numerous advertisements targeting the general public and the highly addictive nature of these usually very short-term products.[64] It recalls its research[65] showing that the vast majority of investors in leveraged forex contracts and CFDs lose money, even though the four regulated firms with a physical presence in France that were targeted by the study implement practices that are superior to those employed by many other firms. The French AMF also highlights the huge concern generated by the proliferation of unregulated firms over the past few years.

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63 Only two respondents (Hong Kong, Turkey) stated that they are not aware of any significant issues, whether general or specific, at the moment with the relevant products and the firms offering them. However, binary options are prohibited in Turkey, and neither binary options nor CFDs are currently offered to retail investors in Hong Kong.

64 The French AMF notes that binary options may be considered to be addictive due to their characteristics: they are very simple products, designed to appeal to unsophisticated consumers; they require little up-front investment; they require no knowledge of the underlying market; they require very little decision-making; they have typically very short timeframes; and they will not result in a loss greater than the initial investment. In addition, binary options are often aggressively targeted at the general public through advertisements, which is not unlike sales practices of casinos or the on-line gambling sector, although leveraged forex products and CFDs may be marketed in the same way.

65 See Section IV.6 above.

The Polish KNF notes that its most recent research into the performance of leveraged forex products showed that over 80% of Polish investors in these products lost money in 2014.[66] In addition, the KNF has observed the increasing interest of firms to offer discretionary management of portfolios of OTC forex derivatives to retail investors, which typically leads to such clients losing all or most of their money while generating kickbacks from firms executing orders in such instruments to the firms that manage the portfolios.

The Belgian FSMA considers the relevant products to have nothing in common with traditional investments and to be unfit for distribution to consumers, unless they are purchased on an authorized trading platform such as a regulated market. Furthermore, the firm is often in an inherent conflict of interest when its profit equals the client's loss; the integrity of pricing may also be doubtful in many cases. Such structural deficiencies, according to the FSMA, mean that the usual disclosure and conduct of business rules are incapable of making such business fair and transparent for retail investors.

The UK FCA notes concerns in respect of business models adopted by smaller relevant firms, in particular in the forex sector that pose risks to consumers and challenge the effectiveness of the current regulatory framework. Indeed, new firms can enter the market easily, purchasing off-the-shelf forex trading platforms and marketing themselves across the European Union and beyond with minimal capital expenditure and very low fixed overheads; worse, in some instances a firm will initially meet the threshold conditions at point of entry for authorization and then roll back much of its physical presence so as to rely on a sister or parent firm in another jurisdiction for its infrastructure and control function personnel, so that in the end the FCA authorization is merely a marketing tool. The emergence over the last few years of many more specialized firms creates a risk of a "race to the bottom" in standards, especially based on leverage offered and the type of client targeted, which may lead to the better firms taking greater regulatory and market risk to compete with the less sustainable, high-risk firms.

Regarding marketing communications, the UK FCA points out that although a significant improvement in the practices of the relevant firms has been observed, a continuing area of concern is the lack of prominence granted to "capital at risk" warnings, and the fact that the impact of such warnings is often diminished by other misleading statements. UK firms also continue to struggle with the requirement that each financial promotion must be compliant on a stand-alone basis including web-based and social media promotions, despite published guidance and thematic work by the FCA in this area.

Particular concerns are raised by several jurisdictions in terms of identifying the actual firm behind the marketing communication or the website that is soliciting the potential client or with which the client is doing business. Supervision indeed shows that some entities offering the relevant products frequently use different trading names or brands and operate through different internet domains whose names differ from the entity's corporate name. Some jurisdictions expressed concerns about the difficulty in determining whether the firm is authorized or not (and by whom) and whether the firm is operating on an agency or principal basis.

With regard to account opening procedures including client classification (retail/inexperienced or professional/sophisticated) and know-your-customer processes, the vast majority of

[66] See Section IV.6 above.

respondents consider that in many cases the related rules are not observed or are observed in an insufficient way. Very often some of the relevant firms ask their clients to self-assess their expertise or self-certify that they understand the risks. The Québec AMF observes that unregulated firms appear to ask for little information other than the credit card numbers to open an account. The UK FCA notes common anti-money laundering deficiencies in the sector, as the systems used by firms are more suited to mass onboarding of low-risk customers (e.g., electronic ID) and are typically incapable of conducting enhanced due diligence for high-risk customer profiles.

Alongside the matter concerning account opening procedures, some jurisdictions report significant regulatory concerns in respect of account closing procedures, including the withdrawal of client money. The trend observed in many reporting jurisdictions is that closing an account and withdrawing money is much more complicated, lengthy and difficult than opening an account and starting to trade. Almost one-third of respondents point out that frequently, closing an account seems next to impossible. Some respondents note that this issue is often linked to the firm's bonus program requiring that a high volume trading threshold be met. The Québec AMF notes that unregistered firms request numerous sensitive ID items to close an account, while requesting none to open an account. The UK FCA is aware of clients who are re-directed to trade through offshore intragroup principals and have difficulty in closing their accounts and recovering their money. [67]

Another critical issue concerning the functioning of OTC leveraged products markets, mentioned by approximately one-half of respondents, appears to be the quality of order execution, in particular the methodology for opening and closing positions and the way in which some firms may themselves take the initiative to close client positions (typically described in the terms and conditions of the client agreement). Several respondents note that the relevant firms have significant discretion in setting the opening and closing prices, and that these prices may differ from those of the underlying markets. The UK FCA mentions price "slippage" that may be aggravated by the use of software plug-ins (e.g., MetaTrader4) that amplify the time lag between order reception and order execution, and notes that during the highly stressed EUR/CHF market in January 2015 some firms may have applied so-called "scalping clauses" on winning trades and voided trades to avoid losses. The Hungarian MNB notes that in volatile markets firms will often refuse to execute at the price the client has clicked on, and then offer a different – usually worse – price ("requote"). The US NFA has taken multiple disciplinary actions against forex dealer members in this area.

The difficulty that clients experience in understanding the language of terms and conditions that is less familiar to them than the language of the marketing materials used to solicit them, indeed in understanding terms and conditions written in their native language, is considered by the majority of respondents as raising supervisory concerns because of the length and complexity of terms and conditions as well as the unclear, ambiguous and potentially unfair nature of such contractual stipulations. The Québec AMF notes that the terms and conditions of some relevant platforms appear to give vast powers to the platform.

The lack of resiliency of firms or their trading platform is considered by several jurisdictions to be a significant emerging issue on the relevant markets. The Belgian FSMA points out that

[67] The US NFA notes that FDMs do not often close customer accounts; they close customer positions, and the customer may or may not close the account when it becomes inactive due to the lack of sufficient funds to continue trading.

some firms impose specific contractual clauses concerning systems malfunctions whereby the firm declines any liability for losses due to the failure of the trading platforms. The UK FCA points out that larger, leading investment firms will invest in business continuity with recovery sites hosting duplicate servers that are regularly tested, while smaller firms are likely to hold less capital to protect against operational failures, implement less sophisticated internal risk management controls and have fewer resources to respond to unforeseen events.

The French AMF recalls that the Swiss franc incident in January 2015 demonstrated that some firms are quite vulnerable to shocks, due to their leveraged exposures. The Polish KNF stresses the role of outsourcing that could be crucial in terms of resiliency.

b) *Issues and challenges with cross-border activities*

According to the survey responses of the reporting jurisdictions, most sales of CFDs, leveraged forex products and binary options in the Netherlands, Belgium, France,[68] Spain, Switzerland, Poland and Hungary are conducted through cross-border activities (either licensed or not); in Germany such sales are a substantial proportion although less than half of the transactions undertaken by German retail investors according to the German BaFin. Within the European Union such activities are legal, provided the firm is licensed by the home country authority and registered under the MiFID passporting system with the host country authorities. In most non-EU jurisdictions however, e.g. in the United States, Australia, Brazil, Mexico, Japan and Canada as well as in most EU jurisdictions with respect to firms based in third countries (outside the EU), the home country license is insufficient. In such cases, the host country requires either a locally regulated and supervised firm or local registration and supervision of a foreign-based firm in order to allow financial products or services to be offered to their citizens or residents, in particular to domestic retail investors.

The US CFTC reports in this regard that it has recently launched the Registration Deficient List ("RED list") of identified foreign firms believed to be illegally soliciting US customers to trade in leveraged forex products or binary options. Such illegal offerings are the chief concern of the CFTC in this retail market segment.

The French AMF emphasizes that cross-border activities, especially by unregulated firms based outside the European Union and operating illegally, are the main source of issues for this market segment in France. This is abundantly supported by the highly disproportionate number of investor complaints about unregistered firms operating in France (see Section V above).

The Belgian FSMA shares the view of the French AMF and highlights the illegal and highly detrimental penetration into European retail markets of firms acting with no licensing or supervision in their home jurisdiction, where offers and sales of the relevant products are prohibited domestically and escape all regulation where only non-resident investors are targeted.

[68] The French AMF estimates that although most firms offering the relevant products to French retail investors are non-French, approximately half of the sales of these products to French retail investors are done either by French legal entities or by French branches of entities incorporated in another Member State of the European Union.

The UK FCA notes that firms operating in multiple jurisdictions often consolidate market risk exposure to one trading book that is run around the clock. Subsidiaries trade with the client and execute back-to-back hedges with the head office, which amounts to the outsourcing of pricing and is consequently relevant not only from a risk management perspective but also for compliance with the firm's best execution obligations. Such centralization, including the development and maintenance of the internet platform and the provision of customer services, which is not uncommon in the relevant market segment, raises particular concerns where the firm is headquartered in a "light touch" or "no touch" jurisdiction and is providing significant outsourced services to UK-based subsidiaries. The US CFTC and NFA share this assessment of the particular risks affecting firms that operate in several jurisdictions.

The Japan FSA observes in its survey response that its minimum margin requirements proved helpful in preventing additional losses to firms in Japan as a result of the Swiss franc crisis in January 2015, including where such firms had a parent company in a different jurisdiction requiring no minimum margin requirements.

The German BaFin points out that the distribution of responsibilities between competent authorities of the home and host Member States in Europe makes it challenging to ensure a holistic supervisory approach because of, *inter alia*, language barriers, since the assessment of marketing information requires the monitoring of websites, which typically employ numerous languages.

Although overseas unlicensed firms offer the relevant products to investors in Singapore, the Monetary Authority of Singapore considers that the extent of the issue is not significant at the present time as the number of investors having suffered actual investment losses is not high. In addition, MAS publishes information on these unlicensed firms in its Investor Alert List on its website, so as to alert the general public to the risks of dealing with these entities.

c) Supervisory responses in the reporting jurisdictions

The vast majority of reporting competent authorities have taken action in the relevant market sector over the past few years. The reported actions taken are listed below country by country.

A large number of thematic reviews (identifying various weaknesses and malpractices) have been undertaken by IOSCO members in this area, and many risk warnings have been issued. Another common approach is devoting resources to the financial education of retail investors. In addition, some regulators have also issued recommendations or sent out letters to the relevant firms highlighting the identified deficiencies. Last but not least, there are also examples of bilateral and multilateral discussions in progress.

United States

- The US SEC's Office of Investor Education and Advocacy issued an investor bulletin cautioning individual investors who may be considering participating in the OTC leveraged forex markets in 2011.[69] The bulletin highlights a number of risks that investors face in connection with forex trading, including risks that arise

[69] Investor Bulletin: *Foreign Currency Exchange (Forex) Trading For Individual Investors*, US Securities and Exchange Commission, July 2011. *See* http://www.sec.gov/investor/alerts/forextrading.pdf

specifically in off-exchange leveraged forex trading, such as the lack of both a central marketplace (no public pricing) and central clearing (no protection against counterparty risk).

- The US CFTC has issued Fraud Advisories for leveraged forex trading, informing potential customers of the volatility and risk of such trading including signs of potentially fraudulent sales pitches and red flags to help identify scams. To help investors identify and protect themselves against financial fraud, the CFTC launched SmartCheck[70]) as a database to not only run background checks on financial entities that may have perpetrated fraud, but also to report suspicious activity to the CFTC.
- The CFTC has also recently launched the Registration Deficient List or "RED list" of foreign firms believed to be illegally soliciting US customers in the relevant market sector.
- The CFTC's Office of Consumer Outreach and the SEC's Office of Investor Education and Advocacy have issued an investor alert to warn about fraudulent schemes involving binary options and their trading platforms.[71] The alert addresses the risky nature of binary options and provides details of common schemes, including refusing to credit customer accounts, denying fund reimbursement, identity theft, and manipulation of software to generate losing trades. The alert further clarifies that it is illegal for entities to solicit, accept, or enter into commodity options transactions (including forex) unless those transactions are conducted on a designated contract market, an exempt board of trade, or a bona fide foreign board of trade, or are conducted with US customers who have a net worth that exceeds US$5m (i.e. non-retail).
- The US NFA has adopted NFA Compliance Rule 2-48 in order to be able to monitor trade data daily and identify manipulative trading practices in the OTC leveraged forex sector. The NFA also adopted a ban on providers allowing customers to fund accounts with a credit card (since such funds are not generally "risk capital"). Following market turmoil in January 2015 when the Swiss National Bank abandoned its cap on the Swiss franc's exchange rate against the euro, the NFA adopted rules requiring forex dealer members (FDMs) to implement a risk management program, increasing capital requirements to take into account the risk associated with leveraged forex transactions between an FDM and eligible contract participants (ECPs), especially those acting as foreign dealers and the firm's affiliates, and requiring the collection of security deposits from such ECPs.
- The NFA has produced a brochure entitled "Trading Forex – What Investors Need to Know" that it distributes frequently.

<u>Québec and Ontario</u>

- The Québec AMF has issued individual and general warnings, maintaining a "blacklist" of unregistered platforms that have been uncovered or brought to its attention and that offer the relevant products. The regulator has proposed to firms acting illegally to refrain from adding their names to the blacklist provided they take certain actions including not doing business in Québec, blocking access to their

[70] CFTC Smartcheck *See* http://smartcheck.cftc.gov/

[71] Investor Alert: Binary options and Fraud, Securities and Exchange Commission, Pub. No. 148 (6/13). *See* https://www.sec.gov/investor/alerts/ia_binary.pdf

website by users with an IP address from Québec, stating on their website that the service is not available to Québec residents and returning all funds held on behalf of Québec investors. These actions have enabled the regulator to get money back for some investors and to physically block access to certain platforms for Québec residents. This however has addressed only an infinitesimal part of the problem according to the regulator. The Québec AMF reports that new platforms seem to be popping up every day.

- In Québec qualified persons authorized to offer any of the relevant products are now required to disclose to the regulator and all relevant investors the percentage of all relevant client accounts that were profitable during the previous fiscal year.[72]
- The Ontario Securities Commission has issued warning letters (resulting in 2 unregistered entities seeking registration and becoming members of IIROC), published an Investor Warning List of unregistered firms and has also taken enforcement action against certain unregistered entities.

Brazil

- The Brazilian CVM has issued investor warnings and cease-and-desist orders, and published educational material on the relevant products.

Australia

- An Australian Securities and Investments Commission review of the retail OTC derivatives industry in Australia highlighted a high level of non-compliance. The Australian Securities and Investments Commission has increased the level of scrutiny of license applications and as a result, no new licenses have been granted in the relevant industry for over two years. The Australian Securities and Investments Commission considers that compliance has greatly improved as a result of targeted supervisory activities. Several media releases announcing actions such as suspensions and cancellations of licenses have been published in recent years.
- The Australian Securities and Investments Commission has also been sharing intelligence in this market sector and working with international regulators as well as with other Australian regulatory agencies who deal with matters such as fraud, tax avoidance, money laundering and other criminal activity.
- The Australian Securities and Investments Commission has issued a number of significant consumer warnings, media releases and educational materials in this area.

Singapore

- To address the risks arising from retail investors trading in OTC leveraged derivatives and to better protect investors, the Monetary Authority of Singapore has proposed, inter alia, to increase minimum margin for CFDs on forex and to broaden the type of firms subject to margin requirements.
- The Monetary Authority of Singapore assesses feedback and complaints about entities found to be conducting regulated activities without the requisite license,

[72] By virtue of an amendment to the Québec Derivatives Regulation. See Section IV.6 above.

and takes appropriate action including publication of the names and details of the entities on the Investor Alert List.

Hong Kong

- The Hong Kong SFC sees the growing importance of investor education in this dynamic financial market and has established an affiliated company, the Investor Education Center (IEC), as a dedicated organization to cater for the financial education needs of Hong Kong people across the entire financial sector. The IEC has a dedicated section on its webpage that explains the features, risks and fallacies of leveraged forex trading.[73] It also issues articles on leveraged forex trading from time to time to provide education or alerts to investors.

Japan

- When the foreign exchange business was liberalized in Japan, many firms started dealing in forex, including leveraged forex. The Japan FSA reports that as the market expanded, the number of incidents and complaints increased. The complaints related mainly to persistent solicitation, conclusive judgment (sales staff implying e.g. that the customer will make a profit on the trade), lack of explanation about the risks and unauthorized transactions. To remedy this situation, it was decided that leveraged forex products and firms offering leveraged forex products would be regulated and supervised by the Japan FSA. The Japan FSA accordingly adopted leverage limits on forex products that were implemented in 2010 and 2011, using a phase-in approach.
- Also, the Japan FSA adopted leverage limits on CFDs that were implemented in 2011.

Turkey

- The Turkish CMB has proposed a draft regulation that would prohibit bonuses.
- The CMB has issued a warning to investors that all offers of binary options are illegal, since this activity has been prohibited in Turkey.

Netherlands

- The Dutch AFM has conducted two thematic reviews relating to the relevant products:
    - on 20 CFD providers in 2014; the final report was published in 2015;
    - on binary options; the review started in 2015. [74]
- The Dutch AFM recently refused to grant a financial license to a provider of binary options with the argument that the products are gambling contracts, but lost the case in the Dutch Court.

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73 The Investor Education Centre, Hong Kong. Seehttp://www.thechinfamily.hk/web/en/financial-products/investment/leveraged-forex/trading.html

74 In 2013 the Dutch AFM also undertook a thematic review of leveraged knock-out products offered to retail clients, which are somewhat comparable products although outside the scope of the present report.

- The Dutch AFM conducted an investigation into providers of rolling spot forex that were avoiding supervision by claiming they only offered spot forex (which is not subject to authorization).

Spain

- The Spanish CNMV conducted a thematic review in 2014 of the three most active CFD firms (approximately 90% of the volume traded in CFDs by Spanish investors). The results showed that between 75% and 85% of clients suffered losses, and that client rotation was high, one-fourth remaining clients for less than two months.
- Supervisory action carried out in 2013 by the CNMV identified weaknesses related to CFD markets, including the lack of client information with respect to the risks associated with CFDs (leverage and the possibility of losing more than the invested capital), and the fact that these products are not suitable for all investors. The CNMV sent follow-up letters to the relevant firms reporting these weaknesses and asking them to adopt corrective measures, and subsequently checked implementation of these measures.

United Kingdom

- In 2010, the UK FCA undertook a thematic review of CFD firms' compliance with the client money rules and identified a number of weaknesses in the sector.
- In 2014, the FCA undertook a thematic review on best execution that identified specific sector risks in the CFD space:
  - Dealing with price slippage: Firms should not seek to benefit by passing on adverse price movements to clients. The FCA took enforcement action against one firm for asymmetric price slippage, fining the firm £4m and requiring it to pay client redress of £6m.
  - Information on reference prices and spreads: Firms must price their transactions in OTC markets transparently, based on benchmarks or other publicly available pricing data to which a mark-up can then be applied, in order to demonstrate that best execution has been given.
  - Application of the best execution factors: Firms must be able to explain how they apply and weigh the different MiFID best execution factors in practice.
  - Use of carve outs: Firms must not attempt to limit the scope of best execution obligations in their dealings with clients through the use of carve outs or disclaimers.
- The FCA published a Dear CEO letter in February 2016 to all CFD providers following a thematic review of 9 CFD firms' procedures for taking on new clients.[75] The findings of the review included:

  - Many firms in the sample insufficiently test the knowledge and experience of potential new clients. Firms with the poorest practices do not assess appropriateness at all and instead ask the client to self-certify that she/he understands the risks.

[75] http://fca.org.uk/your-fca/documents/dear-ceo-letters/dear-ceo-letter-cfd

  - Some firms include additional elements in the assessment of appropriateness such as the client's age, income level and the proportion of assets invested, which has the effect of diluting the importance of the client's knowledge and experience.
  - Many firms lack a process to assess whether clients who fail the appropriateness test, but who nonetheless wish to trade CFDs, should be allowed to proceed with CFD transactions.

- Further actions: more supervisory attention devoted to firms' regulatory capital, risk warnings and terms and conditions as well as new applications for authorization in the sector; 3 cancelations of authorizations in the sector in 2014-2015; consumer education; initiative to improve intelligence sharing across the FCA; visits to 24 CFD firms following the Swiss franc crisis (with a focus on risk management and the protection of client assets); bilateral discussions with the Australia Securities and Investments Commission and CySec (Cyprus regulatory authority).
- More generally, the FCA continues to take a robust approach to the relevant products, in line with its risk-based approach to authorizations and supervision. The FCA mentions its close involvement with the supervisory convergence work currently being undertaken by ESMA (see below).

France

- At the domestic level, the French AMF regularly publishes an updated "black list" of unauthorized firms offering the relevant products (more than 250 firms and websites), and regularly publishes warnings about the dangers of becoming a client of such unlicensed entities.
- An original communication campaign using fake advertisements was launched in 2014 on the back of research showing that the vast majority of clients lose money in these products.[76]
- Cooperation of the French AMF with the French self-regulatory body for advertising ARPP was stepped up with a view to define a new ARPP framework for the advertisement of financial products and services.
- Legal action was taken against several unregulated firms, leading to the closure of 4 websites.
- Two AMF enforcement actions against regulated firms succeeded, one involving non-compliant information provided to clients and the other negligence of a firm that should have known that the third parties transmitting orders to the firm were providing automated portfolio management in rolling spot forex contracts without a license.
- Legislation is expected to be adopted in France prohibiting retail electronic advertisements for some or all of the relevant products, as mentioned previously (see Section IV.1).
- A mystery shopping exercise undertaken in 2014 on retail leveraged forex contracts and binary options sold in France revealed that many firms i) required no ID to open an account; ii) refused to open an account without details of the client's credit/debit card; iii) asked very few and very basic questions about the client's profile; iv) provided very little information about risks; v) persistently encouraged clients to

[76] See Section IV.6 above.

invest more, despite the build-up of losses, and vi) refused to return deposited monies to clients in a reasonable time (very seldom in less than two months).

- On 29 July 2016 the AMF announced that it had decided, on the basis of Article 62 of MiFID, to suspend temporarily the passport rights of a Cyprus-based firm that had seriously and persistently failed to comply with certain MiFID requirements.
- Since the unauthorized provision of investment services in France is a criminal offense and enforcement is a matter for the criminal law authorities, the AMF forwards information on such illegal activity to the French public prospector. It is public knowledge that a number of criminal investigations and procedures in this area are underway.
- At the European level, the French AMF also noted ESMA's recent work in this area (see below under "EU-level initiatives").
- The French AMF stresses in its survey response that a purely national approach is totally incapable of resolving the many issues raised by firms operating in this market segment.

Germany

- The German BaFin has intensified supervision of the relevant firms in relation to topics such as marketing communications, appropriateness tests and best execution.
- Following the spike in the CHF/EUR rate in January 2015, BaFin arranged meetings with the largest relevant firms.

Belgium

- The Belgian FSMA has issued an increasing number of warnings about illegal offers of investment services (7 published in 2013, 37 in 2014, and over 70 in first nine months of 2015).
- The FSMA maintains a non-exhaustive list of entities offering financial services without a proper license containing currently 267 firms, of which 188 deal in either binary options or leveraged forex contracts.
- The FSMA has raised awareness among the relevant firms about Belgian regulatory requirements, especially the scope of the prospectus legislation, by publishing a communication. One investment firm has accepted a settlement for non-compliance with the prospectus rules.
- The FSMA has reviewed compliance of the duty of care (rules of conduct) in the context of the relevant products for firms under the FSMA's competence.
- On 26 May 2016, the Belgian FSMA issued a regulation prohibiting the distribution to consumers of any of the relevant products via an electronic trading system other than a regulated market or an authorized multilateral trading facility; this prohibition took effect on 18 August 2016. In addition, the same regulation also prohibits certain distribution techniques with respect not only to the relevant products but to all OTC derivatives that may be offered to consumers via such an electronic trading system. The prohibited distribution techniques include the payment of compensation to clients who introduce new clients, the granting of cash bonuses that cannot be withdrawn at any time, the use of external call centers to market products, the use of credit cards to make payments to the firm, and the use of third-party providers of software or other services where such third party

provider is remunerated on the basis of profits made by the firm or losses incurred by its clients.

Poland

- The Polish KNF published guidance in 2013 on conduct of business in the sector of leveraged forex products.
- The Polish Parliament legislated in 2015 to cap maximum leverage at 100:1 for rolling spot forex products and CFDs.
- The KNF informed all European Union supervisory authorities about the new maximum leverage rules that apply to all firms when providing investment services in Poland.
- The KNF has published investor warnings on its website with respect to OTC derivatives, in particular leveraged forex products.
- The KNF has adopted and published "Guidelines concerning provision of brokerage services on the OTC derivatives market" in May 2016. The Guidelines are divided into 4 Sections relating to the following aspects of provision of services to retail clients on the OTC derivatives market: role of the investment firm's governing bodies, acquiring clients and concluding contracts with clients, selected issues pertaining to contracts with clients, managing portfolios which include one or more OTC derivatives. All firms offering OTC derivatives to retail clients are obliged to implement the Guidelines no later than 30 September 2016.
- The KNF has conducted several surveys establishing the extent of losses incurred by Polish investors in leveraged forex products.
- The KNF has carried out on-site inspections at the majority of relevant domestic firms and at all Polish branches of foreign firms active in the retail OTC leveraged product sector.
- The KNF has withdrawn two licenses for investment firms operating in the retail OTC leveraged forex products market.

Romania

- The Romanian FSA has identified unauthorized activities in the relevant products.
- The majority of firms in this sector are not established in Romania, providing investment services and activities related to rolling spot forex, CFDs or binary options under the MiFID passport, using most of the time introducing broker or white label agreements. Moreover, the majority of the marketing arrangements concluded by the above mentioned firms have been with unauthorized Romanian firms, the so-called “call center” firms.
- The Romanian FSA took the initiative to regulate this type of cross-border agreements, by issuing a Decision in 2011 with regard to the marketing activities of investment firms from other Member States.
- Most of the unauthorized firms were reported by the Romanian FSA to the Judicial Competent Authority in Romania, which initiated criminal investigations in this respect.
- Also, the Romanian FSA has published investor warnings on its website with regard to unauthorized activity provided by relevant firms on the Romanian territory.

Hungary

- The Hungarian MNB has issued recommendations for the purpose of improving the provision of information to retail clients on risks and MiFID tests (suitability, appropriateness) and ensuring that investment firms act honestly, fairly and professionally in accordance with the best interests of clients.
- The MNB issued a recommendation in 2013 seeking to improve disclosure to clients about the incentives of white label partners (very common in Hungary) and the different trading/pricing models used in the relevant market sector.
- The MNB has required the relevant Hungarian investment firms to increase their capital effective March 2016, to take into account the higher level of risk associated with the relevant products offered through white label platforms.[77]
- Many of the cases of unauthorized activity concern rolling spot forex, CFDs or binary options offered through cross-border activities or tied agents. The MNB considers that client protection rules are violated by the activities of apparent tied agents but in reality of non-supervised activities (under cover of introducing broker contracts) which are not compatible with MiFID.

EU-level initiatives:

- An ESMA CFD Task Force was created in July 2015 that focuses on the supervision of the relevant firms and is developing guidance based on discussion of good and poor practices in areas such as implementation of the appropriateness test, clear and not misleading client information, conflicts of interest management, firm authorization processes and passporting.
- This taskforce has since published a range of Q&A material to promote more convergent supervisory approaches by the different national competent authorizes;[78]
- ESMA also re-issued an investor warning on 25 July 2016 about CFDs, binary options, and other speculative products, which emphasized that these products are inherently risky, complex and speculative, that they are often marketed and sold in an aggressive way, and are being offered by unauthorized and unregulated entities. This warning also included details about recent enforcement action taken by the Cypriot regulator, CySec, following separate work at ESMA seeking to address specific consumer protection concerns with a number of firms based in Cyprus.[79]

d) Regulatory and supervisory approaches to address the concerns

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[77] See Section IV-7 for further details.

[78] A first set of ESMA Q&A's in relation to the provision of CFDs and other speculative products to retail investors under MiFID was published on ESMA's website in April 2016. Updated versions were published in June, July and October 2016. The current version can be found here: https://www.esma.europa.eu/press-news/esma-news/esma-publishes-updated-qa-cfds-and-other-speculative-products-1.mifid.pdf.

[79] ESMA, *Warnings about CFDs, binary options and other speculative products*, 25 July 2016. *See*: https://www.esma.europa.eu/sites/default/files/library/2016-1166_warning_on_cfds_binary_options_and_other_speculative_products_0.pdf

Certain reporting jurisdictions put forward a variety of approaches and standards that they deem capable of contributing to mitigating the concerns they signal in their answers to the IOSCO survey.

A small number of reporting jurisdictions have severely restricted or in some cases banned the sale of some of the relevant products to retail investors. In all reporting jurisdictions where such retail sales are allowed, only authorized or registered firms can legally make such sales to the general public, or such authorisation/registration is expected to become a requirement in the near future.

In addition to this authorisation/registration requirement that entails the application of varying prudential and business conduct requirements to the relevant firms, various reporting jurisdictions have mentioned *inter alia* the following approaches and standards that they consider should apply to the three families of relevant products and the firms that offer and sell them to retail investors:

- Adequate capital and risk management;
- Minimum margin requirements, i.e. a cap on leverage offered;
- Robust management of conflicts of interest;
- Integrity of pricing methodology, leading to objective pricing practices;
- Fair, clear and not misleading promotional material and marketing practices;
- Disclosure requirements including clear risk warnings and client profit/loss ratios;
- Appropriate client segmentation to avoid misselling.

Several jurisdictions highlight the importance of investor education and public warnings to ensure that investors are better informed about risks, including illegal or fraudulent schemes.

Some respondents also note that regulators need to intensify supervision in this market segment, and enhance international cooperation. Indeed, by acting either individually or collectively as circumstances warrant, IOSCO members (together with national police forces where appropriate) may be able to shut down illegal sites and limit their ability to illegally solicit clients, as well as require internet service providers to block IP addresses of firms operating illegally and payment service providers to refuse to do business with such firms.

Conclusion

This Report, based on a survey of Committee 3 members, identifies a number of issues and concerns regarding the marketing and sale of certain OTC leveraged products, mostly by specialized firms, to retail investors in IOSCO member jurisdictions.

This particular market segment is a significant phenomenon in a number of markets, and concerns appear to be growing in a number of jurisdictions. The concerns, and regulatory responses to them, vary depending on the particular relevant products, firms and jurisdictions involved.

This Report seeks to comprehensively describe certain concerns with practices by regulated firms, the presence of numerous unregulated firms that operate illegally in several jurisdictions, and significant investor complaints that in many jurisdictions are primarily linked to these unauthorized entities.

Given the concerns identified in this report and the significantly cross-border dimension of this on-line retail market, IOSCO will continue to take an interest in this important area and consider possible future courses of action with a view to enhancing investor protection.

Annex

List of respondents to the survey

Australia: Australian Securities and Investments Commission (ASIC)
Belgium: Financial Services and Markets Authority (FSMA)
Brazil: Comissão de Valores Mobiliários (CVM)
Canada: The Ontario Securities Commission (OSC) and the Québec Autorité des marchés financiers (Québec AMF) submitted a joint response.
France: Autorité des marchés financiers (French AMF)
Germany: Bundesanstalt für Finanzdienstleistungsaufsicht) (BaFin)
Hong Kong: Securities and Futures Commission (SFC)
Hungary: The Hungarian National Bank or Magyar Nemzeti Bank (MNB)
Japan: Financial Services Agency (JFSA)
Mexico: Comisión Nacional Bancaria y de Valores (CNBV)
Netherlands: The Netherlands Authority for the Financial Markets (AFM)
Poland: Polish Financial Supervision Authority (KNF)
Romania: Financial Supervisory Authority (ASF)
Singapore: Monetary Authority of Singapore (MAS)
Spain: Comisión Nacional del Mercado de Valores (CNMV)
Switzerland: Swiss Financial Market Supervisory Authority (FINMA)
Turkey: Capital Markets Board (CMB)
United Kingdom: Financial Conduct Authority (FCA)
United States: Responses were received from the Commodity Futures Trading Commission (CFTC), the Securities and Exchange Commission/the Financial Industry Regulatory Authority (SEC/FINRA) and the National Futures Association (NFA)