

# Regulatory Status of Binary Options Trading for Retail Investors in New Zealand

## I. Executive Summary

This report details the legal and regulatory status of binary options trading for retail investors within New Zealand, based on analysis of information from the primary financial regulator, the Financial Markets Authority (FMA), and related sources.

Binary options are defined as high-risk, speculative financial derivatives where the outcome is a fixed payout or the loss of the entire amount invested, based on a 'yes/no' proposition about an underlying asset's price movement within a typically short timeframe. Their structure often draws comparisons to gambling rather than traditional investing.

The Financial Markets Authority (FMA) is the principal regulator overseeing New Zealand's financial markets, including the providers of derivatives. While New Zealand has not implemented an outright ban on the sale of binary options to retail investors – unlike jurisdictions such as the European Union and Australia – the offering of these products is strictly regulated.

Any entity wishing to offer binary options to retail clients in New Zealand must obtain a Derivative Issuer (DI) license from the FMA. This involves meeting stringent requirements and adhering to ongoing obligations designed to protect investors. Engaging with an unlicensed provider is illegal for the provider and leaves the investor without the protections afforded by New Zealand's regulatory framework.

The FMA explicitly warns consumers that binary options are "very high risk" and advises extreme caution. It highlights the prevalence of unlicensed, often fraudulent, overseas-based online platforms targeting New Zealand residents. Numerous specific warnings have been issued against such entities.

Therefore, while binary options trading is not illegal per se for an individual in New Zealand, its legality is strictly conditional on using a provider holding a valid FMA Derivative Issuer license. Given the high risks inherent in the product and the significant presence of unregulated operators, extreme diligence in verifying FMA licensing is paramount for any retail investor considering participation. The FMA strongly advises against dealing with unlicensed firms.

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## II. Defining Binary Options in Financial Trading

Understanding the nature of binary options is fundamental to appreciating the regulatory approach taken in New Zealand and globally. These instruments possess unique characteristics that distinguish them from other financial products.

### A. Core Concept: The Binary Proposition

At its core, a binary option is a type of financial contract, often classified as an exotic option, characterized by a payout structure with only two possible outcomes: either a predetermined fixed monetary amount or nothing at all.<sup>1</sup> This structure underpins the term "binary." The contract's outcome hinges entirely on the resolution of a simple 'yes/no' proposition.<sup>2</sup> Typically, this proposition relates to whether the price of an underlying asset (such as a stock, currency pair, commodity, or market index) will be above or fall below a specified price level (the 'strike price') at a specific point in time (the 'expiration time').<sup>3</sup> Owing to this all-or-nothing payoff structure, binary options are also referred to as 'all-or-nothing options',<sup>1</sup> 'digital options' (a term more common in foreign exchange and interest rate markets)<sup>2</sup>, or 'fixed return options' (FROs).<sup>2</sup> This fundamental structure dictates the instrument's risk and reward profile, setting it apart from traditional financial investments where potential gains and losses can vary more widely.

### B. Mechanism of Trading

Trading binary options involves predicting the direction of price movement. A trader speculates whether the price of the chosen underlying asset will finish above or below the strike price at the predetermined expiration time.<sup>3</sup> If the trader predicts correctly (the option expires 'in-the-money'), they receive a fixed payout.<sup>8</sup> This payout is typically a percentage of the amount invested, often ranging from 70% to 95%, although some platforms, particularly US exchanges, structure payouts where a winning contract settles at a fixed value like \$100.<sup>2</sup> Conversely, if the prediction is incorrect (the option expires 'out-of-the-money'), the trader loses the entire amount staked on that particular trade.<sup>3</sup>

A critical distinction from traditional 'vanilla' options is that binary options do not grant the holder the right to buy or sell the underlying asset.<sup>3</sup> Ownership of the underlying asset is not a possibility. Instead, binary options exercise automatically upon expiration based purely on whether the price condition has been met, with the gain or loss directly credited or debited to the trader's account.<sup>3</sup> The expiration times for binary options contracts are characteristically short-term, often measured in minutes, hours, or extending up to the end of a trading day or week.<sup>5</sup> This short duration

significantly amplifies the speculative nature of the trading activity. The mechanics highlight a fixed-risk (the amount invested) and fixed-reward (the predetermined payout) scenario for each trade, contrasting sharply with the variable profit and loss potential inherent in many other financial instruments.

### **C. Inherent Risks and Market Perception**

The structure and trading mechanics of binary options lead to significant risks and a market perception often diverging from traditional investment. Multiple sources explicitly compare binary options trading to gambling rather than investing.<sup>2</sup> This comparison stems from the 'all-or-nothing' payout, the heavy reliance on predicting very short-term price fluctuations (which is notoriously difficult<sup>12</sup>), and the fact that, statistically, brokers often have an edge, leading to a negative cumulative payout for traders over time.<sup>2</sup>

Consequently, binary options are widely considered high-risk instruments<sup>2</sup>, deemed suitable only for individuals with a high tolerance for risk and who fully understand the potential for complete loss of their invested capital.<sup>11</sup> Furthermore, the binary options market, particularly the segment operating through online platforms, has gained notoriety for being prone to fraud and scams.<sup>2</sup> Regulatory bodies and consumer protection agencies have documented numerous instances of fraudulent activities associated with unregulated platforms. These include platforms refusing to pay out winnings or return client funds, theft and misuse of clients' personal and financial data (identity theft), and the use of manipulated trading software designed to generate losing trades for customers.<sup>10</sup> The scale of this issue is significant, with the U.S. FBI estimating that binary option scams result in global losses amounting to approximately US\$10 billion annually.<sup>2</sup> This widespread perception and documented history of risk and fraud heavily influence the regulatory posture towards these products, particularly concerning the protection of retail investors. The very definition and operational characteristics of binary options inherently flag them as products requiring stringent oversight.

## **III. Financial Regulation in New Zealand: The Financial Markets Authority (FMA)**

Navigating the legality of any financial product requires identifying the relevant regulatory authority and understanding its mandate and functions. In New Zealand, this role is primarily fulfilled by the Financial Markets Authority.

### **A. Identification and Establishment**

The Financial Markets Authority – Te Mana Tātai Hokohoko (FMA) serves as the primary government agency tasked with the regulation of New Zealand's financial markets.<sup>13</sup> It commenced operations on 1 May 2011<sup>14</sup>, taking over the responsibilities of its predecessor, the Securities Commission of New Zealand.<sup>15</sup> The FMA functions as an Independent Crown Entity, providing it with operational independence while remaining accountable to the government.<sup>13</sup> While other entities play significant roles within the broader financial system – such as the Reserve Bank of New Zealand (RBNZ), which focuses on prudential regulation of banks, insurers, and non-bank deposit takers, and oversees payment systems<sup>17</sup>; the Ministry of Business, Innovation and Employment (MBIE), which handles policy development for financial markets legislation<sup>16</sup>; and the Council of Financial Regulators (CoFR), which facilitates cooperation among agencies<sup>20</sup> – the FMA is the crucial *market conduct* regulator. Its remit covers the behaviour of financial service providers and the conduct of activities within the capital markets, particularly concerning interactions with retail investors.

## **B. Mandate and Objectives**

The FMA operates under a statutory duty outlined in the Financial Markets Authority Act 2011. Its core objective is "to promote and facilitate the development of fair, efficient, and transparent financial markets".<sup>13</sup> Integral to this is promoting the confident and informed participation of businesses, investors, and consumers within these markets.<sup>14</sup> A central tenet of the FMA's mission is ensuring that the financial sector operates in a way that treats people fairly.<sup>14</sup> These objectives are directly pertinent to the regulation of complex and high-risk products like binary options, where issues of fairness, transparency, investor understanding, and protection against unfair treatment are paramount. The FMA must therefore balance the goal of facilitating market access and innovation with the imperative to protect consumers from undue harm.

## **C. Regulatory Functions**

To achieve its objectives, the FMA undertakes several key regulatory functions. It is responsible for licensing various firms and financial professionals who offer specific financial products and services, including issuers of derivatives.<sup>14</sup> This licensing function involves setting minimum standards for competency, conduct, and financial resources, and ensuring ongoing compliance through supervision.<sup>12</sup>

The FMA actively supervises licensed entities and monitors the market for misconduct. It possesses powers to investigate potential breaches of financial markets law and take enforcement action where necessary.<sup>14</sup> Enforcement actions can

range from issuing public warnings and alerts about suspicious entities or practices<sup>14</sup> to pursuing civil or criminal proceedings against firms or individuals whose conduct harms market integrity or investors.<sup>14</sup>

Furthermore, the FMA develops and issues policy documents and guidance notes to clarify its expectations and assist market participants in understanding and complying with their legal obligations.<sup>14</sup> It also plays a role in consumer education, providing information and resources to help individuals make more informed investment and financial decisions.<sup>14</sup>

The legislative framework underpinning the FMA's work includes several key statutes, most notably the Financial Markets Conduct Act 2013 (FMC Act) and the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSP Act).<sup>14</sup> It is important to distinguish FMA licensing from registration on the Financial Service Providers Register (FSPR).<sup>25</sup> While many financial service providers must register on the FSPR, this registration alone does not equate to being licensed or regulated by the FMA for specific activities like offering derivatives. FMA warnings frequently highlight entities that are either FSPR registered but not licensed for the services they offer, or not registered at all, underscoring that FSPR registration should not be misconstrued as FMA endorsement or authorisation for high-risk activities.<sup>22</sup> This distinction is critical for investors performing due diligence.

## **IV. FMA Regulatory Stance on Binary Options**

The FMA's position on binary options is articulated through their classification under existing regulations, specific licensing requirements imposed on providers, and direct guidance and warnings issued to the public.

### **A. Classification as Derivatives**

Within New Zealand's regulatory framework, specifically the Financial Markets Conduct Act 2013 (FMC Act), binary options are treated as a form of 'derivative'. The FMC Act defines derivatives broadly to include various types of contracts whose value is derived from or determined by reference to an underlying asset, index, or benchmark.<sup>21</sup> This definition explicitly encompasses futures contracts, forwards, swaps, contracts for difference (CFDs), and options (with certain exceptions not relevant to typical binary options, such as employee share options).<sup>21</sup> Binary options clearly fit the functional description of an 'option' under this regime, as their payout depends on whether the price of an underlying asset meets a specific condition at a future time.<sup>21</sup> While the term "binary option" may not be explicitly itemized in every list of derivative types on the FMA's website concerning licensing, their characteristics

align unequivocally with the regulated category of options. The FMA's dedicated consumer information page on binary options further confirms their treatment as financial products subject to regulatory attention.<sup>12</sup> This classification is pivotal, as it subjects binary options providers targeting retail clients to the specific licensing regime and conduct obligations applicable to derivative issuers.

## **B. Licensing Requirements for Providers: The Derivative Issuer (DI) License**

The cornerstone of the FMA's regulation of binary options offered to retail investors is the requirement for providers to hold a Derivative Issuer (DI) license. Under the FMC Act, any person or entity that makes a "regulated offer" of derivatives to retail investors in New Zealand must be licensed by the FMA.<sup>21</sup> A regulated offer generally encompasses any offer of financial products made to individuals classified as retail investors, who are presumed to require disclosure and regulatory protections.<sup>21</sup>

Obtaining a DI license is a demanding process. Applicants must satisfy the FMA that they meet minimum standards relating to institutional capability, governance, custody of client assets, risk management procedures, and compliance arrangements.<sup>21</sup> The application process involves detailed submissions and incurs a significant base fee (\$10,695 plus potential additional charges for assessment time), signalling a substantial regulatory hurdle intended to ensure only sufficiently robust firms can operate.<sup>21</sup> Licensed DIs are subject to ongoing statutory obligations and standard conditions imposed by the FMA. These conditions cover areas such as capital adequacy, operational resilience, client money handling, disclosure, suitability assessments, and dispute resolution.<sup>21</sup> Licensed firms must also submit regular regulatory returns and are subject to FMA supervision and monitoring.<sup>21</sup> The FMA also retains the power to impose additional conditions or vary existing ones, as evidenced by recent consultations on potentially introducing standardized leverage limits and strengthening suitability assessment requirements for licensed DIs offering OTC derivatives to retail clients.<sup>28</sup> This licensing requirement serves as the primary gatekeeper, ensuring that any entity legally offering binary options to New Zealanders operates under FMA oversight and adheres to prescribed standards.

## **C. FMA Guidance and Warnings**

The FMA provides direct guidance to consumers regarding binary options via a dedicated page on its website. This guidance is unequivocal in its assessment of the risks, stating plainly that binary options are "very high risk, even for experienced investors".<sup>12</sup> The FMA highlights several key risks: the inherent difficulty in accurately predicting short-term market movements, the potential to lose the entire invested



amount quickly, the prevalence of unregulated foreign-based trading platforms targeting New Zealanders, and a heightened risk of encountering scams or fraudulent practices.<sup>12</sup> Specific fraudulent behaviours mentioned include platforms manipulating software to ensure client losses, refusing to credit accounts or process withdrawals, and engaging in identity theft using client data.<sup>12</sup>

Crucially, the FMA provides clear advice for risk mitigation: "Make sure your provider is licensed by us [the FMA]. If they don't have a licence, don't deal with them".<sup>12</sup> This underscores the importance of the DI license as the primary safeguard for investors. In addition to this general guidance, the FMA maintains a public register of warnings and alerts concerning specific businesses or individuals that investors should be wary of.<sup>22</sup> This list includes numerous entities suspected of operating scams or offering financial services in New Zealand without the necessary licenses or registration. Several warnings specifically name firms associated with binary options or similar high-risk online trading products, such as Option 2 Trade<sup>22</sup>, Flipearners (crypto binary)<sup>22</sup>, BO Technologies Limited (trading as Option Financial Markets or Option FM)<sup>29</sup>, 24Option<sup>26</sup>, and Banc de Binary.<sup>27</sup> These warnings typically emphasize that the entity is not licensed or authorized to provide services in New Zealand.<sup>26</sup> The consistent issuance of such warnings signals the FMA's significant concerns about the risks posed by unlicensed operators in this space.

#### **D. Investor Alerts and Scam Awareness**

The FMA's warnings about binary options are part of its broader efforts to educate the public about investment scams and fraudulent financial activities. Binary options are frequently implicated in common scam typologies, such as those involving unsolicited contact (cold calls, social media messages), promises of unrealistic returns, high-pressure sales tactics, and the use of fake websites or impersonation of legitimate firms.<sup>2</sup> The FMA's general alerts often cover tactics like fake online platforms, withholding of client funds, and identity theft, all of which have been reported in connection with binary options operations.<sup>22</sup> This broader context reinforces the specific warnings about binary options, positioning them within a landscape of high-risk online financial offerings where vigilance against fraud is essential. The sheer volume of warnings related to unlicensed brokers and scams suggests that despite the existence of a licensing regime, a significant amount of unregulated and potentially illicit activity continues to target New Zealand residents, making the practical risk environment challenging for investors.

#### **V. Prohibitions and Restrictions on Binary Options in New Zealand**

While New Zealand regulates the offering of binary options through licensing, specific prohibitions and restrictions apply, primarily targeting unlicensed activity and governing the conduct of licensed providers.

### **A. Prohibition on Unlicensed Offering**

The most significant prohibition relates to the provision of services without the required authorization. It is illegal under the FMC Act for any entity to make a regulated offer of derivatives, which includes binary options, to retail investors in New Zealand unless that entity holds a valid Derivative Issuer license issued by the FMA.<sup>21</sup> This prohibition directly targets the supply side of the market – the providers or issuers of the binary options contracts. The FMA's public warnings against firms like 24Option and Banc de Binary explicitly state that these companies are not registered or authorized to provide financial services in New Zealand, reinforcing the illegality of their operations targeting local residents.<sup>26</sup> Therefore, any offering of binary options to retail clients by an unlicensed entity constitutes a breach of New Zealand financial markets law. Engaging with such an unlicensed provider means the investor steps outside the protective scope of the New Zealand regulatory system.

### **B. Marketing and Distribution Controls**

The requirement for a DI license inherently restricts the legitimate marketing and distribution of binary options within New Zealand to only those firms that have successfully obtained FMA authorization. Beyond this fundamental restriction, licensed Derivative Issuers are subject to comprehensive 'fair dealing' obligations under Part 2 of the FMC Act.<sup>21</sup> These provisions prohibit engaging in conduct that is misleading or deceptive, making false or misleading representations, and making unsubstantiated representations in relation to financial products or services.<sup>21</sup> These rules apply to advertising, promotional materials, and interactions with clients. The FMA has the authority to monitor the marketing practices of licensed entities and take enforcement action if firms engage in misleading advertising or improper sales conduct.<sup>14</sup> An example of FMA enforcement, albeit in a different context, involved action against an individual trader for market manipulation including 'bait-and-switch' conduct designed to create a false or misleading appearance.<sup>24</sup> While not a specific ban on marketing binary options per se, the combination of the licensing gateway and the overarching fair dealing requirements imposes significant controls on how these high-risk products can be legally promoted and distributed to retail investors in New Zealand.



### **C. Absence of Explicit Retail Ban (Contrast with International)**

A notable aspect of New Zealand's regulatory approach is the absence of an explicit, outright ban on the sale, marketing, or distribution of binary options to *retail clients* by *licensed* providers. The available information from the FMA does not indicate the implementation of such a prohibition.<sup>12</sup> This stands in contrast to regulatory actions taken in several other major jurisdictions.

For instance, the European Securities and Markets Authority (ESMA) introduced measures, initially temporary but subsequently made permanent by many national regulators, that prohibited the marketing, distribution, or sale of binary options to retail investors across the European Union, effective from July 2018.<sup>30</sup> Similarly, the Australian Securities & Investments Commission (ASIC) implemented a ban on the issuance and distribution of binary options to retail clients in 2021, citing significant detriment to retail clients from these products.<sup>2</sup> Regulatory bodies in the UK and the US have also expressed significant concerns and imposed restrictions related to binary options.<sup>2</sup>

New Zealand's decision not to follow suit with a complete retail ban represents a significant divergence in regulatory strategy. Instead of prohibiting the product category entirely for retail investors, the NZ approach relies on regulating the provider through the DI licensing regime, coupled with strong risk warnings and investor education. This suggests either a different assessment of the risks versus potential benefits within the NZ context, a belief that the existing licensing standards provide adequate protection, or potentially a different pace of regulatory evolution compared to jurisdictions that opted for outright bans.

## **VI. Summarized Legal Status for Individuals in New Zealand**

Based on the regulatory framework established and enforced by the Financial Markets Authority, the legal status of binary options trading for individual retail investors in New Zealand can be summarized as follows:

### **A. Conditional Legality: The Primacy of Licensing**

Binary options trading is *not* inherently illegal for an individual retail investor residing in New Zealand. However, its legality is strictly *conditional* upon the regulatory status of the entity providing the trading platform or service. For the activity to be conducted within the bounds of New Zealand law and regulatory oversight, the provider must hold a valid Derivative Issuer (DI) license issued by the FMA.<sup>12</sup> Trading binary options through an FMA-licensed DI is permissible under the current regulatory regime.

Conversely, trading through an entity that does *not* hold this specific license means the activity falls outside the regulated space, and the provider is likely operating in breach of the FMC Act if targeting NZ retail clients.

## **B. Practical Reality: High Risk and Prevalence of Unlicensed Operators**

While theoretically legal under the condition of provider licensing, the practical landscape for New Zealand retail investors interested in binary options is hazardous. The FMA itself issues strong warnings acknowledging that a large proportion, likely the majority, of binary options providers accessible online and targeting New Zealanders are based overseas and operate *without* an FMA license or any regulation within New Zealand.<sup>12</sup>

The substantial volume of specific warnings and alerts issued by the FMA against unlicensed brokers, suspected scams, and fraudulent platforms offering binary options or similar high-risk products underscores this reality.<sup>22</sup> This suggests that finding a legitimate, FMA-licensed provider actively marketing binary options specifically to the NZ retail market may be challenging. Consequently, investors seeking to trade these products face a high probability of encountering unregulated or outright fraudulent operations.

Crucially, engaging with an unlicensed provider carries significant consequences for the investor. They forfeit all protections afforded under New Zealand financial markets law and FMA oversight. This includes access to regulated dispute resolution schemes and makes the recovery of funds extremely difficult, if not impossible, in the event of provider default, misconduct, or outright fraud.<sup>12</sup> This gap between theoretical legality (via a licensed firm) and the practical difficulty and danger of accessing the market highlights the extreme caution required.

## **C. Summary of NZ Regulatory Position on Binary Options**

The following table consolidates the key aspects of the FMA's regulatory stance on binary options for retail investors in New Zealand:

Feature	NZ Status / FMA Position	Reference(s)
Product Classification	Financial Derivative (Option)	<sup>21</sup>

Risk Level (FMA View)	Very High Risk	12
Provider Requirement	Mandatory FMA Derivative Issuer (DI) License for retail offers	21
FMA Warnings	Numerous alerts against unlicensed providers; high fraud risk cited	12
Explicit Retail Investor Ban	No (unlike EU, Australia)	2
Legality for Individuals	Legal <i>only if</i> using an FMA-licensed provider	12
FMA Recommendation	Extreme caution; verify FMA license rigorously; avoid unlicensed firms	12

#### **D. Magnified Investor Responsibility**

New Zealand's regulatory approach, which permits licensed offering rather than imposing a ban, places a significantly greater onus on the individual investor compared to jurisdictions with outright prohibitions. In the EU or Australia, retail investors are largely shielded from accessing binary options through regulated channels. In New Zealand, however, the availability (albeit conditional) necessitates that investors actively perform thorough due diligence. The FMA explicitly directs potential investors to verify the provider's license status.<sup>12</sup> Given the documented high risk of encountering unlicensed and fraudulent operators targeting New Zealanders, the responsibility for navigating these risks and ensuring engagement only with legitimate, FMA-licensed entities falls squarely on the individual investor. Failure to exercise this diligence exposes the investor to potentially severe financial loss with little or no recourse.

## **VII. Conclusion and Recommendations**

### **A. Final Assessment of Legal Status**

In conclusion, the offering of binary options to retail investors in New Zealand is legal only when conducted by an entity holding a valid Derivative Issuer license granted by the Financial Markets Authority. Trading by individual retail investors is consequently

legal solely through such FMA-licensed providers. The FMA categorizes binary options as very high-risk financial products and issues strong warnings regarding the dangers, particularly those associated with numerous unlicensed overseas platforms targeting New Zealand residents. New Zealand's regulatory stance, focusing on provider licensing rather than an outright product ban for retail clients, diverges from the approach taken by key international counterparts like the European Union and Australia.

## **B. Recommendations for Individuals**

Individuals in New Zealand contemplating trading binary options should exercise extreme caution and adhere strictly to the following recommendations:

1. **Verify Licensing Rigorously:** Before engaging with any provider, *mandatorily* verify that the entity holds a current FMA Derivative Issuer license. This information should be sought directly from official FMA resources (such as their website or public registers).<sup>13</sup> Do not rely solely on claims made by the provider itself. Critically, distinguish between mere registration on the Financial Service Providers Register (FSPR) and holding the specific FMA license required to issue derivatives.<sup>25</sup>
2. **Heed FMA Warnings:** Pay close attention to all warnings and alerts published by the FMA regarding unlicensed firms, investment scams, and specific entities to avoid.<sup>22</sup> Refrain from dealing with any entity named in an FMA warning or exhibiting characteristics commonly associated with scams.
3. **Understand the Risks:** Fully comprehend the high-risk, speculative nature of binary options. Acknowledge the FMA's assessment of them as "very high risk" and the potential for rapid and complete loss of invested capital.<sup>12</sup> Recognize the frequent comparisons made between binary options trading and gambling.<sup>2</sup> Understand that predicting short-term market movements is exceptionally difficult.<sup>12</sup>
4. **Beware of Unsolicited Offers:** Treat any unsolicited contact (e.g., cold calls, emails, social media messages) promoting binary options trading opportunities with extreme skepticism. Such approaches are common tactics used by unlicensed operators and scammers.<sup>12</sup>
5. **Protect Personal Information:** Exercise utmost caution when asked to provide personal identification documents, credit card details, or other sensitive financial information to online trading platforms, particularly if the business is based overseas and lacks an FMA license. The risk of identity theft and financial fraud is significant.<sup>12</sup>
6. **Consider Alternatives / Seek Advice:** Given the inherent risks, regulatory

complexities, and prevalence of fraud associated with binary options, individuals should consider less risky, more transparent investment alternatives. Before investing in any high-risk product, seek personalized financial advice from a financial adviser licensed in New Zealand.<sup>13</sup>

The overall regulatory posture in New Zealand, characterized by stringent licensing requirements for providers, explicit high-risk warnings from the FMA, frequent alerts about scams, and a heavy emphasis on investor due diligence, effectively signals that binary options are generally unsuitable for the average retail investor. While not explicitly banned, the framework encourages extreme caution, if not outright avoidance.

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