

Client Alert

Ban on distribution of certain financial products in Belgium

June 2014

In our alert of 11 February this year (see [here](#)), we unveiled the consultations which were launched by the Belgian Financial Services and Markets Authority (the “**FSMA**”). These consultations concerned, on the one hand, a draft royal decree regarding certain information obligations applicable to the distribution of financial products to retail clients (the “**Royal Decree**”) and, on the other hand, a draft regulation banning the distribution of certain non-mainstream financial products to retail clients (the “**Regulation**”). Both consultations ended on 17 February 2014.

At this stage, the Royal Decree is still a preliminary draft (*Voorontwerp/Avant-projet*). The Consumer Council (*Raad voor het Verbruik/Conseil de la Consommation*) was asked to provide its advice on the preliminary draft. The Royal Decree is expected to be approved soon.

The Regulation was approved by a Royal Decree of 24 April 2014 which was published in the Belgian Official Gazette on 20 May 2014.

The Regulation aims to ban the distribution of several non-mainstream financial products to retail clients in the Belgian territory, irrespective of the nationality or the place of business of the person who distributes these financial products.

1. Financial products linked to life settlements

The ban prevents the distribution to retail clients of traded life insurances or financial products whose performance depends, directly or indirectly, on one or more traded life insurances (“life settlements”). Life settlements originated in the United States at the end of the 20th century where terminally ill insured persons sold their insurance policies to allow them to cover their medical costs. The market for life settlements has grown and expanded ever since. Financial products linked to life settlements have been created and distributed in Belgium in the form of investment products or insurance contracts.

Regardless of the obvious ethical discussions which may arise in this respect, such financial products are considered to be complex and risky. The determination of their value depends on various factors such as life expectancy, the quality and diversity of the underlying pool of life settlements, medical breakthroughs, the currency of the underlying insurance contract or the solvency of the insurance company. Finally, given the international nature of the risks and the parties involved, such financial products are also susceptible to all kinds of fraud.

2. Financial products linked to virtual currencies

The Regulation also aims to ban the distribution to retail clients of financial products whose performance depends, directly or indirectly, on virtual currencies.

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The risk of virtual currencies, such as Bitcoin and the less well known Litecoin, are numerous. Firstly, the internet environment where virtual money is held and traded entails various risks. For instance, there is the risk that a trading platform or digital wallet could be hacked and the owner could lose his virtual money. Secondly, the operational reliability of such systems, particularly as regards the risk of fraud, has not yet been formally assessed by the regulators. Thirdly, in contrast to the situation for electronic money, fluctuations in the virtual currency exchange rate can result in substantial financial losses. Fourthly, there is no legal guarantee that virtual currency can be exchanged at any time for its original value. Finally, virtual currency is not legal tender: no-one is obliged to accept payment with virtual currency.

For these reasons, any financial product whose performance depends on virtual currencies may no longer be distributed to retail investors in Belgium.

3. Certain fund-linked investment instruments

The Regulation also bans the distribution to retail investors of investment instruments or insurance contracts whose performance depends, directly or indirectly, on rights in a fund if the latter does not meet the requirements to be offered to the public in Belgium. This is, for example, the case for the funds investing in non-mainstream assets.

Non-mainstream assets are assets which do not belong to the categories of investments open to Belgian public undertakings for collective investment or Belgian undertakings for collective investment in claims. Examples of such non-mainstream assets include commodities, artworks and products such as whiskey or wine. These assets are, by nature, very speculative, complex and their value is difficult to assess by retail clients.

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The Regulation will enter into force on 1 July 2014. This measure confirms the trend towards increased consumer protection in the financial sector in Belgium.