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The AMF considers that the offer of cryptocurrency derivatives requires authorisation and that it is prohibited to advertise such offer via electronic means

Following an analysis of the legal qualification of cryptocurrency derivatives, the AMF has reached the conclusion that platforms which offer these products must abide by the authorisation and business conduct rules, and that these products must not be advertised via electronic means.

Over the past few months, the recent cryptocurrency boom has spurred several online trading platforms to offer binary options, CFDs or Forex contracts with an end-of-day maturity (rolling spot forex), where the underlying is a cryptocurrency. Such contracts allow investors to bet on a cryptocurrency's rise or fall, without holding the underlying.

The AMF has carried out a legal analysis of cryptocurrency derivatives. The process of reasoning is twofold: on the one hand, to determine the legal qualification of the notion of "derivative" in the context of cryptocurrency derivatives and on the other, to consider whether a cryptocurrency could be legally regarded as an eligible underlying. The notion of "derivative" is not defined in EU legislation per se. Within the MiFID framework, EU lawmakers only set out a list of derivatives (such as options, futures, swaps or forwards), followed by a list of eligible underlyings.

The AMF concludes that a cash-settled cryptocurrency contract may qualify as a derivative, irrespective of the legal qualification of a cryptocurrency.

As a result, online platforms which offer cryptocurrency derivatives fall within the scope of MiFID 2 and must therefore comply with the authorisation, conduct of business rules, and the EMIR trade reporting obligation to a trade repository. Above all, these products are subject to the provisions of the Sapin 2 law, and notably the ban of advertisements for certain financial contracts.

About the AMF

The AMF is an independent public authority responsible for ensuring that savings invested in financial products are protected, that investors are provided with adequate information and supervising the orderly operation of markets. Visit our website www.amf-france.org

Press contact:

AMF Communication Directorate - Christèle Fradin - Tel: +33 (0)1 5345 6029 or +33 (0)1 5345 6028


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