

July 2007

Guidelines on informing investors about structured products

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¹ These Guidelines may be subject to editorial changes.

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Introduction

The simplified prospectus stipulated by article 5 of the Federal Act on Collective Investment Schemes (CISA) is intended to inform the average investor in a brief and simple manner on the key terms of structured products in accordance with article 5 CISA. Accordingly, the Board of Directors of the Swiss Bankers Association is issuing the following guidelines, which have been approved by the Swiss Federal Banking Commission.

1. Scope

The obligation to prepare a simplified prospectus applies to structured products publicly offered in Switzerland or from Switzerland. The obligation does not apply if the conditions set out in art. 4 para. 4 of the Federal Ordinance on Collective Investment Schemes (CISO) are met.

Explanation / comments

The public offering and the public distribution of structured products are subject to the rule on public promotion as per art. 3 CISA (cf. art. 3 para. 3 CISO). Accordingly, no public offer or public distribution exists if the offer or distribution is directed exclusively towards qualified investors within the meaning of art. 10 para. 3 CISA and the advertising is only made by means customarily used for this market (art. 3 para. 1 CISO). In this case, the obligation to prepare a simplified prospectus does not apply to this segment.

Similarly, the publication of the value (prices, quotes or similar information) and tax details of structured products by the issuer or financial intermediaries in the media as per art. 4 para. 1 CISO also does not constitute a public offer or public distribution, provided such publication does not include any contact details (art. 3 para. 4 in conjunction with para. 2 CISO).

Based on the currently applicable provisions, e.g., both the listing prospectuses of a Swiss exchange and the prospectuses as

per the EU Prospectus Directive satisfy the requirements of the CISA.

2. Description of structured products and delimitation of scope

Structured products are investment instruments for which the redemption value is linked to the performance of one or more underlying values. They may have fixed or unlimited maturities and be based on one or more parts, irrespective of weighting.

Structured products are acquired on the basis of an individual sales contract and, unlike in the case of a collective investment scheme, the investor is not protected by a collective pool of assets for the fulfilment of the contractually agreed product terms (no right of segregation) but, rather, the issuer as well as the guarantor, if any, to the extent of its guarantee, are liable to the investor.

These guidelines apply only to structured products as per art. 5 CISA which are issued publicly by an issuer as per art. 5 para. 1 CISA or which are publicly distributed or guaranteed according to art. 5 para. 1 CISA.

Usual structured products are capital-protected products, products with a maximum return and certificates.

Explanation / comments

Products where the primary focus is on financing purposes or a risk transfer in the narrow sense, such as collateralized debt obligations, credit linked notes, asset backed securities, convertible bonds and bonds as per art. 1156 of the Swiss Code of Obligations, are not covered by either the CISA or art. 5 thereof.

Similarly, the term “structured products” does not include forward and options transactions (e.g. futures, warrants, traded options, etc.), irrespective of their legal set-up.

In contrast, structured products within the meaning of art. 5 CISA include, among others, products which have the following underlying value or type of underlying value:

- a Swiss collective capital investment scheme as per CISA which is open to ordinary investors, or
- more than one Swiss collective capital investment scheme as per CISA which are open to qualified investors, provided that physical delivery of the units is excluded, or
- a foreign collective capital investment scheme that is authorized in Switzerland, or
- more than one foreign collective capital investment scheme that are not authorized in Switzerland for public distribution, provided that physical delivery of units in the underlying values is excluded.

3. Basic principle: no product supervision

Structured products are not subject to the CISA. They may be publicly offered in Switzerland or from Switzerland only if they are issued, guaranteed or distributed by an institution as defined by art. 5 para. 1 section a CISA in conjunction with art. 4 CISO (art. 5 para. 1 CISA). Such products are subject to the "simplified prospectus" requirement (art. 5 para. 1 section b CISA, art. 4 para. 4 CISO).

Explanation / comments

The simplified prospectus as per art. 5 CISA is to be distinguished from the "simplified prospectus" as per art. 76 CISA (only art. 5 CISA applies to structured products).

4. Duty to provide information (basic principle)

The term "simplified prospectus" as per art. 5 CISA is to be understood as a summary description of the product which includes the following content as a minimum. The starting point is art. 5 paras. 2 and 3 CISA, which provide the following:

Para. 2

"The simplified prospectus must fulfil the following requirements:

- a) It describes, in a standardized format, the main characteristics of the structured product (key terms), its prospects for earnings and losses and the significant risks for the investor.
- b) It is easy to understand for the average investor.
- c) It indicates that the structured product is not a collective investment scheme and is not subject to approval by the supervisory authority."

Para. 3

"The simplified prospectus is to be offered free of charge to all interested persons in connection with the issue or conclusion of contract."

5. Duty to provide information (content)

The "simplified prospectus" and the "standardized format" as per art. 5 para 2 section a CISA include, as a minimum, information on:

(a) Issuer and issuer's head office:

Explanation / comments

- name
- head office (administrative district or equivalent place designation abroad)
- if applicable, the guarantor (same details as for issuer)

(b) Security:

Explanation / comments

- brief description of the type of product,
- Swiss security number and ISIN, if any
- calculation agent
- total amount and minimum investment
- currency of the security
- issue price

(c) Price-setting, payment, expiration and redemption details

Explanation / comments

- trading volume and ratio
- rights attached to the security
- seniority / subordination, if any
- exercise details, exercise style (with a brief explanation in each case)
- maturity / point in time

- price-setting, payment, expiration and redemption details (with a brief explanation in each case)
- paying agent, exercise agent
- clearing
- indication that the security is not listed
- restriction on transferability, tradability, trading details (brief reference to liquidity / tradability in the secondary market, even if the product is not listed on an exchange)
- redemption details, with brief explanation in each case of how redemption is calculated on expiration, in particular the prices of the underlying value(s) that are determinative for this purpose, exercise prices, description of the various scenarios, including earnings prospects, etc.
- fees imposed on the purchaser during the term of the investment after issue are to be set out in the simplified prospectus.
- reference to tax treatment in Switzerland

(d) Brief reference to the significant risks for investors

Explanation / comments

- Product-specific risks
Limited or unlimited potential for loss, reference to capital protection or conditional protection, "risk similar to equities", reference to possible early redemption options, etc.

Indication that during the term of the investment, bid and offer prices may possibly differ to a greater or lesser extent (spread).

- Issuer risk
Reference to issuer risk (e.g. through a disclosure clause such as "Investors bear the issuer risk. The investment instrument's value is dependent not only on the development of the underlying, but also on the creditworthiness of the issuer,

which may vary over the term of the structured product.").

It is to be indicated in each case whether the issuer is or is not subject to prudential supervision (specifying the supervisory authority). If the issuer is not subject to any such supervision, the lack of prudential supervision is to be expressly noted (art. 4 para. 2 CISO).

It must be indicated if a rating is available for the issuer or, indirectly, for the guarantor (guarantee, keepwell agreement, etc.). If no rating is available, it must be indicated specifically.

(e) Underlying value or values

Explanation / comments

- description of the underlying value or values or how they are calculated
- identification of the underlying value, e.g., by means of Swiss security number, ISIN, Bloomberg or Reuters symbol
- reference to the relevant exchange or index calculation agent

(f) Issue date of the product

- reference to a website on which unforeseen changes to the conditions for the structured product which were not agreed contractually but which arise during the product's term (e.g. conversion of underlying value) will be announced.

Explanation / comments

The issuer must ensure that unforeseen modifications of the conditions of the products which were not agreed contractually, e.g. arising as a result of corporate actions affecting the underlying value, such as share splits, par value redemptions, etc., are published on a website. A reference to this is to be made in the simplified prospectus.

(g) Applicable law and place of jurisdiction

Explanation / comments

The applicable law and place of jurisdiction are to be highlighted in the text, e.g. in bold type, if foreign law applies.

(h) Indication that the structured product is neither a collective investment scheme nor subject to authorization by the supervisory authority (cf. art. 5 para. 2 section c CISA)

Explanation / comments

This can be indicated, for example, by means of a statement such as: "The product is not a collective investment scheme as per the Federal Act on Collective Investment Schemes (CISA) and is not subject to approval or supervision by the Swiss Federal Banking Commission". The product must not be referred to as a collective investment scheme in terms of the CISA.

6. Duty to provide information: (further information)

Further information may be added, such as information on hedging, details of the workings of the product or its terminology.

7. Duty to provide information: (relationship to the Swiss Code of Obligations)

The prospectus requirement under art. 1156 of the Swiss Code of Obligations is not applicable (art. 5 para. 4 CISA).

8. Form, language and source for obtaining the information

- a) The information as per art. 5 ff. of these guidelines is to be offered or made available free of charge to interested investors at the time of issue or at the time of a subsequent acquisition upon request. In addition, details as to where or through whom and how this information can be obtained in Switzerland are to be included at a prominent place in the simplified prospectus.
- b) The information may be written in one of Switzerland's official languages or in English.
- c) The information is to be offered or made available in printed or electronic form or otherwise. Upon request by the client, the information is to be provided in printed form.
- d) No publication in the media (not even in abridged form) is required.

Explanation / comments

It is sufficient if the information or the simplified prospectus is published on an Internet page at the relevant moment. However, investors shall be supplied with a printed version on request, free of charge, at the time of issue or acquisition.

9. Entry into force

These guidelines enter into force on 1 July 2007.

10. Transitional provision

The requirement to prepare a simplified prospectus applies to structured products within the scope of these guidelines which are issued after the effective date of these guidelines. The guidelines will not apply retroactively to structured products issued prior to that date.

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