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Guidelines on informing investors about structured products

Introduction

Translation of the original German version. In case of any divergence, the German version shall prevail.

The (provisional and definite) simplified prospectus stipulated by art. 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 art. 5 CISA. Accordingly, the Governing Board of the Swiss Bankers Association and the Committee of the Swiss Structured Products Association are issuing the following guidelines, which have been approved by the Swiss Financial Market Supervisory Authority FINMA).

1. Scope

The obligation to prepare a simplified prospectus¹ applies to structured products distributed to non-qualified Investors 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 Ordinance (CISO) are met.

Explanation / comments

The distribution of structured products to non-qualified Investors in Switzerland or from Switzerland are subject to the rule on sale of structured products as per art. 5 CISA. The distribution of structured products to qualified Investors per art. 3, 3bis and 3ter CISA is not subject to the obligation to prepare a simplified prospectus.

The obligation to prepare a simplified prospectus does not apply if no distribution in the sense of art. 3 CISA takes place. The FINMA-Circular 13/9 Distribution under the Collective Investment Schemes legislation elaborates what FINMA qualifies as “distribution” in relation to structured products.

¹ In these Guidelines, the term "simplified prospectus" includes both the provisional and the definitive simplified prospectus, unless explicitly stated otherwise.

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, however, with respect to the latter only if the structured products are not distributed to non-qualified Investors in Switzerland. The obligation to prepare a simplified prospectus does not apply in these cases, only if the listing prospectus or the prospectus per EU Prospectus Directive, respectively, is made available upon subscription or upon conclusion of the purchase contract on the product.

2. Description of structured products and delimitation of scope

These guidelines apply only to structured products as per art. 5 CISA. 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 but, rather, the issuer (possibly limited to a relevant compartment of assets) as well as the guarantor, if any, to the extent of its guarantee, are liable to the investor. Usual structured products are for example capital-protected products, products with a maximum return as well as participation products.

Sont par exemple des produits structurés courants les produits à capital garanti, les produits à rendement maximum ainsi que les produits de participation.

Explanation / comments

Products where the primary focus is on financing purposes, such as collateralized debt obligations, asset backed securities, convertible bonds and bonds as per art. 1156 of the Swiss Code of Obligations, are not considered as structured products. The same applies credit linked notes issued for the purpose of financing the reference debtor. However credit linked notes that are issued for investment purposes count are considered as structured products.

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.

3. Basic principle : no product supervision

Structured products are not subject to the CISA.

They may be distributed to non-qualified Investors in Switzerland or from Switzerland only if they are issued, guaranteed or under equivalent legal protection by an institution as defined by art. 5 para. 1 section a CISA in conjunction with art. 4 CISO (art. 5 para. 1 CISA) or if issued by a special purpose vehicle and distributed by a financial institution as defined by art. 5 para. 1 section a CISA in conjunction with art. 4 CISO and equivalent protection is ensured //(art. 5 para. 1^{bis} CISA). Such products are subject to the “simplified prospectus” requirement (art. 5 para. 1 section b CISA, art. 4 para. 4 CISO). A provisional simplified prospectus with indicative terms must be offered free of charge to any interested person prior to subscription or prior to conclusion of the purchase contract for the product, and the definitive simplified prospectus must be offered free of charge to any interested person upon issuance or upon conclusion of the purchase contract for the product.

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, whereby some economic parameters in the provisional simplified prospectus do not have to be definitively determined and can be specified with merely indicative values. The indicative values are to be clearly marked as such.

The simplified prospectus is to be offered proactively to interested non-qualified Investors. They shall be informed where the simplified prospectus can be obtained or viewed. In relation to the minimum content art. 5 paras. 2 and 3 CISA are relevant, 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 the authorization from the supervisory authority.”

Para. 3

“A provisional simplified prospectus including indicative information must be made available free of charge to interested persons prior to subscribing the product or prior to concluding an agreement to purchase the product. In addition, the definitive simplified prospectus must be made available free of charge to interested persons on issue or on concluding an agreement to purchase the product.”

5. Duty to provide information : content

The simplified prospectus is to be sub-divided into the three main categories: 1. “Product Description”, 2. “Prospects for profits and losses” and 3. “Significant risks for the investors”. By taking into account the principle of “easy to understand”, additional sections can be added containing general information, in particular on the hedge, on details of the mechanics or on terminology.

A reference must be made prominently on the first page of a simplified prospectus in bold letters (and namely not in the footnotes in small print) that the structured product is not a collective investment scheme nor subject to approval by the Swiss Financial Market Supervisory Authority and, moreover, investors bear the issuer risk. The reference can be formulated for example as “This product is not a collective investment scheme as per the Federal Act on Collective Investment Schemes (CISA) and is not subject to the authorization or supervision by the Swiss Financial market Supervisory Authority FINMA. Investors bear the issuer risk.”. The product must not be referred to as a collective investment scheme in terms of the CISA. Any risk of deception or confusion shall be avoided.

It must also be indicated prominently on the first page of the simplified prospectus, if the structured product is not issued, guaranteed or under equivalent legal protection by a supervised Financial Intermediary as per art. 5 para. 1 CISA.

5.1 Content « Product Description »

The information in the main category “Product Description” shall at least include:

(a) Issuer and issuer’s office:

Explanation / comments

1. Name
2. Head office (administrative district or equivalent place designation abroad)
3. In any case, it must be indicated whether the issuer is subject to prudential supervision or not (name of the supervisory authority). If the issuer is not subject to such supervision, attention must specifically be drawn thereto (art. 4 para. 2 CISO).
4. If the issuer has a rating, this must be indicated (details of the rating agency and rating); if the issuer is not rated, this must be indicated explicitly.
5. If applicable, security provider and guarantor (same information as for issuer).

(b) Valor:

Explanation / comments

1. categorization number and product name according to categorization of the Swiss Structured Products Association
2. brief description of the type of product)
3. Swiss security number and ISIN, if any
4. calculation agent
5. total amount and minimum investment
6. currency of the security
7. issue price

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

Explanation / comments

1. trading volume and ratio
2. rights attached to the security
3. seniority / subordination, if any
4. exercise details, exercise style (with a brief explanation in each case)
5. maturity / point in time
6. price-setting, payment, expiration and redemption details (with a brief explanation in each case)
7. paying agent, exercise agent
8. clearing
9. indication that the security is not listed or on any listing (stating the exchange)
10. 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)
11. 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, etc.
12. fees imposed on the purchaser during the term of the investment after issue

13. disclosure of distribution fee:
The issuer of a structured product must disclose all distribution fees which are priced into the issue price or an up-front fee upon issuance, including sales commission paid to distributors.
The distribution fee is generally to be disclosed as a percentage of the nominal amount of the structured product. No distributor shall receive a sales commission higher than the reported percentage. If the sales commission paid to the distributor is depending on the performance of the structured product, the calculation parameter of the commission must be disclosed. For products with a term of less than one year, the relevant percentage to be disclosed is the absolute percentage, whereas for products with a term of more than one year it is the percentage per annum (per annum, p.a.). For “open-end” structured products the distribution fee shall be split linearly over 10 years.
14. Reference to tax treatment in Switzerland.

(d) Underlying value or values

Explanation / comments

1. description of the underlying value or how they are calculated
2. identification of the underlying value, e.g., by means of Swiss security number, ISIN, Bloomberg or Reuters symbol
3. reference to relevant stock exchange or index calculation agent
4. “Actively Managed Certificates” or (“AMCs”), whose underlying values are managed discretionary over the course of their term, must be marked as dynamic, discretionary managed product in bold letters prominently on the first page of the provisional and definitive simplified prospectus. Furthermore the corresponding description must include the following information, while the information may also be disclosed in an appendix or in a separate section:

- a) basic parameters of the investment strategy (including the title universe; title selection criteria; information on the handling of the income of the underlying values). The allocation guideline and the relevant title universe must be determined before issuance and shall not be changed without the consent of the investors. They shall be disclosed in the provisional as well as the definitive simplified prospectus in a concise and easily understandable manner,
- b) manager: Information about the manager of the investment strategy (at least name/company name, residence/domicile, supervisory authority or statement that manager is not subject to prudential supervision),
- c) management commission: details of all compensation paid to the manager of the investment strategy (management fees) for the product,
- d) note on where the information on the investment strategy can be obtained free of charge,
- e) Note on where the current composition of the underlying value (including the weighting of components) is accessible (the information of the composition is to be updated at least monthly).

(e) Security arrangements

Explanation / comments

1. Description of security arrangement (type of security: for example lien, guarantee, keep-well agreement))
2. Information on methodology of the security arrangement (principal terms of the security agreement including the applicable laws); amount of security (amount or percent of the secured claim); any adjustments during the term of the structured product (margining, calculation agent); quality of security (possible rating of guarantor, description of pawn); short

- description of the liquidation mechanism (with a reference to the provisions of the security agreement)
3. Information about the custodial agency if security is kept with a third party custodian
 4. Information where the security agreement can be obtained free of charge

(f) Issue date of the product / changes to the conditions which were not agreed contractually

Reference to a website on which unforeseen changes to the terms and 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 terms and 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. This is to be mentioned in the simplified prospectus.

(g) applicable law and jurisdiction

Explanation / comments

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

5.2 Content "Prospects for profits and losses"

The main category "Prospects for profits and losses" in the provisional and definitive prospectus shall illustrate the impact of changes in the market price of the underlying values on the redemption amount and on the delivery obligation, respectively, under the structured product. The investor shall be informed in an easy understandable way, what the maximum loss is it might suffer and what the maximum return is, that it might realize, by investing in the product. E.g., this can be done by illustrating different market scenarios.

5.3 Content “Significant risks for investors”

In the main category “Significant risks for investors” the main risks of investing in the structured product shall be summarised. In particular, the following risks shall be illustrated:

(a) Product-specific risks

Explanation / comments

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).

(b) Issuer risk

Explanation / comments

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 value, but also on the creditworthiness of the issuer, which may vary over the term of the structured product.”).

6. Duty to provide information: relationship to the Swiss Code of Obligation

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

7. Form, language and source for obtaining the information

1. The information as per art. 5 ff. of these guidelines is to be made available free of charge to interested investors in the form of a provisional simplified prospectus prior to subscription or

prior to conclusion of the purchase contract with indicative information and in form of the definitive simplified prospectus upon issuance or purchase of the product. In addition, it shall be stated prominently in the simplified prospectus, where or through whom and how it can be obtained free of charge in Switzerland.

2. The information may be written in one of Switzerland's official languages or in English, while it shall be indicated on the first page of the simplified prospectus, if it is not available in one of Switzerland's official languages.
3. 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.
4. No publication in the media (not even in abridged form) is required.

Explanation / comments

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

8. Entry into force

These guidelines enter into force on 1 March 2015 and replace the guidelines from 1 July 2007.

9. Transitional provision

The requirement to prepare the provisional and definitive simplified prospectus in accordance with these revised guidelines applies to structured products 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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