



Guidelines on informing investors about structured products from September 2014

1. Introduction

As part of the revision of the Collective Investment Schemes Act (CISA) and the Collective Investment Schemes Ordinance (CISO), which came into force on March 1, 2013, the statutory basis for structured products, i.e. art. 5 CISA and art. 4 CISO, has been partially revised too. Before the revision of 2013, art. 5 para. 2 CISA already foresaw that the content of the simplified prospectus required for structured products had to follow a standardized scheme. According to art. 4 para. 3 CISO, this format must be defined in selfregulation and approved by the FINMA. Together with the Swiss Structured Products Association (SVSP), the Swiss Bankers' Association (SBVg) has adjusted these guidelines on informing investors about structured products (Structured Products Guidelines, hereinafter SPG) to the revised art. 5 CISA and art. 4 CISO. Various aspects of the revised SPG deserve closer inspection.

2. The definition of the structured product in the SPG

Neither the CISA nor the CISO contain a definition of structured products. Art. 5 para. 1 CISA outlines them as "products, such as capital-protected products, products with maximum yield and certificates". Similarly, FINMA's Frequently Asked Questions (FAQ) on structured products in the version of September 10, 2014 contain no definition, they merely offer assistance in the delimitation from collective investment schemes und Special Purpose Vehicles (SPV).

For this reason, the definition contained in the previous SPG was helpful: "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." Unfortunately, this definition has been removed from the SPG. This happened in unison with FINMA's renouncement to provide such a definition in the CISO-FINMA (CISO-FINMA consultation report, August 27, 2014, point 2.3). The reason may well be that it is not the duty of the

SPG to close the legal loophole represented by the missing definition. Similarly, the heterogeneity of structured products makes a definition difficult. This does not alter the fact that firstly the definition was helpful; secondly the scope of application of the SPG is legally problematic. The SVSP website contains the following definition, close to the old SPG definition: "A combination of classic financial investment and derivative, securitized in one instrument as an independent product and put out by the issuer."

As before, the SPG still contains a negative periphrase, according to which forward and options transactions (such as options, futures, warrants etc.) are not structured products. The following points are also new: (i) the investor is not protected by a collective pool of assets for the fulfilment of the contractually agreed product terms but rather the issuer, and (ii) for structured products, an investment purpose (in contrast to the financing purpose) is typical. Collateralized debt obligations, assetbacked securities, convertible bonds and bonds are not deemed to contain an investment purpose and are explicitly excluded from art. 5 CISA. A delimitation from collective investment schemes is no longer given in the SPG. It is only to be found in the FINMA FAQs (FAQ 3 and 6), according to which the distribution of a structured product, whose value is at least 33.3% dependent upon a collective investment scheme, represents an (indirect) distribution of a collective investment scheme. This is always problematic when the structured product is distributed to investors to which the underlying collective investment scheme is not allowed to be distributed: collective investment schemes are not problematic underlyings when the structured product is distributed to the type of investor(s) to which the underlying collective investment scheme can be distributed. Also, a delimitation from special purpose vehicles (SPVs) is now only undertaken in the FINMA FAQs. The delimitation is comparable to the one against collective capital investments (FAQ 4). An SPV is always defined as a collective capital investment when it quali-

fies as such in its country of origin.

An active portfolio management is not a criterion of delimitation. Now, actively managed structured products also fall under art. 5 CISA (see point 6 below).

3. When is a simplified prospectus required?

A simplified prospectus is required when structured products are to be distributed to non-qualified investors. For the distribution to qualified investors, no simplified prospectus is required (for the definition of non-qualified investors, see short & simple 3/2013 [LINK](#)). Distribution to non-qualified investors is only permitted when a simplified prospectus exists, and when the structured product is issued, guaranteed or equally secured by a bank, insurance company, securities dealer or a foreign institution that is subject to equivalent standards of supervision (art. 5 CISA). The foreign institute is required to have a branch in Switzerland (art. 4 para 1 pt. a, CISO). It is no longer required that the structured product is distributed by a bank, insurance company, a securities broker or foreign financial institute (art. 5 para. 1 pt. a, CISA (previous version)). A structured product that fulfils the above requirements can also be distributed by other persons or entities.

If the structured product is issued by an SPV, distribution is required to be performed by a financial institute (bank, insurance company, securities dealer, foreign institution that is subject to equivalent standards of supervision, with subsidiary in Switzerland), an equivalent security must be guaranteed and a simplified prospectus exist.

4. Proactive offering of simplified prospectus

Somewhat surprisingly, a provision was included in the SPG, stating that the simplified prospectus be offered proactively to interested non-qualified investors. This offering can also be in the form of a reference indicating the location of the simplified prospectus (e.g. on an internet page).

5. Content of simplified prospectus

The SPG contain a detailed blueprint, according to which a simplified prospectus is to be structured. It is as an attachment included in this short & simple with comments. As a result of the new SPG, the blueprint has gained the following alterations:

If prior to the issuance of a structured product not all information is conclusively defined, a simplified prospectus with indicative values is to be published prior to issuance. After the issuance, this simplified prospectus is to be replaced by a simplified prospectus with the definitive values. This corresponds with art. 5 para. 3 CISA.

A new element concerns the requirement to post the following disclaimer on the front page, in prominent position and in bold type: "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 remainder of the simplified prospectus is to be subdivided into three parts: (i) product description, (ii) prospects for profits and losses, (iii) significant risk for the investors (see the draft in the attachment).

The product description follows the requirements which have thus far been in force. However, it is now necessary to mention (i) whether the issuer is subjected to prudential supervision (this previously had to be men-

tioned with reference to the issuer risk), (ii) the rating of the issuer (if available; this previously had to be mentioned with reference to the issuer risk), (iii) the distribution fee as included in the issuance price, (iv) how the security is structured (type of security, methodology of security, information about the custodial agency if security is kept with a third party custodian, information where the security agreement can be obtained free of charge).

In 2011, the FINMA subjected several simplified prospectuses and sales documentation of structured products to examination (see FINMA report: [LINK](#)). For purposes of comparability, the FINMA demanded that by the composition of the simplified prospectuses, the issuers of structured products keep "slavishly" to the stipulations of the SPG and apply the terminology suggested in it. We thus correspondingly recommend that these stipulations be followed and existing text be subjected to revision.

6. Actively Managed Structured Products

Unlike previously, the actively managed structured products (Actively Managed Certificates – AMC) are explicitly mentioned. Providing they are classified as structured products (see point 2 above), they are categorized under art. 5 CISA. For actively managed certificates, it is demanded that reference be made, on the first page in bold type, to the discretionary portfolio management.

Furthermore, the following points are to be mentioned: (i) basic parameters of the investment strategy, (ii) the portfolio manager, (iii) management fee paid to the portfolio manager, (iv) note on where the information on the investment strategy can be obtained free of charge, and (v) note on where the current composition of the underlying value is accessible. As has been the case thus far, the investment strategy's benchmark figures may also be contained in an attachment to the simplified prospectus.

7. Transitional provision

The SPG enter into force on 1 March 2015 (point 8, SPG). A simplified prospectus with indicative values is only necessary if a structured product is issued after March 1 2015. A backdated requirement to compile a simplified prospectus with indicative values does not exist (point 9, SPG).

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Template: Simplified prospectus ¹

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.

Additional reference

[It must be indicated, 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.]

Additional reference

(Only applicable for "Actively Managed Certificates", Cf. Chapter 5.1, lit. (d), Ciph. 4 of the Guidelines on informing investors about structured products (page 7 and 8))
 [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.]

A. Product Description

a) Issuer

Company	
Head office	<i>Administrative district or equivalent place designation abroad</i>
Supervision	<i>It must be indicated whether the issuer is subject to prudential supervision or not. If the issuer is not subject to such supervision, attention must specifically be drawn thereto (art. 4 para. 2 CISO).</i>
Name of the supervisory authority	
Rating	<i>If the issuer has a rating, this must be indicated; if the issuer is not rated, this must be indicated explicitly.</i>
Rating Agency	
<i>If applicable: same information as for security provider and guarantor</i>	

b) Valor

Categorization number	<i>According to categorization of Swiss Structured Products Association</i>
Product name	<i>According to categorization of Swiss Structured Products Association</i>
Brief description of the type of product	
Swiss security number	<i>If any</i>
ISIN	<i>If any</i>
Calculation Agent	
Total amount and minimum investment	
Currency of the security	
Issue price	

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

Trading volume and ratio	
Right attached to the security	
Seniority	<i>If any</i>
Subordination	<i>If any</i>
Exercise details	<i>With a brief explanation in each case</i>
Exercise style	<i>With a brief explanation in each case</i>
Maturity	
Point in time	
Price-setting	
Payment	
Expiration	
Redemption details	
Paying agent, exercise agent	
Clearing	
Listing	<i>Indication that the security is not listed or on any listing (stating the exchange)</i>
Restriction on transferability, tradability and trading details	<i>Brief reference to liquidity / tradability in the secondary market, even if the product is not listed on an exchange.</i>
Redemption details	<i>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.</i>
Fees	<i>Fees imposed on the purchaser during the term of the investment after issue.</i>

¹ This template is based on the informationen in Chapter 5 of the Guidelines on informing investors about structured products.

Disclosure of distribution fee	<i>Cf. Chapter. 5.1 lit. (c) ciph. 13 of the Guidelines on informing investors about structured products (page 7).</i>
Reference to tax treatment in Switzerland	

d) Underlying value or values

Underlying value or values	<i>Description of the underlying value or how they are calculated</i>
Swiss security number, ISIN, Bloomberg and Reuters symbol	<i>Identification of the underlying value</i>
Relevant stock exchange/index calculation agent	<i>Reference to relevant stock exchange or index calculation agent</i>

e) Security arrangements

Description of security arrangement	<i>Type of security: for example lien, guarantee, keep-well agreement</i>
Methodology of the security arrangement	<i>Cf. Chapter 5.1 lit. (e) Ciph. 2 of the Guidelines on informing investors about structured products (page 8 und 9)</i>
Custodial agency	<i>Information about the custodial agency if security is kept with a third party custodian.</i>
Place where the security agreement may be obtained	<i>Information where the security agreement can be obtained free of charge.</i>

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

Website	<i>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. Cf. Chapter 5.1 lit. (f) of the Guidelines on informing investors about structured products (page 9).</i>
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g) Applicable law and jurisdiction

Applicable Law	<i>Highlighted in the text, e.g. in bold letters, if foreign law applies.</i>
Jurisdiction	<i>Highlighted in the text, e.g. in bold letters, if foreign law applies.</i>

B. Prospects for profits and losses

[Information on prospects for profits and losses; *Cf. Chapter 5.2 of the Guidelines on informing investors about structured products (page 9 and 10)*]

C. Significant risks for investors

a) Product-specific risks

[Information on product-specific risks; *Cf. Chapter 5.3 lit. (a) of the Guidelines on informing investors about structured products (page 10)*]

b) Issuer risk

[Information on issuer risk; *Cf. Chapter 5.3 lit. (b) of the Guidelines on informing investors about structured products (page 10)*]

c) [Further significant risks for investors]

Cf. Chapter 5.3 of the Guidelines on informing investors about structured products (page 10)

[Reminder: Insert explanatory scenarios and charts.]

Additional Annex

(Only applicable for „Actively Managed Certificates“, Cf. Chapter 5.1 lit. (d) Ciph. 4 of the Guidelines on informing investors about structured products (page 7 and 8))

Basic parameters of the investment strategy	<i>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.</i>
Manager	<i>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).</i>
Management commission paid to the manager	<i>Management commission: details of all compensation paid to the manager of the investment strategy (management fees) for the product.</i>
Place where the information on the investment strategy can be obtained	<i>Note on where the information on the investment strategy can be obtained free of charge.</i>
Place where the current composition of the underlying value can be obtained	<i>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).</i>

Disclaimer: This template is based on the information in Chapter 5 of the Guidelines on informing investors about structured products. Please consult the guidelines when preparing a simplified prospectus.