

## Derivatives - Switzerland

### New guidelines on derivatives

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October 22 2014

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#### Introduction

In September 2014 the Swiss Bankers Association and the Swiss Structured Products Association jointly issued the new Guidelines on Informing Investors about Structured Products. The new guidelines will enter into force on March 1 2015 and will replace the guidelines initially issued by the Swiss Bankers Association in 2007. The new guidelines have been recognised by the Swiss Financial Market Supervisory Authority (FINMA) as a minimum standard.

Composed derivative products – or 'structured products' as they are known in Switzerland – such as reverse convertibles, certificates and leverage products are to a certain extent governed by the Federal Act on Collective Investment Schemes and the Federal Ordinance on Collective Investment Schemes, which were both amended in March 2013. On one hand, the new guidelines reflect such legislative amendments, while on the other hand, they address certain concerns raised by FINMA in recent years with regard to investors' protection. They further include clarifications sought by the financial industry.

#### Availability of simplified prospectus

The new guidelines clarify that a simplified prospectus must be made available to investors free of charge only if the structured products are distributed to non-qualified investors under the Federal Act on Collective Investment Schemes. In contrast, a simplified prospectus need not be made available if the 'structured products' are not distributed (as the term is defined under the act) or are distributed to qualified investors only. As required under the act, if a simplified prospectus must be made available pursuant to the guidelines, a preliminary simplified prospectus is required before subscription or conclusion of the purchase agreement, and a final simplified prospectus on the issuance of the product or conclusion of the purchase agreement. Further, the guidelines require that the simplified prospectus be offered proactively to interested non-qualified investors – they must be informed where the simplified prospectus can be obtained or viewed.

#### Labelling requirements

The new guidelines establish certain labelling requirements (some of which are required pursuant to the Federal Act on Collective Investment Schemes). Relevant reference must be made on the first page of the simplified prospectus in the required manner, stipulating:

- that the structured product is neither a collective investment scheme nor subject to the authorisation or supervision of FINMA and the investor bears the issuer risk;
- whether the product is not issued, guaranteed or under equivalent legal protection of a supervised financial intermediary;
- whether the product is actively managed; and
- whether the simplified prospectus is not available in one of Switzerland's official languages.

#### Content

The guidelines repeat what was already required under FINMA's former frequently asked questions (FAQs) (see below). The simplified prospectus must be sub-divided into three main categories:

- product description;
- prospects for profits and losses; and
- significant risks for investors.

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Further, an additional section may be added containing general information about the product. Finally, as required under the Federal Act on Collective Investment Schemes, the guidelines prescribe that indicative terms must be clearly marked in the preliminary simplified prospectus.

#### **Disclosure of distribution fee**

Pursuant to the new guidelines all distribution fees that are priced into the issue price or constitute up-front fees on issuance (including sales commissions paid to distributors) must be disclosed by the issuer of the structured products in a certain manner, depending on their term and structure.

#### **Products**

The new guidelines contain additional requirements with regard to certain derivative products.

##### ***Actively managed products***

Pursuant to the guidelines, the following information must be provided in the simplified prospectus of an actively managed derivative:

- basic parameters of the investment strategy;
- information about the manager and management commissions; and
- where the existing composition of the underlying assets may be accessed.

Further, the information on the composition of the underlying assets must be updated at least monthly.

##### ***Credit-linked notes***

According to the guidelines, credit-linked notes qualify as structured products only if they are issued for investment purposes. In contrast, credit-linked notes issued for financing purposes do not qualify as structured products under the Federal Act on Collective Investment Schemes.

The new guidelines will enter into force on March 1 2015. The guidelines will apply only to structured products issued after that date and will therefore have no retrospective effect. However, some of the requirements may already apply on the basis of the revised act.

Further, in view of the new guidelines, FINMA updated its FAQs on structured products on September 10 2014. Some of the questions contained in the former FAQs (December 23 2010) are no longer addressed in the updated version, as they are covered by the new guidelines. However, other questions have been removed for no apparent reason.

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