

## **PART 2**

### **STRUCTURED PRODUCTS**

## **Chapter 1**

### **GENERAL**

- 1.01 Section B, Part 2 of these Guidelines sets out the specific requirements that must be complied with in relation to unlisted structured products under the Lodge and Launch framework.
- 1.02 For avoidance of doubt, unlisted structured products would include floating rate negotiable instruments of deposit (NIDs) and Islamic negotiable instruments of deposit (INIDs) with tenure of more than five years<sup>1</sup>.

### **Eligible Issuer**

- 1.03 The following categories of persons are eligible to issue structured products (Eligible Issuers):
- (a) A qualified bank;
  - (b) A qualified dealer;
  - (c) A locally incorporated special purpose vehicle (SPV) sponsored by a qualified bank or qualified dealer; and
  - (d) Cagamas Bhd (Cagamas) and locally incorporated SPV sponsored by Cagamas, provided that the underlying reference of the structured product is restricted to assets originated in the domestic banking sector.
- 1.04 Where the structured product is issued by a locally incorporated SPV, the qualified bank, qualified dealer or Cagamas sponsoring the SPV must provide an undertaking to investors on the performance of the administrative and operational obligations of the SPV.

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<sup>1</sup> Other examples of structured products falling under these Guidelines include equity linked notes, bond linked notes, index linked notes, currency linked notes, interest rate linked notes, commodity (contracts) linked notes and credit linked notes.

## **Structured products of foreign-related corporations**

- 1.05 A qualified bank and qualified dealer may issue<sup>2</sup> a structured product of its foreign-related corporation, provided that such foreign-related corporation is–
- (a) the foreign parent company or foreign-related corporation of that qualified bank or qualified dealer, and is duly licensed in its home jurisdiction as the equivalent of a qualified bank or qualified dealer; or
  - (b) an SPV<sup>3</sup> which is sponsored by the foreign parent company or foreign-related corporation of that qualified bank or qualified dealer.
- 1.06 The qualified bank or qualified dealer who issues the structured products of the SPV under subparagraph 1.05(b) above must provide an undertaking to investors on the performance of the administrative and operational obligations of that SPV.

## **Requirements of an SPV as an Eligible Issuer**

- 1.07 An SPV sponsored by a qualified bank, qualified dealer or Cagamas under subparagraph 1.03(c) or (d) above must be a resident in Malaysia for tax purposes.
- 1.08 An SPV must have independent and professional directors or trustees, as the case may be.
- 1.09 In determining whether an SPV is sufficiently “bankruptcy remote”, the following must be taken into account:
- (a) An SPV cannot include in its objectives, the power to enter into any other activities that are not incidental to its function as an SPV in relation to the structured product programme;

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<sup>2</sup> For the purposes of these Guidelines, the Eligible Issuer under paragraph 1.05 is the qualified bank or qualified dealer, not the foreign parent company or foreign-related corporation or SPV.

<sup>3</sup> An SPV under subparagraph 1.05(b) may be set up in a foreign jurisdiction.

- (b) An SPV must subcontract to third parties all services that may be required by it in order to maintain the SPV and its assets;
  - (c) An SPV is not permitted to have employees or incur any fiduciary responsibilities to third parties other than to parties involved in the structured product programme; and
  - (d) All the liabilities, present or future, of an SPV (including tax) must be quantifiable and capable of being met out of resources available to it.
- 1.10 Without prejudice to any applicable law, an SPV must maintain proper accounts and records to enable a complete and accurate view to be formed of its assets, liabilities, income and expenditure and to comply with all other regulatory reporting requirements in respect of the issuance of structured products.
- 1.11 An SPV sponsored by a qualified bank, qualified dealer or Cagamas must only issue structured products that are fully collateralised against assets or securities or guaranteed by a qualified bank.

### **Islamic structured products**

- 1.12 In addition to complying with these Guidelines, any proposal in relation to an Islamic structured products must also comply with the *Guidelines on Islamic Capital Market Products and Services*.
- 1.13 [Deleted]

## **Chapter 2**

### **STRUCTURE**

#### **Credit rating**

- 2.01 Any rating of structured products must be provided by a credit rating agency registered with the SC.
- 2.02 For structured products of foreign-related corporations under paragraph 1.05 above, a rating by an international credit rating agency is also acceptable.

#### **Programme size**

- 2.03 A lodgement to the SC pursuant to these Guidelines must be made only via a structured product programme with a size of up to RM5 billion and any issuance will reduce the structured product programme size accordingly.

#### **Tenure**

- 2.04 The structured programme must be fully utilised within three years from the date of its lodgement with the SC.

#### **Approvals**

- 2.05 All necessary approvals in relation to the issuance of a structured product from other regulatory bodies, including BNM, must be obtained prior to the issuance of that structured product.

#### **Roles and responsibilities of Responsible Party**

- 2.06 An Eligible Issuer must—
- (a) ensure that information on the principal terms and conditions as well as risks associated with the structured products are disclosed to all investors; and
  - (b) request a confirmation from such investors that disclosure was in fact made.

## **Chapter 3**

### **LODGEMENT**

3.01 All information and documents to be lodged are set out in the Lodgement Kit.

3.02 A qualified bank or a qualified dealer may make lodgement directly with the SC or through a principal adviser. However, an Eligible Issuer who is not a qualified bank or qualified dealer must make its lodgement with the SC under these Guidelines through a principal adviser.

#### **Islamic structured products**

3.03 [Deleted]

3.04 [Deleted]

3.05 [Deleted]

## **Chapter 4**

### **CONTINUOUS OBLIGATIONS**

- 4.01 For the issuance of structured products under a structured product programme, an Eligible Issuer or its principal adviser must submit the information and documents used in the issuance of each new structured product series under the structured product programme prior to the first issuance of that structured product series.
- 4.02 For the purpose of paragraph 4.01 above, a new structured product series include any structured product that has any material change to its terms and conditions such as changes in the class of underlying reference, changes in Shariah principles, changes in the risks associated with the product or any change in regulatory requirements.
- 4.03 The information and documents to be submitted under paragraph 4.01 above are set out in the Lodgement Kit.
- 4.04 For structured products of foreign-related corporations under paragraph 1.05 above, the qualified bank or qualified dealer must submit further information and documents, which are set out in the Lodgement Kit.
- 4.05 Following the lodgement of a structured product programme with the SC, an Eligible Issuer is required to submit a monthly post-issuance report to the SC incorporating information as may be specified by the SC. The requirement to submit a monthly post-issuance report is also applicable where no structured product has been issued under the programme (i.e. nil reporting).
- 4.06 The monthly post-issuance report under paragraph 4.05 above must be submitted no later than seven business days after the end of every month.

## **Chapter 5**

### **REVISION**

- 5.01 No revision or amendment can be made to the terms and conditions of a structured product programme or structured product issued under a structured product programme.
- 5.02 However, an Eligible Issuer or its principal adviser can make changes or update the information related to the Eligible Issuer such as the business address, contact persons and credit rating of the Eligible Issuer.
- 5.03 If the changes or updates in relation to matters mentioned in paragraph 5.02 above result in consequential amendments to be made in the product highlights sheet and other information and documents used in the issuance of the structured products, a replacement product highlights sheet and revised information and documents must be submitted.