



Suruhanjaya Sekuriti
Securities Commission

GUIDELINES ON THE OFFERING OF STRUCTURED PRODUCTS

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1.0 INTRODUCTION

- 1.01 Any person who issues, offers for subscription or purchase, or makes an invitation to subscribe for or purchase, or makes available structured products requires the approval of the Securities Commission (SC) under section 32 of the Securities Commission Act 1993 (SCA) and shall comply with the Guidelines on the Offering of Structured Products (hereafter referred to as "these Guidelines").
- 1.02 These Guidelines stipulate the criteria which must be met when issuing, offering, making an invitation for, or making available unlisted structured products to investors listed in Schedules 2 and 3 of the SCA.
- 1.03 For the purposes of these Guidelines:
- (a) "qualified bank" means :
 - (i) a commercial bank licensed under the Banking And Financial Institutions Act 1989;
 - (ii) an Islamic bank licensed under the Islamic Banking Act 1983; or
 - (iii) an investment bank licensed as a dealer under the Securities Industry Act 1983 and as a merchant bank under the Banking And Financial Institutions Act 1989, and established under the Guidelines on Investment Banks jointly issued by Bank Negara Malaysia and the SC.
 - (b) "qualified dealer" means a dealer licensed under the Securities Industry Act 1983, and :
 - (i) which is a universal broker as defined in the SC's Guidelines on Permitted Activities for Stockbroking Companies;
 - (ii) which is a 1+1 broker as defined in the SC's Guidelines on Permitted Activities for Stockbroking Companies; or
 - (iii) which is a special scheme broker as defined in the SC's Guidelines on Permitted Activities for Stockbroking Companies.
 - (c) "structured product" means any investment product that falls within the definition of "securities" under the SCA and which derives its value by reference to the price or value of an underlying reference;

(d) “underlying reference” means any security, index, currency, commodity or other assets or reference, or combination of such assets or reference.

1.04 **Appendix 1** sets out a non-exhaustive list of examples of structured products falling under these Guidelines.

2.0 SCOPE

2.01 Unless expressly stated in these Guidelines, the Guidelines on the Offering of Private Debt Securities shall not apply to structured products approved under these Guidelines. However, these Guidelines shall not be used to circumvent the Guidelines on the Offering of Private Debt Securities, the Guidelines on the Offering of Asset-Backed Securities, the Guidelines on the Offering of Islamic Securities or any other guidelines issued by the SC that would apply to a fundraising exercise by a body corporate.

Exemption from SC's Prior Approval

2.02 Where at least one party is a qualified bank or a qualified dealer, the issuance of the following non-tradable¹ structured products will not require the prior approval of the SC under these Guidelines:

- (a) Bond options
- (b) Credit default swaps
- (c) Credit options
- (d) Total return swaps
- (e) Equity swaps / equity options

This exemption shall not apply to structured products based on equity swaps/equity options that fall within the Policies and Guidelines on Issue/Offer of Securities, for which approval by the SC under the said Guidelines is necessary.

2.03 The issuance of non-tradable structured products where both parties are qualified banks and/or qualified dealers will not require the prior approval of the SC under these Guidelines.

¹ Non-tradable structured products in the context of these Guidelines refer to structured products which are not capable of being traded without the consent of both parties.

Islamic Structured Products

2.04 The Shariah principle(s) and concept(s) adopted for an Islamic structured product must be based on the principles and concepts approved by the SC's Shariah Advisory Council (SAC), a list of which is mentioned in **Appendix 2**.

For this purpose, an issuer of Islamic structured products must appoint one of the following as its Shariah adviser:

- (a) An independent Shariah adviser who has been approved by the SC and who meets the following criteria:
 - (i) is not an undischarged bankrupt;
 - (ii) has not been convicted for any offence arising out of a criminal proceeding;
 - (iii) is of good repute and character; and
 - (iv) possesses the necessary qualifications and expertise particularly in fiqh muamalah and Islamic jurisprudence, and has a minimum of 3 years experience or exposure in Islamic finance; or
- (b) An Islamic bank licensed under the Islamic Banking Act 1983; or
- (c) A qualified bank, other than an Islamic bank, that carries out an Islamic Banking Scheme.

Notwithstanding the above, a foreign Shariah adviser may be used for Islamic structured products made available by a qualified bank or qualified dealer under subparagraph 3.03 below.

3.0 ELIGIBLE ISSUERS

3.01 The following categories of persons are deemed as eligible issuers under these Guidelines:

- (a) a qualified bank;
- (b) a qualified dealer; and
- (c) a locally incorporated Special Purpose Vehicle (SPV) sponsored by a qualified bank or a qualified dealer.

- 3.02 Cagamas Berhad and locally incorporated SPVs sponsored by Cagamas Berhad are also eligible to issue structured products under these Guidelines provided that the underlying reference is restricted to assets originated in the domestic banking sector.

Structured Products of Foreign Related Corporations

- 3.03 Qualified banks and qualified dealers may make available the structured products of a foreign-related corporation, provided that such foreign-related corporation is:
- (a) the foreign parent company or related corporation² 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 which is sponsored by the entities listed in (a) above.
- 3.04 The issuers described in sub-paragraphs 3.01, 3.02 and 3.03 are collectively referred to in these Guidelines as Eligible Issuers³.

SPV Issuer Requirements

- 3.05 The following requirements apply to SPVs:
- (a) An SPV sponsored by a qualified bank, qualified dealer or Cagamas must be a resident in Malaysia for tax purposes. An SPV under sub-paragraph 3.03(b) may be set up in a foreign jurisdiction.
 - (b) An SPV's directors or trustees, as the case may be, must all be independent and professional.
 - (c) An SPV is to be bankruptcy remote and in determining the same, the following must be taken into account:
 - (i) the SPV cannot include in its objectives, the power to enter into any other activities that are not incidental to its function as a special purpose vehicle in relation to the structured product programme;
 - (ii) the SPV must sub-contract to third parties all services that may be required by it in order to maintain the SPV and its assets;

² as defined in the Companies Act 1965

³ For the purposes of these Guidelines, the Eligible Issuer under sub-paragraph 3.03 is the relevant qualified bank or qualified dealer, not the foreign parent company, related corporation or SPV issuer.

- (iii) the 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
 - (iv) all the SPV's liabilities (including tax) must be quantifiable and capable of being met out of resources available to it.
- (d) 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 issue, offer or invitation of structured products.
- (e) An SPV sponsored by a qualified bank, qualified dealer or Cagamas shall only issue, offer or make an invitation for structured products that are fully collateralised against assets or securities and/or guaranteed by a qualified bank.
- (f) An Eligible Issuer that sponsors an SPV under sub-paragraphs 3.01(c) or 3.02, and an Eligible Issuer for structured products of an SPV under sub-paragraph 3.03(b), shall issue an undertaking to the investors of that SPV's structured products, to ensure the performance of that SPV's administrative and operational obligations.

4.0 SUBMISSION OF PROPOSALS AND APPROVAL FROM THE SC

- 4.01 An Eligible Issuer and/or its adviser (if applicable) must submit the information and documents listed in Appendix 3 to the SC before issuing, offering, making an invitation for, or making available structured products.
- 4.02 A qualified bank or a qualified dealer may make a submission directly to the SC under these Guidelines for a proposal to issue, offer, make an invitation for, or make available its structured products. An Eligible Issuer who is not a qualified bank or a qualified dealer must make its submission to the SC under these Guidelines through a qualified bank or universal broker as their principal adviser.
- 4.03 The SC's approval for a waiver of any of the requirements under these Guidelines must be obtained before a submission is made.

4.04 A submission to the SC pursuant to these Guidelines shall be made only via a structured product programme with a size of up to RM5 billion. Any issuance will reduce the approved programme size accordingly.

4.05 A submission shall be deemed approved by the SC on the date of receipt of the applicable set of completed information and documents prescribed in the relevant Appendices. Each issue, offer, invitation or availability of structured products under the programme shall be deemed approved on the condition that, among others, the following requirements will be fully complied with:

- (a) all other necessary approvals are obtained in accordance with paragraph 5;
- (b) risk disclosure statement, information and warning requirements are met in accordance with paragraph 7;
- (c) suitability and fair dealing requirements are met in accordance with paragraph 8;
- (d) documents and materials are submitted in accordance with paragraph 9; and
- (e) post-issuance notifications are made in accordance with paragraph 10.

A submission for a programme that includes Islamic structured products is deemed approved on the basis that the Shariah principles and concepts listed in Appendix 2 and/or such other principles and concepts which are approved by the SC's SAC from time to time will be fully complied with.

4.06 In the event of a breach of or non-compliance with sub-paragraph 4.05 above, an Eligible Issuer is to suspend making further issues, offers, invitations for or availability of structured products under the unutilised portion of a structured product programme, until such breach or non-compliance is remedied to the SC's satisfaction.

5.0 OTHER APPROVALS

5.01 All necessary approvals in relation to the issue, offer, invitation or availability of a structured product from other bodies, including from Bank Negara Malaysia or Bursa Malaysia Securities Berhad (Bursa Malaysia), are to be obtained prior to issuing, offering, making an invitation for, or making available that structured product.

6.0 RATING REQUIREMENT

- 6.01 An Eligible Issuer issuing, offering, making an invitation for or making available structured products may obtain a rating for the same at its discretion, from a rating agency recognised by the SC.
- 6.02 Notwithstanding sub-paragraph 6.01 above, the issue, offer, invitation for or making available of the following structured products shall be rated by a rating agency recognised by the SC:
- (a) tradable structured products; and
 - (b) structured products by an SPV under sub-paragraphs 3.01(c), 3.02 or 3.03(b), that are collateralised by assets or securities other than securities issued by the Malaysian Government or sovereign securities in the currency of issue of the foreign-related corporation.

For structured products under sub-paragraph 3.03, a rating by an international credit rating agency will also be acceptable.

- 6.03 For avoidance of doubt, a rated structured product shall be continuously rated throughout its tenor.

7.0 REQUIREMENT FOR DISCLOSURE

- 7.01 A risk disclosure statement shall be made available by a primary seller of structured products to investors when offering, making an invitation for, or making available structured products under these Guidelines, which risk disclosure statement shall include the following information:
- (a) a clear explanation highlighting all material risk factors of investing in the structured product;
 - (b) recent price trends of the underlying reference (if applicable);
 - (c) scenarios showing a range of potential gains or losses resulting from changes in value of the underlying reference;
 - (d) information on the liquidity provider or other liquidity facilities (if applicable);

- (e) a rating for the structured product and the definition of such rating (if applicable);
- (f) other material information relating to the structured products that would enable or assist investors to make an informed decision; and
- (g) where an Eligible Issuer is an SPV, or where an Eligible Issuer is making available the structured products of an SPV under sub-paragraph 3.03(b), material information regarding such SPV and arrangements made for the performance of the SPV's obligations.

For the purposes of these Guidelines, a primary seller is the party that offers, makes an invitation for, or makes available the structured product to investors at the primary market, and that may be the Eligible Issuer itself⁴ and in the case of tradable structured product, may also include its adviser and subscriber.

7.02 The following minimum information is also to be provided by a primary seller together with the risk disclosure statement to investors:

- (a) a detailed description of the structure of the transaction;
- (b) principal terms and conditions of the transaction, including investment terms (e.g early withdrawal by investor, early termination by issuer, transfer and/or selling restrictions, etc);
- (c) where an Eligible Issuer is an SPV, transaction costs transferred to the investors (if any); and
- (d) a copy of the undertaking in sub-paragraph 3.05(f) by an Eligible Issuer in relation to an SPV under sub-paragraphs 3.01(c), 3.02 or 3.03(b).

7.03 A primary seller must ensure that the information in sub-paragraphs 7.01 and 7.02 is disclosed to all investors to whom structured products are offered at the primary level and request a confirmation from such investors that disclosure was in fact made.

7.04 A primary seller has a continuing obligation to provide to investors of structured products:

⁴ For Eligible Issuer who is an SPV, this also refers to its sponsor.

- (a) updates on changes to the information in sub-paragraphs 7.01 and 7.02 above upon request; and
- (b) for tradable structured products, updates on recent price trends (where applicable) and relevant information on the underlying reference, which shall be made available on a timely basis to investors.

7.05 A primary seller must also provide the following risk warning statement in the documents and according to the format specified below:

WARNING
THE RETURNS ON YOUR STRUCTURED PRODUCT INVESTMENT WILL BE AFFECTED BY THE PERFORMANCE OF THE UNDERLYING ASSET/REFERENCE, AND THE RECOVERY OF YOUR PRINCIPAL INVESTMENT MAY BE JEOPARDISED IF YOU MAKE AN EARLY REDEMPTION.

- (a) in Arial font size 12 bold capital letters, at the bottom of every page of the application form, investment agreement and/or any other document forming part of the contract between an Eligible Issuer and the investor pertaining to an issue, offer, invitation or availability of structured products under these Guidelines;
- (b) in Arial font size 12 bold capital letters on the first and last pages of the term sheet, the principal terms and conditions, the risk disclosure statement and other documents not otherwise specified in this sub-paragraph 7.05;
- (c) in Arial font size 24 bold capital letters, as the first slide in any promotional soft copy slide presentation and/or hard copy print out; and
- (d) in Arial font bold capital letters, on the first and last pages of advertising or promotional notice or material in any other medium, the font size of which is to be no smaller than the font size of the content.

Primary sellers are reminded to use appropriate colours for the risk warning statement, so as to ensure legibility and prominence.

7.06 A primary seller must ensure that investors are provided with information on how complaints against the Eligible Issuer may be made to the SC, by contacting the SC's Complaints Department:

- (a) via phone to the Aduan Hotline at : 03 – 6204 8999
- (b) via fax to : 03 – 6204 8991
- (c) via e-mail to aduan@seccom.com.my
- (d) via online complaint form available at www.sc.com.my

This information is to be provided to the investor in written form, whether in the term sheet, risk disclosure statement, investor confirmation, or promotional material.

7.07 The disclosure obligations in this paragraph 7 do not apply to onward sellers of tradable structured products in the secondary market.

8.0 SUITABILITY AND FAIR DEALING REQUIREMENTS

8.01 A primary seller shall adopt fair dealing best practices when dealing, marketing and selling structured products to investors. In particular, the different standards of fair dealing in relation to institutional investors and investor individuals should be noted and addressed. This includes giving an investor individual who invests in structured products during an offer period, the option to obtain a full refund of his principal investment sum within three working days of such investment or the remaining offer period, whichever is earlier.

8.02 A primary seller should endeavour to make an investor understand the risks in relation to investing in structured products before marketing and selling structured products to that investor. The following are minimum key measures that a primary seller is expected to observe to ensure adequate investor protection with regard to any issue, offer, invitation for, or the making available of structured products:

- (a) **KNOW YOUR CLIENT:** To determine whether structured products are suitable for the targeted client, a primary seller should take all reasonable steps beforehand to assess the client's financial position, investment experience and investment objectives.

- (b) DUTY OF CARE: A primary seller should ensure that the financial risks and potential losses that may arise from investing in structured products are fully explained to clients before the client makes his investment decision. Projections of returns on investment are to be based on historical performance, if available, and reasonable expectations of future performance.
- (c) SALES PERSONNEL : A primary seller should ensure that actual and potential clients are only attended to by specifically identified personnel who have a financial background and possess adequate knowledge and understanding of structured products, particularly when dealing with investor individuals.
- (d) PROVIDE RISK DISCLOSURE STATEMENT: A primary seller should provide clients with pertinent information regarding the risks in investing in structured products. In this regard, the risk disclosure statement is to be provided separately from the application form or other document constituting a contract between an Eligible Issuer and the investor, and is to be furnished to the potential investor together with other promotional and sales documents, before any binding contract is entered into by the investor.
- (e) CONFIRMATION OF DISCLOSURE BY CLIENT: A primary seller should invite the client to read the risk disclosure statement, ask questions and take independent advice if the client so wishes. Thereafter, the client should be requested to sign a confirmation that the relevant disclosure has been made by the primary seller.
- (f) INVESTOR INDIVIDUALS: A primary seller should ensure that a higher standard of diligence is exercised when dealing with investor individuals. Among other things, investor individuals should be provided with the contact information of the relevant person(s) (and not merely an automated answering service) who may be contacted for queries, requests and complaints.

9.0 POST-APPROVAL SUBMISSION

9.01 The Eligible Issuer is required to submit the hard copy of documents and materials used in the issue, offer or invitation of each new structured product series⁵ under a programme no later than one working day from the date of first issuance, offer or invitation of that structured product series to :

⁵ A new structured products series refers to structured products that have a different underlying reference and/or different set of offering documents.

Bond Market Department
Market Supervision Division
Securities Commission
3 Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur.

- 9.02 The documents and materials to be submitted under sub-paragraph 9.01 shall include the risk disclosure statement, the principal terms and conditions, the advertising and promotional material, the written opinion of a Shariah adviser on how the structure meets Shariah requirements (if applicable), and such other documents or information as may be required by the SC.
- 9.03 For structured products of foreign-related corporations under sub-paragraph 3.03, the requirements in sub-paragraphs 9.01 and 9.02 shall be complied with by the relevant qualified bank or qualified dealer, who shall also submit the following further information and documents :
- (a) name of the foreign parent company, related corporation or SPV;
 - (b) home jurisdiction of the foreign parent company, related corporation or SPV;
 - (c) evidence acceptable to the SC that the foreign parent company or related corporation is duly licensed by the relevant authority in its home jurisdiction as the equivalent to that of a qualified bank or qualified dealer; and
 - (d) relevant information on compliance with any approval, filing or registration requirements, where applicable, set out by the relevant authority of its home or other jurisdictions for such structured products .

10.0 REQUIREMENT FOR CONTINUOUS POST-ISSUANCE NOTIFICATION

- 10.01 For any issue, offer or invitation of structured products that fall under these Guidelines, an Eligible Issuer is required to submit a semi-annual post-issuance notification to the SC⁶ incorporating information in the format set out in Appendix 5 of these Guidelines.
- 10.02 The semi-annual post-issuance notification prescribed above shall be submitted to the SC:
- (a) in soft copy to DS@seccom.com.my; and

⁶ This requirement includes "nil reports", if applicable.

(b) in hard copy to : Private Debt Securities Issues Department
Issues & Investment Division
Securities Commission
3 Persiaran Bukit Kiara
Bukit Kiara
50490 Kuala Lumpur.

10.03 In relation to each structured product transaction it enters into, an Eligible Issuer is also required to furnish to the SC, upon request, the principal terms and conditions, term sheet, risk disclosure statement, investor confirmation of disclosure, contract note, investment agreement, and any other relevant document relating to that transaction.

11.0 TRANSITIONAL PROVISIONS

11.01 These Guidelines shall from the date of its release supersede the Guidelines on the Offering of Structured Products released on 10 December 2003 and the Practice Note 1 released on 26 October 2005 ("the previous Guidelines"). Notwithstanding the same, approvals granted by the SC under the previous Guidelines, whether in relation to structured products, structured product programmes or waivers, shall remain valid.

11.02 Structured product programmes which have been approved by the SC under the previous Guidelines will remain valid until the expiry of the availability period or tenor of the programme. Notwithstanding the same, the issue, offer or invitation of new structured products under such programmes shall comply with the requirements of these Guidelines with effect from 1 August 2007.

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EXAMPLES OF STRUCTURED PRODUCTS FALLING UNDER THESE GUIDELINES

- Equity Linked Notes
- Bond Linked Notes
- Index Linked Notes
- Currency Linked Notes
- Interest Rate Linked Notes
- Commodity (Contracts) Linked Notes
- Credit Linked Notes

**Approved Shariah Concepts and Principles for the Purpose of Structuring,
Documenting and Trading of Islamic Securities**

The following are acceptable Shariah concepts and principles for Islamic securities -

A. Primary principles

- **Deferred-Payment Sale [*Bai' Bithaman Ajil* (BBA)]**
A contract that refers to the sale and purchase transaction for the financing of an asset on a deferred and an instalment basis with a pre-agreed payment period. The sale price will include a profit margin.
- **Sale with Immediate Repurchase [*Bai' 'Inah*]**
A contract which involves the sale and buy back transaction of an asset by a seller. A seller will sell the asset to a buyer on a cash basis. The seller will immediately buy back the same asset on a deferred payment basis at a price that is higher than the cash price. It can also be applied when a seller sells the asset to a buyer on a deferred basis. The seller will later buy back the same asset on a cash basis at a price which is lower than the deferred price.
- **Supply Sale [*Bai' Istijrar*]**
A contract between a client and a supplier, whereby the supplier agrees to supply a particular product on an ongoing basis, for example monthly, at an agreed price and on the basis of an agreed mode of payment.
- **Advance Purchase [*Bai' Salam*]**
A sale and purchase contract whereby the payment is made in cash at the point of contract but the delivery of the asset purchased will be deferred to a pre-determined date.
- **Sale and Repurchase [*Bai' Wafa*]**
A contract with the condition that when the seller pays back the price of goods sold, the buyer returns the goods to the seller.
- **Leasing [*Ijarah*]**
A *manfaah* (usufruct) type of contract whereby a lessor (owner) leases out an asset or an equipment to its client at an agreed rental fee and pre-determined lease period upon the *`aqad* (contract). The ownership of the leased equipment remains in the hands of the lessor.

- **Lease to Purchase [*Ijarah Thumma Bai`*]**
 A contract which begins with an *Ijarah* contract for the purpose of renting out a lessor's asset to a lessee. Consequently, at the end of the lease period, the lessee will purchase the asset at an agreed price from the lessor by executing a purchase (*Bai`*) contract.
- **Purchase Order [*Istisna`*]**
 A purchase contract of an asset whereby a buyer will place an order to purchase the asset which will be delivered in the future. In other words, the buyer will require a seller or a contractor to deliver or construct the asset that will be completed in the future according to the specifications given in the sale and purchase contract. Both parties of the contract will decide on the sale and purchase prices as they wish and the settlement can be delayed or arranged based on the schedule of the work completed.
- **Profit-Sharing [*Mudharabah*]**
 A contract which is made between two parties to finance a business venture. The parties are a *rabb al-mal* or an investor who solely provides the capital and a *mudharib* or an entrepreneur who solely manages the project. If the venture is profitable, the profit will be distributed based on a pre-agreed ratio. In the event of a business loss, the loss shall be borne solely by the provider of the capital.
- **Cost-Plus Sale [*Murabahah*]**
 A contract that refers to the sale and purchase transaction for the financing of an asset whereby the cost and profit margin (mark-up) are made known and agreed by all parties involved. The settlement for the purchase can be either on a deferred lump sum basis or on an instalment basis, which will be specified in the agreement.
- **Profit and Loss-Sharing [*Musyarakah*]**
 A partnership arrangement between two parties or more to finance a business venture whereby all parties contribute capital either in the form of cash or in kind for the purpose of financing the business venture. Any profit derived from the venture will be distributed based on a pre-agreed profit sharing ratio, but a loss will be shared on the basis of equity participation.
- **Benevolent Loan [*Qardh Hasan*]**
 A contract of loan between two parties on the basis of social welfare or to fulfill a short-term financial need of the borrower. The amount of repayment must be equivalent to the amount borrowed. It is however legitimate for a borrower to pay more than the amount borrowed as long as it is not stated or agreed at the point of contract.

B. Supplementary concepts and principles

- **Debt Trading [*Bai' Dayn*]**

A transaction that involves the sale and purchase of securities or debt certificates that conforms with Shariah. Securities or debt certificates will be issued by a debtor to a creditor as an evidence of indebtedness.
- **Open-Bidding Trading [*Bai' Muzayadah*]**

An action by a person to sell his asset in the open market through a bidding process among potential buyers. The asset for sale will be awarded to the person who has offered the highest bid/price. This is also known as the sale and purchase transaction based on tender.
- **Guarantee [*Kafalah*]**

A contract of guarantee whereby a guarantor underwrites any claim and obligation that should be fulfilled by an owner of the asset. This concept is also applicable to a guarantee provided on a debt transaction in the event a debtor fails to fulfill his debt obligation. The same definition can be applied for *Dhaman*.
- **Ownership Right [*Hak Tamalluk*]**

An asset in the form of ownership rights as classified by Shariah which are tradable.
- **Gift [*Hibah*]**

A gift awarded to a person on voluntary basis.
- **Remittance [*Hiwalah*]**

A contract that allows a debtor to transfer his debt obligation to a third party.
- **Rebate [*Ibra'*]**

An act by a person to withdraw his rights to collect payment from a person who has the obligation to repay the amount borrowed from him.
- **Pre-Agreed Contract [*Ittifaq Dhimni*]**

A sale and re-purchase of the underlying asset of which the prices are agreed by the parties prior to the completion of the contract. This is an external agreement which must be reached before the contract can be concluded to allow for the bidding process (*Bai` al-Muzayadah*) to take place.
- **Collateral [*Rahn*]**

An act whereby a valuable asset is made as a collateral for a debt. The collateral will be utilised to settle the debt when a debtor is in default.

- **Fee [*Ujrah*]**
A financial charge for the utilisation of services or *manfaat*. In the context of today's economy, it can be in the form of salary, wage, allowance, commission and alike.

- **Agency [*Wakalah*]**
A contract which gives the power to a person to nominate another person to act on his behalf as long as he is alive based on the agreed terms and conditions.

INFORMATION TO BE SUBMITTED FOR THE PURPOSE OF OBTAINING SC'S APPROVAL

1. Application letter disclosing the following items:
 - (a) Background information of the Eligible Issuer:
 - (i) Issuer's Name
 - (ii) Issuer's Business Address
 - (iii) Names, telephone and fax numbers of the respective officers-in-charge of the Issuer

 - (b) Further background information, if the Eligible Issuer is an SPV under sub-paragraphs 3.01(c) or 3.02:
 - (i) Company registration number
 - (ii) Place of incorporation
 - (iii) Authorised and paid-up capital
 - (iv) Shareholder information
 - (v) Names, NRIC or Passport Nos. & profiles of directors
 - (vi) A letter of undertaking pursuant to sub-paragraph 3.05(f), from the relevant qualified bank or qualified dealer

 - (c) Background information on the Adviser (if applicable):
 - (i) Adviser's Name
 - (ii) Adviser's Business Address
 - (iii) Names, telephone and fax numbers of the respective officers-in-charge of the Adviser

 - (d) Background information on the foreign parent company, related corporation or SPV as at the date of submission, if offering structured products under sub-paragraph 3.03:
 - (i) Name(s) of foreign parent company, related corporation or SPV
 - (ii) Home jurisdiction(s) of foreign parent company, related corporation or SPV
 - (iii) List of companies, being foreign parent company and/or related corporation, that are duly licensed by the relevant authority in their respective home jurisdictions as the equivalent of a qualified bank or a qualified dealer
 - (iv) List of SPVs under sub-paragraph 3.03(b) (if applicable), and their respective home jurisdictions and shareholders

- (e) A generic description of the structured product programme, including the following information:
 - (i) Name of programme, if applicable
 - (ii) Categories of underlying reference(s)
 - (iii) Size of programme
 - (iv) Validity period of programme, if applicable
 - (v) Prevailing credit rating of the Eligible Issuer, if applicable
 - (vi) Description of Shariah principle(s) and/or concept(s) adopted (if applicable) as at the date of submission
 - (vii) Name of Shariah Adviser (if applicable) as at the date of submission

- (f) Waiver(s) from complying with these Guidelines and/or specific approval pursuant to the Securities Commission Act 1993 sought and obtained from the SC prior to the submission (where applicable)

2. (a) **For Eligible Issuers**

Eligible Issuer's Declaration (Appendix 4A)

(b) **For advisers, if applicable*:**

Adviser's Declaration (Appendix 4B)

* For structured products made available in accordance with sub-paragraph 3.03, no Adviser's Declaration is needed.

DECLARATION BY ELIGIBLE ISSUERS

Date: [Date of Application]

The Chairman
Securities Commission

Dear Sirs,

**ELIGIBLE ISSUER: [Name of Eligible Issuer]
Declaration and Undertaking Pursuant to the Guidelines on the Offering of
Structured Products**

We, [Name of Eligible Issuer], propose to undertake to issue, offer, make an invitation for, or make available, the following⁷:

- (a)
- (b)
- (c)

(hereinafter referred to as "the Proposal").

- 2. We confirm that after having made all reasonable enquiries, and to the best of our knowledge and belief, there is no false or misleading statement contained in, or material omission from, the information that is provided to the adviser(s) / expert(s) or⁸ to the SC in relation to the Proposal.
- 3. We declare that we are satisfied after having made all reasonable enquiries that the Proposal is in full compliance with the following:
 - (a) Guidelines on the Offering of Structured Products; and
 - (b) Other requirements under the Securities Commission Act 1993 as may be applicable.

⁷ To include name, size and validity period of the proposed programme

⁸ To delete if not applicable

4. We declare that we have not committed a breach of these Guidelines under a previous programme(s) submitted to the SC / We declare that any breach under these Guidelines in relation to a previous programme(s) has been remedied to the satisfaction of the SC⁹.
5. We undertake to obtain / We declare that we have obtained all necessary approvals from other bodies to make¹⁰ an offer, issue or invitation to make available securities in relation to the Proposal.
6. We undertake to ensure continuous compliance with the requirements and the conditions imposed by the SC in relation to the Proposal. We further undertake that in the event of any breach of the same, we will suspend making any further issue or offer or, invitation for, or making available, structured products in relation to the Proposal, notify the SC of such breach, and remedy the same to the SC's satisfaction.
7. We undertake to provide to the SC all such information as the SC may require in relation to the Proposal.
8. We undertake to the SC that we shall bear responsibility for the liability of any foreign-related corporation accruing to Malaysian investors in relation to the Proposal.¹¹

This Declaration is made pursuant to a resolution of the Board of Directors made on [date of resolution]/ a Power of Attorney granted to the Authorised Signatory below on [date of Power of Attorney]¹².

Yours faithfully,

.....
 [Name of Authorised Signatory]
 [Designation of Authorised Signatory]

⁹ Delete whichever not applicable

¹⁰ Delete whichever not applicable

¹¹ Delete if not making available structured products under sub-paragraph 3.03

¹² Delete whichever not applicable

DECLARATION BY THE PRINCIPAL ADVISER (IF APPLICABLE)

Date: [Date of Application]

The Chairman
Securities Commission

Dear Sirs,

ELIGIBLE ISSUER : [Name of Eligible Issuer]

Declaration and Undertaking Pursuant to the Guidelines on the Offering of Structured Products

[Name of Eligible Issuer] proposes to undertake to issue, offer, make an invitation for, or make available, the following¹:

- (a)
- (b)
- (c)

(hereinafter referred to as "the Proposal").

We, [Name of Principal Adviser], are advising [Name of Eligible Issuer] on the Proposal.

2. We confirm that after having made all reasonable enquiries, and to the best of our knowledge and belief, there is no false or misleading statement contained in, or material omission from, the information that is provided to the SC in relation to the Proposal.
3. We declare that we are satisfied after having made all reasonable enquiries that the Proposal is in full compliance with the following:
 - (a) Guidelines on the Offering of Structured Products; and
 - (b) Other requirements under the Securities Commission Act 1993 as may be applicable.

¹ To include name, size and validity period of the proposed programme

4. We confirm that to the best of our knowledge and belief, there is no continuing breach of these Guidelines under a previously approved programme by²:
 - (a) the Eligible Issuer³;
 - (b) the corporation that sponsored the Eligible Issuer⁴; or
 - (c) any other SPV sponsored by that corporation.

5. We undertake to obtain the necessary approvals from other bodies prior to the Eligible Issuer making / We declare that we have obtained the necessary approvals from other bodies for the Eligible Issuer to make⁵ an offer or issue of, or invitation for, or make available, any structured products contemplated under the Proposal.

6. We undertake to immediately inform the SC if it comes to our knowledge that the Eligible Issuer has breached or failed to comply with any applicable requirements at any time from the submission of this declaration until the implementation of the Proposal.

7. We undertake to provide to the SC all such information as the SC may require in relation to the Proposal.

Yours faithfully,

.....
[Name of Authorised Signatory]
[Designation of Authorised Signatory]

² Delete (b) and (c) if Eligible Issuer is not an SPV

³ Issuers described in sub-paragraphs 3.01(c) and 3.02

⁴ If Eligible Issuer is an SPV

⁵ Delete whichever not applicable

REPORTING FORM FOR STRUCTURED PRODUCTS

Appendix 5

Issuer :

Period from 1 Jan – 30 June / 1 July – 31 December [Year]

Part A: Structured products issued during the period

Program Name	Product Name	Issue Date	Tenor	Issue Amount (RM'000) ¹	Underlying Reference/s	Type of Investor ²	Principal Protected ³ (Y/N)	Transferable (Y/N)	Principle ⁴ (C/I)
Total									

Part B: Structured products of foreign parent company/related corporation/SPV issued/sold during the period⁵

Foreign Issuer	Product Name	Issue Date	Tenor	Issue Amount ('000) ¹	Underlying Reference/s	Type of Investor ²	Principal Protected (Y/N) ³	Transferable (Y/N)	Principle (C/I)
Total									

¹ For transactions that are denominated in other currencies, please specify amounts in the applicable currency and provide separate row for "Total".

² Type of Investor

- AMC - Asset Management Companies
- BRK - Universal, Consolidated or Special Scheme Brokers
- COR - Corporations
- FI - Financial Institutions
- INC - Insurance Companies
- INV - High Net Worth Individuals
- UTF - Unit Trust Funds
- OTH - Others. Please specify.

³ A structured product is principal protected if the principal amount will be repaid in full, in cash, when held to maturity.

⁴ Issued under conventional or Islamic principles

⁵ Do not include transactions falling within paragraph 2.03 of the Guidelines

Part C: Cumulative outstanding structured products⁶ as at end of the period⁷

Program Name	Program Size	Date of SC Approval	Outstanding Amount ⁸ Last Period (A)	Amount Issued This Period (B)	Amount Redeemed This Period (C)	Outstanding Amount This Period (A+B-C)	Total Amount Unutilised
Total							

We declare that the information submitted in Parts A, B and C⁹ above is true, correct and complete for the Period _____.

Signature :
Authorised Officer:
Designation :

Submission Date¹⁰ :
Contact Person :
Contact Number :

⁶ Do not include transactions falling within paragraph 2.03 of the Guidelines

⁷ All amounts to be in RM'000, except foreign currency structured products which are to be stated in the applicable currency

⁸ Cumulative amount

⁹ Delete whichever not applicable

¹⁰ To be no later than 7 days from the end of the applicable period