

ADMISSION BOARD COMMUNIQUÉ NO. 6/2008 OF 30 MAY 2008

Listing of derivatives whose underlying instruments have not been approved by the SFBC for public distribution in Switzerland

I. BACKGROUND

In a preliminary decision, the Admission Board has approved a listing application for a structured product whose underlying instrument is a collective investment scheme that has not been approved by the Swiss Federal Banking Commission (SFBC) for public distribution in Switzerland. The approval was granted on the condition that the value of the derivative product, within the context of Point 14 of the "Frequently Asked Questions" (FAQ) dated 19 July 2007 regarding the Federal Act on Collective Investment Schemes (CISA), does not depend more than 33.3% on the value of such a collective investment scheme.

The regulatory background of the preliminary decision, as well as the additional obligations for issuers of such derivatives is the subject of this Communiqué.

II. REGULATORY BACKGROUND

According to the aforementioned SFBC publication, no indirect distribution of a collective investment scheme is present **if the value of a structured product does not depend more than one-third (33.3%) on the value of a capital investment that is not approved for public distribution in Switzerland.**

For passive (static and non-static) products, this threshold is applicable at the time of issuance. Subsequent adjustments that lead to the threshold being exceeded are permissible as long as such adjustments are made in accordance with predefined rules. In the case of actively managed certificates, i.e. products whose underlying instruments are managed discretionarily, that threshold pertains to the time at which the manager may take "investment decisions".

The applicant of the application referred to in Point I took the view that a derivative that does not violate the "one-third rule" under the SFBC's FAQ can be listed, even though ref. no. 37 of the Directive on the Listing of Derivatives stipulates that only funds that have received approval for distribution either in Switzerland or from Switzerland come into question as underlying instruments in this regard. This is because no indirect distribution of the collective investment scheme is present. The Admission Board accepted this line of argumentation. The listing of a derivative whose underlying instruments consist of one or more collective investment schemes that are not approved for public distribution in or from Switzerland will be made dependent on the obligations set out in Point III, below, with which issuers must comply.

III. OBLIGATIONS OF THE ISSUER

The judgment as to whether or not the SFBC's "one-third rule" applies, and hence the public distribution of a structured product is permissible under CISA, is solely a matter for the issuer.

Accordingly, the issuer, upon submission of an application for the provisional admission to trading of a derivative whose underlying instrument consists of one or more collective investment schemes that have not been approved for public distribution in or from Switzerland, must provide the Admission Board with **a written confirmation that no case of circumvention in terms of CISA, its related implementing ordinances or the relevant stipulations of the SFBC is present**, and in particular that **the value of the derivative does not depend more than one-third on the value of a collective investment scheme that has not been approved for distribution in or from Switzerland.**

This confirmation must be submitted to the Admission Board in advance via fax (+41 (0) 58 854 29 34), together with the application for provisional admission to trading. The original must be forwarded immediately.

The Admission Board reserves the right to reject applications for provisional admission to trading as well as the listing of derivatives in cases of obvious attempts at circumvention. In particular, an obvious case of attempted circumvention is present in the following instances:

1. if the terms and conditions of the derivative provide for physical delivery of the related collective investment scheme;
2. if the value of a tracker certificate without capital protection depends more than one-third on the price development of such a collective investment scheme.

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