

## ADMISSION BOARD COMMUNIQUÉ NO. 4/2007 OF 26 JUNE 2007

### ***Listing of dynamic certificates with discretionary management (Actively Managed Certificates)***

#### I. BACKGROUND

In a preliminary decision dated 5 January 2007, the Executive Committee of the Admission Board approved a request to list dynamic certificates with actively managed underlying instruments as a new permissible structure.

Because the financial characteristics of such products require special treatment in terms of the legal aspects of listing and trading, **the issuers of discretionary managed certificates are subject to additional obligations**. The regulation of those obligations is the substance of this Communiqué.

#### II. SCOPE OF APPLICABILITY

The provisions of this Communiqué are to be upheld by all issuers of dynamic certificates with discretionary managed underlying instruments (hereinafter, «Actively Managed Certificates», «AMCs»).

#### III. DEFINITION OF AMCS

Deemed to be an AMC are those products for which the **underlying instruments are managed at the discretion of an asset manager**.

For qualification as an AMC, it is negligible whether a given product is directly based on a discretionary managed basket of securities or, otherwise, linked to an index that tracks the performance of such a basket.

An index-related product will in particular be considered an AMC if the underlying index is fully or partially managed on a discretionary basis or is not able to be freely licensed (e.g. so-called tailor-made indices). For such indices – even if they are calculated by a third party – it must be ensured that the issuer is aware at all times of the precise composition of the given index during SWX Swiss Exchange trading hours and can make that information available to SWX in a timely manner.

#### IV. REGULATORY ASPECTS

AMCs are subject to the regulatory requirements of the **Directive on the Listing of Derivatives** as well as **all other implementing provisions relevant to derivatives**.

**AMCs will typically qualify as structured products and not as investment funds** (no collective capital investment; no third-party administration; no segregated assets; no right

to separate satisfaction in the case of bankruptcy; no co-ownership rights). Within the context of Art. 5 CISA, structured products are fundamentally exempted from the scope of applicability of CISA. **The determination of whether a specific product falls within the scope of applicability of CISA shall in each instance be the exclusive responsibility of the issuer and not that of SWX.**

## V. PRODUCT-SPECIFIC MATTERS

For the sake of pricing transparency, issuers of AMCs must fulfil the following requirements:

- **Market making agreement („MMA“)**: For structured products with discretionary managed underlying instruments to which adjustments can be made that have an effect on the price during continuous trading on the SWX, the issuer must conclude a market making agreement containing the following key elements:
  - Spread: the market maker shall endeavour to post prices with the narrowest possible spread, whereas at no time may the spread exceed 3%.
  - Quote size: the minimum size for both sides (bid/ask) of a given quote must amount to CHF 50,000 or the corresponding amount in foreign currency.
  - Duration: the market maker is obligated to post quotes in the product on each SWX trading day during 90% of the trading hours.

The legally signed MMA is to be submitted to the Admission Board in original form and prior to submission of the application for provisional admission to trading.

- **Reporting requirement in case of mistrades**: in the event of a mistrade, the issuer must immediately inform the SWX Exchange Operations department of that fact via tel. +41 (0) 58 854 24 75.

Deemed to be mistrades are **transactions that have been executed outside the maximum spread**. Affected by this are all mistrades, even those in which the issuer was not directly involved. The related report must be made immediately and regardless of the deadlines laid down in SWX Directive No. 15 ([http://www.swx.com/download/trading/regulation/directives/swx\\_dir15\\_en.pdf](http://www.swx.com/download/trading/regulation/directives/swx_dir15_en.pdf)). The issuer bears sole responsibility for any trade annulments declared by SWX.

- **Obligation to provide information to the SWX**: at the request of the SWX, namely its Exchange Operations department, the issuer must **at all times be prepared to inform SWX immediately with regard to the composition of the underlying basket as well as provide a history of the adjustments made to the basket**. If this information cannot be supplied within a reasonable period of time, trading in the product will be suspended forthwith by the SWX (Art. 79 LR). The sanctioning ordinance under Arts. 81 et seq. LR shall apply in this regard.
- **Investment strategy**: the **investment guidelines and related universe of securities must be specified at the time of issuance and may not be altered at any later date**. These guidelines, as well as the universe of securities, must be submitted to the SWX together with the other enclosures of relevance to the listing application. The issuer,

or its authorised delegate, must permanently monitor compliance with the investment guidelines.

## VI. REQUIREMENTS FOR THE LISTING PROSPECTUS

Due to the special characteristics of AMCs, the related listing prospectus is subject to additional requirements:

- **Investment strategy:** the precise definitions and specifications of the investment guidelines are to be presented in a clear and comprehensible form in the listing prospectus and in condensed form in the listing notice. The investment restrictions must be determined in a manner such that the investor can clearly understand the orientation of the product.
- **Cost transparency:** the listing prospectus must contain at minimum the information indicated in the following points:
  - a. Fees: all fees regularly charged to the AMC (e.g. management fees) are to be disclosed in the listing prospectus, regardless of whether they are paid to the issuer or any third party (if they are one-time charges, on an annualised basis). Furthermore, the issuer may charge no additional regular fees.
  - b. Treatment of dividends: disclosure must be made as to how dividends paid on the underlying instruments are handled (e.g. “Net dividends, upon receipt, will be reinvested in the corresponding stock”).
  - c. Rebalancing: indication must be given as to how rebalancing of the underlying instruments is accomplished (e.g. „at closing prices“ or „discretionary over the entire trading day“).
- **Additional risk disclosure statement:** in order to avoid any misunderstanding on the part of the public, the issuer must include a special passage in both the listing prospectus and listing notice which draws attention to the fact that AMCs are not collective capital investments within the context of the Federal Act on Collective Investment Schemes (CISA) and are therefore not subject to supervision by the Swiss Federal Banking Commission (SFBC).

Admission Board Communiqués are available on the Internet in English, German and French at: [http://www.swx.com/admission/regulation/messages/2007\\_en.html](http://www.swx.com/admission/regulation/messages/2007_en.html)

