

Monetary Authority of Singapore

FINANCIAL ADVISERS ACT
(CAP. 110)

GUIDELINES ON STRUCTURED DEPOSITS

Guideline No : FAA-G09

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GUIDELINES ON STRUCTURED DEPOSITS

Persons to whom the Guidelines on Structured Deposits [“these Guidelines”] Apply

1 These Guidelines are issued pursuant to section 64 of the Financial Advisers Act [“the Act”].

2 These Guidelines apply to any licensed or exempt financial adviser or its representative, who advises on any structured deposit, except —

- (a) where advice is given to an accredited investor, expert investor or institutional investor, as defined in Regulation 2(1) of the Financial Advisers Regulations (Rg 2);

[Amended on 2 December 2005]

- (b) where advice is given to a high net worth individual as defined in the Guidelines on Exemption for Specialised Units Serving High Net Worth Individuals under Section 100(2) of the Financial Advisers Act (Guideline No. FAA-G07), by a separate and distinct department, division, section or unit [“the Unit”] of the licensed or exempt financial adviser, as the case may be, and the licensed or exempt financial adviser has been exempted from certain provisions in Part III of the Act and certain written directions issued pursuant to section 58 of the Act in relation to the provision of financial advisory services by the Unit; or

(c) where advice is given to any person outside Singapore who is —

(i) an individual and —

(A) not a citizen of Singapore;

(B) not a permanent resident of Singapore; and

(C) not wholly or partly dependent on a citizen or permanent resident of Singapore; or

(ii) in any other case, a person with no commercial or physical presence in Singapore.

[Amended on 2 December 2005]

Purpose of these Guidelines

3 These Guidelines set out the standards of conduct expected of licensed and exempt financial advisers and their representatives when advising on structured deposits. They provide general guidance and are not intended to replace or override any legislative provisions or written directions issued under the Act in respect of conduct requirements specifically applicable to licensed or exempt financial advisers and their representatives.

4 As a matter of good business practice, licensed and exempt financial advisers and their representatives are encouraged to apply these Guidelines when advising on any other deposits which are linked to complex financial instruments which do not fall within the definition of a structured deposit under the Act, including those with returns linked to a commodity price.

Definitions

5 The expressions used in these Guidelines shall, except where expressly defined in these Guidelines or where the context otherwise requires, have the same meanings as in the Act.

6 For the purposes of these Guidelines:

“bank” means —

- (a) a bank licensed under the Banking Act (Cap. 19); or
- (b) a merchant bank approved as a financial institution under the Monetary Authority of Singapore Act (Cap. 186);

“client” includes a prospective client;

“deposit” has the same meaning as in the Financial Advisers (Structured Deposits – Prescribed Investment Product and Exemption) Regulations 2005;

[Amended on 2 December 2005]

“deposit-taking institution” means —

- (a) a bank; or
- (b) a finance company licensed under the Finance Companies Act (Cap. 108);

“dual currency investment” has the same meaning as in the Financial Advisers (Structured Deposits – Prescribed Investment Product and Exemption) Regulations 2005;

[Amended on 2 December 2005]

“financial adviser” means a licensed financial adviser or a person exempt from holding a financial adviser’s licence under section 23(1)(a), (b), (c), (d) or (e) of the Act;

[Amended on 1 July 2005]

“structured deposit” has the same meaning as in the Financial Advisers (Structured Deposits — Prescribed Investment Product and Exemption) Regulations 2005.

[Amended on 2 December 2005]

Use of the term “Structured Deposit”

7 A structured deposit is a type of deposit and not a unique class of financial instruments. “Deposit” is defined in the Banking Act (Cap.19), and has a generally understood meaning. Labelling a product as a structured deposit in any marketing material or product disclosure document, when it does not bear the characteristics of a deposit, is tantamount to misleading conduct as investors may misconstrue that the product has the characteristics of a deposit when in fact, it does not.

8 Hence, a financial adviser, or its representative, should not use the title or description “deposit” or “structured deposit” to describe an investment product unless the product being offered falls within the definition of a deposit or a structured deposit.

9 Paragraphs 7 and 8 do not apply in relation to a structured deposit that is a dual currency investment¹.

[Amended on 2 December 2005]

¹ Paragraphs 5 and 6 of the Notice on Dual Currency Investments (Notice No. FAA-N11) apply in respect of dual currency investments.

Product Information Disclosure

10 Although a structured deposit is a relatively safe instrument, returns on such products are variable and often contingent on the performance of complex financial instruments that the average retail investor may not fully understand. Furthermore, investing in a structured deposit entails certain risks, including potential loss of the principal sum invested if the investment is not held to maturity. These risks should be clearly disclosed to every investor to ensure that he or she is able to make an informed investment decision.

11 In general, a financial adviser or its representative advising on structured deposits should ensure that product information disclosure for all publications used by the financial adviser or its representative, including marketing materials, is clear, adequate and not false or misleading. In considering whether product disclosure is clear, adequate and not false or misleading, due regard should be given to paragraph 11 of the Notice on Information to Clients and Product Information Disclosure (Notice No. FAA–N03).

12 Every financial adviser is encouraged to review its documents regularly, to ensure that its documents meet the above standards.

13 Every financial adviser and its representatives should provide every client with a fair and adequate description of all material information, including:

- (a) **the nature of the investment**, including the underlying financial instruments and how these instruments work;
- (b) **details of the deposit-taking institution**, if the financial adviser is not also the deposit-taking institution;

- (c) **the benefits** that are likely to be derived from the structured deposit, the amount and timing for benefits and whether the benefits are guaranteed or non-guaranteed. Benefits payable in the case of early redemption by the deposit-taking institution should be clearly disclosed. Illustrations of benefits in the best and worst case scenarios should be provided. Benefits shown in headline rates should be realistic and achievable, and not based on an unreasonably optimistic view of events;
- (d) **all risk factors** that may result in the client being paid benefits which are less than the illustrated values;
- (e) **all fees or charges** that may be imposed in respect of the structured deposit;
- (f) **early termination clauses**, including procedures, charges and restrictions on early withdrawal by the client, or early redemption by the deposit-taking institution, as well as any other material information associated with termination prior to maturity. A financial adviser and its representatives should ensure that every client is fully aware of the tenor of the structured deposit, and the fact that the principal sum on the structured deposit is only guaranteed if held to maturity. The possibility of losses on the principal sum due to early withdrawal by the client and the factors affecting the amount recoverable by a client should be clearly disclosed every client;
- (g) **any warning, exclusion or disclaimer** in relation to the structured deposit; and
- (h) information that the structured deposit is not an insured deposit

for the purposes of the Deposit Insurance Act 2005 (No. 31 of 2005).

[Amended on 4 May 2006]

Past and Future Performance

14 Where any **illustration of past or future performance** of a structured deposit, or that of its underlying financial instruments is provided, a financial adviser or its representative should:

- (a) when using any forecast on the economy, stock market, bond market and economic trends of the markets, state that such forecast is not necessarily indicative of the future or likely performance of the structured deposit; and
- (b) when using past performance of the structured deposit, or that of its underlying financial instruments, to illustrate possible returns of that structured deposit, state that past performance is not necessarily indicative of future performance.

Recommendations on Structured Deposits

Reasonable Basis for Recommendation

15 Where any financial adviser or its representative offers any recommendation on a structured deposit, the financial adviser or its representative should have a reasonable basis for any recommendation that is made. In considering whether there is reasonable basis for any recommendation, due regard should be given to the provisions in the Notice on Recommendations on Investment Products (Notice No. FAA–N01).

Warnings

16 Some clients may not require any recommendation from a financial adviser or its representatives on their selection of a structured deposit.

17 A financial adviser and its representative may dispense with the usual fact-finding and needs-based analysis process when dealing with such clients. However, appropriate warnings should be made to such clients highlighting that they may wish to seek advice from a financial adviser before making a commitment. At the minimum, the warning should convey the following message:

- “(a) Unlike traditional deposits, structured deposits have an investment element and returns may vary. You may wish to seek advice from a licensed or an exempt financial adviser before making a commitment to purchase this product.
- (b) In the event that you choose not to seek advice from a licensed or an exempt financial adviser, you should carefully consider whether this product is suitable for you.”

18 These warnings should be in writing and should be prominent and clear, and a financial adviser and its representative should document that these warnings have been duly read and understood by the client, and that the client wishes to proceed after having understood the features of the product.

19 Paragraphs 16-18 do not apply in relation to a structured deposit that is a dual currency investment².

² Paragraph 8 of the Notice on Dual Currency Investments (Notice No. FAA-N11) applies in respect of dual currency investments.

[Amended on 2 December 2005]

Screening

20 A financial adviser and its representative should screen every client seeking to invest in any structured deposit. Any client who indicates that he or she may need to withdraw his or her funds prior to the maturity of the structured deposit to meet certain needs (such as an elderly person), should be encouraged to seek advice from a financial adviser. This is because early termination may result in a loss of the principal sum, and such clients may only be able to recover the value of the underlying financial instruments. It is therefore important for such clients to have a good understanding of how the relevant financial instruments work before they invest in the structured deposit.

Training and Competency

21 Structured deposits often involve underlying financial instruments that are complex and difficult to understand. As such, any advice regarding a structured deposit should be made by a person who is equipped with the necessary expertise to offer reasonable advice. As a general rule, the more complex a structured deposit, the better trained the representative of a financial adviser would need to be.

22 In this regard, the representative of a financial adviser who meets the training and competency requirements set out in the Notice on Minimum Entry and Examination Requirements for Representatives of Licensed Financial Advisers and Exempt Financial Advisers (Notice No. FAA-N13) will be considered as one who is equipped with the necessary expertise. All representatives of a financial adviser advising on structured deposits should pass Module 5 (Rules and Regulations for Financial Advisory Services) of the Capital Markets and Financial Advisory Services Examination

[“CMFAS Exam”]. In addition, financial advisers should either ensure that all representatives advising on structured deposits pass Module 8 (Collective Investment Schemes) of the CMFAS Exam or develop their own specific training programmes on structured deposits, to equip their representatives with the necessary expertise.

[Amended on 1 July 2005]

Fit and Proper Criteria

23 Even where a financial adviser or its representatives are not required to and do not make any recommendation, the financial adviser or its representatives should still meet the fit and proper criteria described in the Guidelines on Fit and Proper Criteria (Guideline No. FSG–G01) and the standards of conduct described in the Guidelines on Standards of Conduct for Financial Advisers (Guideline No. FAA– G04).

[Amended on 1 July 2005]

Segregation of Activities

24 Structured deposits should be distinguished from traditional fixed deposits to ensure that clients are not misled into believing that the returns and risks on structured deposits are similar to traditional fixed deposits.

25 To achieve this distinction, any financial adviser that is also a deposit-taking institution, when advising on any structured deposit, should ensure that the marketing and advisory process for such structured deposit is distinct from the process through which a client’s funds are accepted. Employees in the deposit-taking area who are not qualified to provide advice on investment products, such as bank tellers, should not be involved in the marketing or offering of any recommendation in relation to any structured deposit.

[Amended on 1 July 2005]

[Amended on 26 November 2010]

Requirements under the Banking Act (Cap. 19)

26 As it is possible for the provision of financial advisory service in respect of structured deposits to lead to the acceptance of a deposit by a financial adviser or its representative on behalf of a deposit-taking institution, every financial adviser and its representatives are reminded to be aware of the requirements under the Banking Act (Cap. 19), in particular —

- (a) the restrictions on deposit-taking business and soliciting of deposits; and
- (b) (in relation to banks) the restrictions on the opening of a new place of business by a bank.

27 In relation to paragraph 26(b), a booth or road show location where applications for structured deposits are received would be considered a new place of business or a bank branch, for which the relevant bank would have to seek the prior approval of the Authority under section 12 of the Banking Act (Cap. 19)³.

28 These Guidelines shall take effect on 1 June 2005.

³ Please refer to MAS Circular No. BD 26/2003 dated 8 December 2003 on “Promotion booths and roadshow locations that accept applications for credit cards, charge cards or unsecured credit facilities”.