White-labelling
Issues note for EFMLG,
14 November 2005, Madrid

General introduction

For decades, white-labelling can be seen in supermarkets with own-name products. These products are often supplied by specialised manufacturers with relative low costs of development. The particular chain of supermarkets is the exclusive seller of this product, resulting in a closer relationship with their shoppers. The manufacturer increases its turn over, making profit without additional sales or marketing costs.

Financial Markets products

In financial markets terms, private banks can be supermarkets and general banks can be manufacturers of white-labelled products, ranging from standard FX products to complex structured debt/equity products ("Structured Products"). This note will focus on Structured Products, given the risks involved: a manufacturer has to explain the product to the counterparty and record the understanding and the acceptance of the risks involved. Increasingly private banks ask general banks to develop Structured Products to meet their clients' bespoke needs or as a sales opportunity within their distribution channel.

In general, three situations are possible:

1) The general bank sells Structured Products directly to the retail clients of a private bank, accompanied by appropriate prospectuses/pricing supplements (often medium term notes). The general bank has to act in the interests of these clients and to treat them reasonably and fairly: duty of care.
2) The general bank sells Structured Products to a private bank, accompanied by a regulatory approved prospectus/pricing supplement, which is not required, since the private bank is a professional market party. The general bank knows that the clients of the private bank are the end-investors (for if the private bank would need an economic hedge only, the transaction could be structured as an OTC derivative, thus avoiding costs). The private bank then sells the Structured Products to its clients referring to the prospectus/pricing supplement involved. The general bank has a duty of care with respect to its marketing material. However, it can not perform any (advisory) duty of care to the individual clients, since the general bank does not know their names, let alone their risk profiles. The latter duty of care must be performed by the private bank.
3) The same as described in (2) but now with the name of the private bank dominantly appearing in the name of the Structured Products, in the pricing supplement made by the general bank and in the marketing material, made by the private bank. The name of the general bank is mentioned as manufacturer in the small print of the marketing material. Such Structured Product mostly can be bought only by the clients of this private bank.

Risks of white-labelling, the perspective of the general bank

In practice, retail clients focus on marketing material rather than on pricing supplements and prospectuses. The situation described in (3) seems therefore the most risky.
Improper marketing material solely made by the private bank can give rise to reputational issues for the general bank as well. Inconsistencies between marketing material and pricing supplements/prospectuses and selling at the wrong target group can cause legal risks for the general bank, particularly if the general bank should be aware of this.

At present, the roles and responsibilities of a general bank are not clear enough. An agreement between a general bank and a private bank in which the latter is solely responsible and liable for marketing and distribution may not be a sufficient protection for the general bank.

Conclusion

Making an inventory of these risks resulting in a best market practice could limit this uncertainty, possibly resulting in a product liability for the general bank, leaving other risks for the private bank, but at least resulting in the situation that the general bank knows exactly to what extend it is required to be involved in marketing and distribution of white-labelled Structured Products by the private bank.

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