

DRAFT

EFMLG Sub-group, Retail structured products, **05.03.08**

**QUESTIONNAIRE EFMLG – RETAIL STRUCTURED PRODUCTS
Country- specific replies**

1. NOTION OF STRUCTURED PRODUCTS

a. Is there in any definition of a structured product in your jurisdiction? If yes, please identify the source of regulation.

AUSTRIA	
BELGIUM	
DENMARK	There is no definition of a structured product under Danish law. However, the Danish Bankers Association has in its recommendations on information disclosure in relation to sale and marketing of retail structured notes dated 1 January 2008 (the 'Recommendations') defined a structured note as a debt instrument whose yield is dependant on the development of the value of one or more underlying assets.
FINLAND	There is no regulatory definition of a structured product.
FRANCE	<p><u>Scope</u> Banks generally sell structured products to institutional investors. However structured products can be sold to 'retail' clients such as local authorities. Generally, structured products (OTC derivatives or securities) are negotiated with the client [or with its intermediary ('distributor')]. They are usually bespoke products.</p> <p><u>Background of the questionnaire</u> We understand that this questionnaire has been set up in the context of the subprime crisis. However structured products are not only risk transfer products such as CDOs.</p>

	<p>'Distributors' Generally, in France, there are three types of 'distributors' or intermediaries.</p> <ul style="list-style-type: none"> - Investment service providers* (other than investment adviser) which negotiate or place - their own products or third party products as the case may be; - Investment advisers (and related advisers); and - Insurance intermediaries ('<i>Intermédiaire en opération d'assurance</i>') such as insurancebrokers ('<i>courtiers</i>'). <p>* When the provider is its own distributor, the provider negotiates with the client on a purely bilateral basis (dealing on own account).No.</p> <ul style="list-style-type: none"> - AMF rules (which merely transpose certain MiFID provisions) merely provide that risks should be disclosed in respect of a 'financial instrument' composed of two or more different financial instrument (see art.31.4 MiFID2). A composed financial instrument may not be a structured products (composed securities such as convertible bonds are not 'structured'). - AMF also posted on its website a translation of the Commission answers to CESR (CEVM working document ESC-07-2007) regarding MiFID best execution which uses the notion of 'customised products' or 'complex products' without definitions. <p>The notion of structured products is not a legal qualification in France and is thus difficult to define. National or European regulation does not make reference to the notion of structured products other than in an incidental way. This notion does not correspond to the list of financial instruments such as defined in article L. 211-1 of the French monetary and financial code.</p>
GERMANY	<p>No, the Wertpapierhandelsgesetz (Securities Trading Act - WpHG) only mentions derivatives. Products are not classified in different classes of risk; but distributors do have to assess the knowledge and expectations of their retail clients by completing a questionnaire regarding their risk appetite and understanding of the products (Wertpapiererhebungsbogen gem. WpHG / Börsentermingeschäftsfähigkeit)</p> <p>N.B. For the Swiss Market, the Swiss Structured Products Association has proposed the following definition: "A structured financial product combines financial investments and derivatives in a single product in the form of a security. The payback value of a structured product follows the development of one or more underlying assets."</p>
GREECE	
IRELAND	<p>There is no legal definition of a structured product in Ireland and market participants may attribute different meanings to the term.</p> <p>In Ireland, the Consumer Protection Code ('CPC') issued by the Irish Financial Services Regulatory Authority ('Financial Regulator') in August 2006 and MIFID are the principal regulatory and legal provisions applicable to retail structured products. The CPC applies to a specified list of entities (including banks) regulated by the Financial Regulator but does not apply to such regulated entities when providing MIFID services (as defined in CPC)¹. The regulated entities to which the Code applies are required to comply with it as a matter of law.</p> <p>Tracker Bonds are a feature of the Irish structured products market and a 'Tracker Bond' is defined in the CPC as 'a deposit or life assurance policy which contains the following features: (a) a minimum payment, at the expiration of a specified period of time, of a specified percentage of the amount of capital</p>

¹ The CPC defined 'MIFID Service' as any service or activity set out in Annex 1 of the EU Directive 2004/39/E, but not including any service or activity of a person to whom such Directive does not apply by virtue of Article 3 of such Directive.

	invested by the consumer in the product; and (b) a potential cash bonus payable after a specified period of time, which is linked to, or determined by, changes over the period of investment in the level of one or more recognised stock market indices, commodity prices, any other recognised financial indices or the price of one or more securities specified at the outset or from time to time’.
ITALY	<p>According to Italian law, the definition of complex financial instrument can be construed <i>a contrario</i> from the notion of simple financial instruments, which are defined in Article 44 of the Consob Intermediaries Regulation² in relation to the provision of financial services through the execution only mode. Article 44 provides for that ‘any financial instrument not mentioned under article 43, subsection 1, paragraph a) shall be considered simple if the following criteria are met:</p> <ul style="list-style-type: none"> a) it does not find definition under the terms of article 1, subsection 1-bis, paragraphs c) and d) of the Consolidated Law³ (hereinafter the ‘TUF’), or in the definitions provided by article 1, subsection 2, paragraphs d), e), f), g), h), i) and j) of said Consolidated Law; b) there are frequent opportunities to sell, redeem or otherwise obtain repayment of such a financial instrument at prices openly available to market operators. Said prices must be those of the market or those made available, or confirmed, by assessment systems other than those adopted by the issuer; c) no actual or potential liability for the customer is implied which exceeds the cost of purchase of the instrument; d) sufficient complete information is openly available and the characteristics are sufficiently simple to understand that the average retail customer may make an informed decision regarding whether or not to execute a transaction in relation to said instrument”⁴ <p>In turn, Article 43 subsection 1, paragraph a), mentions ‘shares admitted for trading on a regulated market, or equivalent market in another country, money market instruments, bonds or other debt securities (excluding bonds or debt securities with an underlying derivative), harmonised UCITS and other simple financial instruments’ as financial instruments, which can be the object of execution only services.</p> <p>Therefore, complex financial products are to be defined as all financial instruments that fall into the scope of Article 1 (2) of Consolidated Law and/or do not satisfy the conditions set out under Article 44 of the Consob Intermediaries Regulation provided that they are not i) shares admitted to trading on a regulated market; ii) money markets instruments; iii) bonds or other debt instruments that do not embed derivatives; iv) quotes of UCITS and v) all financial instruments that do not meet the requirements of Article 44 of the a.m. Consob Regulation.</p> <p>The notion of structured financial product has a financial and economic scope and makes reference to high risk-return objectives, which are pursued by embedding into a simple financial instrument a derivative so to obtain a high yield financial product⁵.</p> <p>Consequently, since every structured financial product necessarily embeds a derivative component, there follows that under Italian law they will always be qualified as complex financial instruments.</p>
LUXEMBOURG	No.
THE	There is no definition of a structured product in Dutch law. The Netherlands Bankers’ Association has circulated two recommendations related to structured products (one recommendation on best practice product approval procedure and one recommendation on transparency of information). None of the

² Testo Unico della Finanza, d.legl.n° 58 , 2 February 1998, updated by d.lgs. n° 164 of 17 September 2007, by d.lgs. n° 195 of 6 November 2007 and by D.Lgs. n° 229 of 19 November 2007.

³ Reg. N°16190 adopted with deliberation of 29 October 2007.

⁴ Informal translation into English by Consob.

⁵ http://www.investopedia.com/articles/optioninvestor/07/structured_products.asp

NETHERLANDS	<p>recommendations however provide a definition. The Authority Financial Markets (the “AFM”) has circulated an analysis on structured products and the AFM describes structured products as: “Structured products are a special category of investment products. They are relatively complex, and the associated investment risks are structured in a special manner. Structured products are often more complex than collective investment schemes. The reason for this is that structured products generally consist of collections of financial instruments, such as bonds and derivatives (e.g. options). The investment risks are also unlike those associated with collective investment schemes. Whereas collective investment schemes closely follow the movements of prices of the shares in which they invest, for example, structured products conversely mitigate or reinforce those movements. The AFM divides structured products into two categories: structured investment products and structured leverage products. The reason for this division is that structured leverage products are less complex than other structured products. As such, the AFM does not deal with that category in this report.”</p>
PORTUGAL	<p>There is no specific definition of structured products in Portugal. Notwithstanding this, Portuguese authors tend to include in this category all financial instruments that combine the particular characteristics of derivatives with typical elements of notes, whose value depends on or is derived from the performance of a secondary source such as an underlying bond, currency or commodity (the underlying asset). A similar definition can be found in Bank of Portugal Notice (“Aviso”) no. 6/2002, on instruments of collecting of structured savings (“instrumentos de captação de aforro estruturado”), a specific structured product regulated by Portuguese law. This product is defined as a financial instrument that, although assuming the legal form of an existing instrument, has characteristics that are not directly identifiable with the ones of that original instrument, which profitability depends, totally or otherwise, on the development of the underlying financial instruments and the investment risk is undertaken, even if not totally, by the investor. In addition, Portuguese law qualifies as a security any other document representing a similar juridical situation provided they may be traded on the market. Therefore, any instrument that contains the specific characteristics described above and fulfils the foregoing qualification requirements set forth by paragraph g) of Article 1 of the Portuguese Securities Code, approved by Decree-Law 486/99, of 13 November, as amended (“PSC”) would be included in the notion of a structured product.</p>
SLOVENIA	
SPAIN	<p>Definition can be found in Article 36 of the ‘Real Decreto 1309/2005 de 4 de Noviembre por el que se aprueba el reglamento de la ley 35/2003 de Inversiones Colectivas’ when discussing eligible assets for fund investment. Art 36 defines structured transactions (<i>operaciones estructuradas</i>) as those which consist in the combination of one or more ‘assets or eligible financial instruments’ (<i>activos o instrumentos financieros aptos</i>) and one or more ‘<i>derivative financial instruments</i>’ (<i>instrumentos financieros derivados</i>).</p> <p>Similar definition can be found in Article 50.1b of the <i>Real Decreto 2486/1998, de 20 noviembre, por el que se aprueba el Reglamento de Ordenación y Supervisión de los Seguros Privados</i>, which defines them as the combination of two or more assets, derivative transactions or a combination of both, structured as one single legal instrument (<i>que se instrumenten a través de un único negocio jurídico</i>) in the terms and conditions contained in the Orden Ministerial del Ministerio de Economía y Hacienda 339/2007 de 16 de febrero. In addition article 9 of such OM defines further and comprehensively “<i>activos financieros estructurados</i>”.</p>
SWEDEN	<p>There is no explicit definition of structured products in the Swedish jurisdiction, but they are included in the definition of ‘transferable securities’ and ‘financial instruments’ in the Swedish Act (SFS 2007:528) on the Financial Market. Further, there are definitions of structured products in Swedish preparatory works</p>

	and in position papers from the Swedish FSA (Sw: Finansinspektionen).
UNITED KINGDOM	There is no legal or regulatory definition of a 'structured product' in the U.K. However, the United Kingdom Financial Services Authority ('FSA') has, in a Discussion Paper dated September 2006 entitled ' <i>The responsibilities of providers and distributors for the fair treatment of customers</i> ' ('DP 06/4') set out its interpretation of retail structured products. For example, the FSA indicated that retail structured products may have varying term lengths and risk profiles but that many retail structured products are principal protected, although in some cases the level of principal protection afforded to investors may be less than 100 per cent. In addition, we are aware that some retail structured products, for example a product that tracks a benchmark index such as the FTSE, may have no principal protection.

b. Is there a differentiation between complex and non-complex products?	
AUSTRIA	
BELGIUM	
DENMARK	For the purpose of 'execution only' rules there is a differentiation between complex and non-complex products under Danish law as only the latter may be subject to 'execution only'. However, there exists no definition of a complex product.
FINLAND	Not yet. There are discussions pending with the Finnish FSA regarding the differentiation. The Finnish Banking Association has proposed that a structured bond would qualify as a non-complex product if it satisfies the following requirements: <ol style="list-style-type: none"> 1. capital guaranteed on the maturity date and issue price is not more than 115% 2. the return is based on the yield of an underlying asset which may be a quoted share, commodity, fund, currency pair, reference interest rate, an index of any of them or any other common investment object; and the return is a pre-determined percentage of the yield 3. bonds are listed on a stock exchange 4.
FRANCE	Not under French law [Please note that a product may be considered 'complex' a day and may turn 'vanilla' the day after]

	<ul style="list-style-type: none"> - The French monetary code and the AMF related regulation transposed the notion of 'Non complex financial instrument' (Art.19.6 §2 MiFID1 and Art.38 MiFID2, Art. 314-57 of general regulation of the French Financial market authority (AMF)) re. 'execution only' (and client test). French association of investment firms (AFEI) established an internal list of French non complex financial instruments (attached). - Complexity and risk (no link): A complex product can be risk free, when a vanilla product (eg shares) can be a risky investment. - Complexity lies with the terms of the product. A professional investor is 'assumed to have the necessary level of knowledge and experience' to understand the product (MiFID).
GERMANY	Yes, but not clearly given by law, the market has developed this over time. The German certificate market is quiet mature and so retail investors are familiar with complex products.
GREECE	
IRELAND	Prior to the introduction of MIFID, there was no differentiation between complex and non- complex products
ITALY	Please see the answer to question a). At the moment the legal distinction between complex and non-complex financial instruments is relevant only in connection with the execution mode of an order under the new MiFID implementation rules.
LUXEMBOURG	Yes. The Laws and Rules implementing MiFID differentiate between these two classes (Law on the Financial Sector, art. 37-3 + Règlement grand-ducal 'MiFID', art. 44 + CSSF Circular 07/307, art. 57).
THE NETHERLANDS	The term 'complex' is used to describe some combinations of banking products, but structured products are not considered complex in that sense.
PORTUGAL	<p>From a Portuguese legal perspective, there is no differentiation between complex and non-complex structured products.</p> <p>In general terms and from an economic and financial perspective, complex and non-complex structured products differ in two features: the risk factors inherent to each type of product and the dynamic features traditionally included in complex structured products (in other words, all static products would fall under non-complex structured products, provided they fulfil the risk criteria generally used to define complex structured products).</p> <p>Article 38 of Commission Directive 2006/73/EC, of 10 August 2006, implementing Directive 2004/39/EC of the European Parliament and of the Council, of 21 April 2004 ("MiFID") sets forth the requirements that must be fulfilled by a non-complex product.</p>
SLOVENIA	

SPAIN	Yes. Following MIFID implementation such differentiation can now be found in the new Art 79bis of the Ley de Mercado de Valores (LMV).
SWEDEN	Yes. There is a differentiation between complex and non-complex financial instruments in the Swedish legislation that is relevant to structured products. Non-complex financial instruments might follow the rules on 'execution only' when executing or transmitting client orders under certain prerequisites, while executing orders in complex financial instruments will be subject to appropriateness test rules.
UNITED KINGDOM	<p>There is not a formal definition of a 'complex' or 'non-complex' product. However, in several FSA Discussion Papers and in the FSA Handbook (e.g. DP 06/4, the Principles for Business from the FSA Handbook and the Discussion Paper dated June 2007 entitled '<i>A review of Retail Distribution</i>' ('DP07/1')), the FSA has sought to differentiate between complex and less complex products. The key emphasis that the FSA seeks to make is that firms should ensure that the product is suitable and appropriate for the retail investor. The FSA highlights the fact that firms must bear in mind (i) the financial sophistication of the target investor base, (ii) the riskiness and complexity of the product and (iii) whether a particular structured product matches the investor's needs, interests and appetite for risk. In addition, there is a general principle that the retail customer must be treated fairly and be given information that is clear, fair and not misleading and has been prepared with sufficient skill, care and diligence to enable the investor to understand the product and its associated risks and to make an informed investment decision.</p> <p>The FSA has also recommended that product providers stress-test their products to check that they are appropriate and suitable for the retail market.</p> <p>It should be noted that risk and complexity are not necessarily linked in the context of retail structured products. Although a product may be complex (for example, having a complex pay-off formula, referencing illiquid assets, etc), if it is 100 per cent. principal protected, then the investment may not be considered such a risky one for a potential investor. Conversely, a product may have a simple structure but offer little or no principal protection, which may make it a riskier investment for a retail customer.</p>

c. In which form are structured products typically offered in your country?

AUSTRIA	
BELGIUM	
DENMARK	Retail structured products are typically offered in note form. Non-retail structured products are typically offered in note or derivative form but the market has also seen a vast amount of structured deposits.
FINLAND	Bond issues.

FRANCE	<p>Usually these products are negotiated with the client (OTC or private placement) and are legally offered through the following financial instruments:</p> <ul style="list-style-type: none"> - Agreements [OTC Derivatives Agreements] <p>Securities [including EMTN (such as credit linked notes or over formula products), BMTN or other TCN-Commercial Paper]</p> <ul style="list-style-type: none"> - Bank term deposits <p>Note that they can potentially be sold as an underlying of a life insurance contract. Insurance companies can offer structured products to their client in the form of “unités de compte”.</p>
GERMANY	Typically as certificate or note (Zertifikat, Anleihe).
GREECE	
IRELAND	Structured products are usually sold in Ireland as term deposit products, life insurance products, bonds or notes.
ITALY	<p>Structured products are offered both to retail and to corporate clients. Retail clients are offered standardised structured products that are either structured in house or by an external Provider. According to our practices, structured products placed through our retail network are usually listed on MTFs or on regulated markets.</p> <p>On the other hand, the specific needs of corporate clients are met with tailored made OTC structured products that may be both structured in house or by a third party.</p>
LUXEMBOURG	As ‘notes’ under certificate programs or European Medium Term Notes programs (EMTN).
THE NETHERLANDS	Structured products are offered to retail clients as notes under EMTN programs (or similar documentation). They are offered to professional clients as either notes or derivatives (OTC).
PORTUGAL	As a general rule, structured products are offered in Portugal through structured deposits, derivatives (OTC and exchange traded), unit-linked, certificates, structured funds and credit-linked notes.
SLOVENIA	

SPAIN	Derivatives (OTC and exchange traded), deposits, insurance and pension products, mutual funds.
SWEDEN	In Sweden structured products are mainly index-, equity-, interest- or commodities linked bonds. Sometimes also warrants are included in the concept of structured products.
UNITED KINGDOM	In the U.K., there is not currently a highly developed market for derivative-based retail structured products. Vanilla and lightly structured products are, however, offered to the U.K. retail market, often in the form of investment 'plans', insurance-based products, or UCITS III-compliant funds. There are also some examples of more complex products being sold to retail investors. In DP07/1 the FSA identifies the problems and difficulties of retail distribution in the U.K. (explaining the lack of appetite for structured products in the U.K.). The FSA notes that many retail investment products have complex charging structures, meaning that it is often not clear how benefits accrue to retail customers. Retail customers infrequently purchase retail structured products in the U.K., so are thereby relatively inexperienced in investing in them. The risks and commitment behind a structured product are often difficult for a potential investor/ retail customer to understand and the 'price' of the product is hard to determine. It is interesting to note that the FSA cites 'low levels' of financial capability, lack of consumer confidence, lack of interest and engagement in the U.K. as key reasons behind why the U.K. does not have a highly developed retail market.

2. Relationship between Distributor and Providers

a. If there is an OTC Structured product does this extend the relationship between Distributor /Intermediary and Provider?

AUSTRIA	
BELGIUM	
DENMARK	[The question is not clear to me]
FINLAND	The market is developing. Several small distributors are becoming active.

FRANCE	OTC is a bilateral relationship which usually does not involve third party intermediaries. Instead of 'the provider' we prefer to speak of 'the producer' who is the person who creates the product (In the regulations "the provider" is the person who provides the investment service...).
GERMANY	No, an OTC would be considered to be an independent product.
GREECE	
IRELAND	Many structured products include an OTC derivative component. The rate of return payable on many structured products (whether sold as bonds, notes or deposit products) will be determined by reference to an OTC derivative transaction. However, the transaction entered into between the Product Provider and Distributor/Intermediary is not usually traded as an OTC derivative transaction. The transaction may be structured as a deposit transaction or a bond, the rate of return on which is determined by reference to an OTC derivative transaction.
ITALY	<p>In our view the privity of contract between investors and Distributors/Intermediaries and between Distributors/Intermediaries and Providers in principle bars the establishment of a relation between investors and Providers. In fact, investors will bring any claim primarily against Distributors/Intermediaries, and Providers can be involved merely as a third party defendant together with Distributors/Intermediaries.</p> <p>A possible case - although difficult to provide interest and evidence for - could be that of an investor claiming that the Distributor has misrepresented the structured products to him because it has been misrepresented by the Provider in first place. This would mean that the distributing bank has not fully understood the risks embedded in the derivatives because of its mere reliance on the representation of the Provider and the lack of an independent assessment.</p> <p>In this case the client has to prove that the Distributor has not fully assessed and weighted the risks embedded in the derivatives, possibly because it did not have the necessary and sufficient internal skills and resources to do this assessment, or because of negligence or other reasons (inducements).</p> <p>In such a scenario the Distributor could further claim against the Provider that it has committed a mistake of fact on the features of a given financial instrument because of the false representations of the Provider.</p>
LUXEMBOURG	Yes, there is an OTC transaction: we buy an option from the Provider (an Investment Bank). (not sure this really answers your question)
THE NETHERLANDS	In case of OTC structured products there is no distributor (bi-lateral negotiated contracts).

PORTUGAL	As a general rule, the bilateral relationship underlying an OTC transaction does not involve third parties. However, it may not be completely set aside the possibility of an investor and/or a Distributor involving a Provider in a legal suit from the investor against the Distributor (and the Provider) on the basis of violation of legal rights of the investor.
SLOVENIA	
SPAIN	Typically no.
SWEDEN	Presuming that 'Provider' is an entity that will structure the product as well as issuing it, there might be factors extending the relationship between the Distributor and the Provider in case of OTC Structured product (presumed to be a private placements).
UNITED KINGDOM	<p>The relationship between a distributor/ product provider/ intermediary would not be extended in the context of trading structured products. In HSBC's experience of U.K. transactions, our common role is to provide hedges to U.K. Building Societies who are issuing retail products. Where HSBC's name or logo is to be used in legal or marketing material, we would enter into an agreement setting out provisions governing the use of our logo/ name/ trademark and would check all references to HSBC, and all uses of our marks, in the product materials.</p> <p>In July 2007, the Joint Association Committees ('JAC') published a set of principles for managing the product provider / distributor relationship. Amongst other things, these principles state the following:</p> <ul style="list-style-type: none"> • investor suitability (as determined in the local market) is, usually, exclusively an issue for distributors • distributors should take responsibility for the accuracy and completeness of marketing materials prepared by them • product providers should consider whether the distributor is an appropriate distributor for the placing of particular types of products and, where they consider it necessary, practical and appropriate to do so, should conduct a 'know your distributor' approval process • Product providers and distributors should seek to agree and record their respective roles and responsibilities towards investors <p>The JAC are currently considering further principles for managing the distributor/individual investor relationship and are holding regular discussions with market participants.</p>

b. Are there any regulations, rules, laws in place governing the relation between Distributor and Provider

AUSTRIA	
BELGIUM	
DENMARK	The relationship between distributor and provider is not dealt with under Danish law.
FINLAND	No. There is a self-regulating body (the Finnish Structured Products Association, 'FSPA') which has issued a recommendation on this issue.
FRANCE	<p>French rules do not directly address the issue of the relationship between Distributor and producer. Indirectly, each party must apply its own set of rules (such as rules of conduct). Distributors and producers contractually organize their relationship. ND</p> <p>However, please note that the French Asset Management Association (AFG, representing investment funds and individual portfolio management) and the French Banking Federation (FBF, the professional body representing 450 commercial, cooperative and mutual banks operating in France included both French and foreign-based organizations) have prepared a code of good practices concerning the marketing of financial products but this code has not been released yet.</p> <p>To summarize, this code proposes the following principles:</p> <p>The producer is responsible for the:</p> <ul style="list-style-type: none"> - conception and compliance of the product ; - management of the product / followed from the portfolio ; - preparation of a product sheet; - preparation of the regulatory and contractual documents; - transmission to the distributor of the regulatory and contractual documents. <p>The distributor has to:</p> <ul style="list-style-type: none"> - make a prior evaluation and advice of the Customer; - inform the customer; - respect the retail distribution and marketing rules <p>The obligations and the liabilities shared between the producer and the distributor:</p> <ul style="list-style-type: none"> - elaboration of the advertising documents; - control of the advertising by the producer at request of the distributor;

	<ul style="list-style-type: none"> - preliminary Submission of the projects of advertising documents to the producer, to his request; - fights anti-laundering and prevention of the market abuses.
GERMANY	Yes, German Commercial Code (HGB) deals with business on a agency basis (Kommisionsgeschäft), and the normal regulations of civil code (BGB) apply.
GREECE	
IRELAND	There are no specific regulations, rules or laws in place governing this relationship. However, the Consumer Protection Code is a principles based code and many of the general principles set out in Chapter 1 of the Code (copy extract attached) are relevant to the Distributor/Provider relationship.
ITALY	The Distributor - Provider relationship is governed primarily by a civil law contractual agreement between them. In the case of listed financial instruments, alongside with the contractual relationship, there is also the prospectus liability of the parties issuing the prospectus and a further liability of the responsible of the placement <i>vis-à-vis</i> final investors.
LUXEMBOURG	We always have CSA and ISDA contracts with the option Provider.
THE NETHERLANDS	No (except for the laws governing the distribution agreement).
PORTUGAL	Portuguese law contains no specific regulations, rules or laws currently in force governing the relation between a Distributor and a Provider, which therefore, and in principle, will be governed by the civil law contractual agreement between them. This notwithstanding, please note that the arrangements between the parties concerned and the fact that structured products combine various components may in practice result in different financial services that each party is responsible for, which implies that those parties will be responsible for different aspects of the applicable regulatory obligations related thereto, from a Portuguese legal standpoint.
SLOVENIA	

SPAIN	Not specifically regarding financial instruments or structured products, so the general civil and commercial legislation will be applicable, as in an agency or distribution contract or similar transactions.
SWEDEN	<i>Inter parts</i> there is basically general civil law regulating the relationship which means that the contractual issues are of great importance. Obvious, certain parts of the securities law as well as civil law will also have impact on the relationship.
UNITED KINGDOM	There are no regulations, rules or laws governing the relationship between product providers and distributors and, in general, freedom of contract applies and, in general, the parties are free to agree between themselves on their respective roles and responsibilities. However, as cited above, the FSA circulated DP06/4 in which it outlines the possible apportionment of responsibilities between a product provider and distributor in the sale of retail structured products. This includes apportionment of responsibility for product design, 'Know-Your Customer' ('KYC') checks, stress testing, financial promotion, sales targeting and post-sale responsibility. Also as mentioned above, the JAC has provided a useful forum for market participants (both providers and distributors) and advisers to discuss ways in which the relationship between a product provider and distributor should be best shaped by the market.

c. What is the market practice in your country to document the relationship between Distributor and Provider?	
AUSTRIA	
BELGIUM	
DENMARK	The relationship between distributor and provider is typically not documented.
FINLAND	Market practice is to use a distribution agreement.

FRANCE	<p>Usually a 'distribution agreement' is entered between the parties (The producer makes prior investigation to check if the Distributor is duly licensed, has a good track record and reputation). Please note that IPMA covers the dealership status.</p> <p>The project of code of good practice above mentioned recommends that the relations between producer and distributor are formalized through written conventions</p>
GERMANY	Market practice is to have Distribution Agreements between Distributor and Provider.
GREECE	
IRELAND	As a result of market and regulatory developments, there is growing recognition that the relationship between Distributor and Provider should be formally documented.
ITALY	<p>Standard agreement between Distribution and Providers normally include provisions covering the following issues:</p> <ul style="list-style-type: none"> - description of the financial instruments to be placed or distributed, normally by making reference to a more detailed document, such as the terms and conditions; - description of the placement the Distributor is expected to carry out, including selling restrictions if the parties intend to place the instrument privately and rules on sub-distributors; - undertaking of the Distributor to place a given amount of financial instruments, subject to the satisfaction of standard conditions precedent (such as obtainment of a rating, evidence of the actual issue of the financial instrument and of the financial soundness of the parties); - description of the formalities and of the timing of the closing, if the financial instruments are to be issued; - undertaking of the Provider to pay the Distributor a placing commission; - representations and warranties of the Provider on its financial soundness, existing authorisations and certain features of the financial instruments to be placed; - representations and warranties of the Distributor on its financial soundness and existing authorisations; - notices, interpretation of the agreement, governing law and jurisdiction.
LUXEMBOURG	ISDA and CSA contracts need to be signed between the two parties, otherwise, the deal cannot be made.
THE NETHERLANDS	Most of the times a distribution agreement is used (governed by English law or local law).

PORTUGAL	To the best of our knowledge, we believe that there isn't any common market practice on this matter. Although the relationship between the two parties is likely to depend on the relevant structured product, we anticipate that the Distributor/Provider relationship would be governed by a Distribution Agreement in most of the cases.
SLOVENIA	
SPAIN	It would depend on the specific product, but we would not say that there is any common market practice to govern the Distributor/Provider relationship in relation to financial instruments or structured products.
SWEDEN	Usually this relationship is documented through written agreements.
UNITED KINGDOM	Historically, it was fairly unusual for providers and distributors to enter written Distribution Agreements. However, in the past few years, market practice has begun to change and now it is more common for Distribution Agreements to be negotiated. The JAC principles include a statement that 'product providers and distributors should seek to agree and record their respective roles and responsibilities towards investors' and, although this does not necessarily require a Distribution Agreement, HSBC's practice is to insist on signing a Distribution Agreement before permitting third parties to distribute HSBC products into the retail market.

d. What would you consider as necessary components/issues to be dealt with in a contract/agreement?

AUSTRIA	
BELGIUM	
DENMARK	The most necessary components of a distributor/provider agreement would be the allocation of responsibility for the legality of the structured product as such and the accurateness of the marketing material.

FINLAND	Liabilities and duties of the distributor, the use of the provider name, fees, marketing material, dispute settlement.
FRANCE	In France, a civil law country (as opposed to common law) the agreement can deal with the essential terms of the relationship such as (i) selling restrictions, (ii) liability in respect of marketing material and (iii) exclusivity (and of course remuneration). French law agreements do not usually remind to the parties their legal obligations [such as for the distributor, its obligation to (i) apply the rules of conducts (eg distributor must carry out the suitability/appropriateness tests), (ii) comply with applicable rules when marketing and selling the product (in particular in respect of the transparency of its remuneration).
GERMANY	Indemnities, Representations, Responsibilities for preparation of marketing material and risk-disclosure, suitability checks, fees
GREECE	
IRELAND	Distribution Agreements should provide for the appointment of the distributor and should address: <ul style="list-style-type: none"> • responsibilities for marketing material, product terms and conditions etc • responsibilities of Provider to furnish product information to Distributor • suitability requirements • compliance with selling requirements/restrictions • fees and expenses • appointment of sub-distributors, if applicable
ITALY	A distinction should be made whether the object of the distribution contract cover the i) distribution of OTC structured products or ii) listed ones. - As to the first case we consider that, albeit the contracting parties are free to determine the content of the distribution agreement, <i>de facto</i> distribution contracts are quite standardised in their structure in order to be accepted in the market practice. Therefore, necessary issues to be dealt with by the contract are the following ones: <ul style="list-style-type: none"> - The description of the product to be placed; - The undertakings of the Provider and Distributor (in terms of selling restrictions related to investors and countries where the instruments can be placed with); - The undertaking of the Provider to structure the issue in line with the Distributor instructions or a representation of the Provider concerning the characteristics of the relevant financial products; - Fees and commissions; - Period of placement; - Representations and warranties; - Advertisement and marketing material. - As to the case related to the distribution of listed structured products, it should be reminded that the Prospectus Directive regulates the issue of the

	<p>responsibility attaching to the prospectus. Therefore, the distribution contract – in our view – should not provide for clauses conflicting with the rules of this Directive, as implemented into national law.</p> <p>Under Italian law, according to Article 94 (8) of TUF it is provided for the responsibility for damages of the issuer, offeror or any guarantor – endured by the investor who has relied on the content of the prospectus.⁶</p> <p>Moreover, Article 94(9) of TUF provides for the responsibility of the intermediary responsible for the placement in the case of false information or for omissions such as to influence the decisions of a reasonable investor, unless the intermediary is able to present a proof that he took every precaution, as indicated in Article 94 paragraph (8).</p>
LUXEMBOURG	[Do you mean the contract with the Provider for selling us the Swap, or the Distribution agreement?]
THE NETHERLANDS	The relationship in general, fees and expenses, responsibility of the distributor to comply with local law and regulations, disclosure of marketing materials.
PORTUGAL	<p>Product providers and distributors should seek to agree on their respective roles and responsibilities, namely towards the end-customer in the retail supply chain. In particular, the following items should be addressed in the relevant agreement that is to govern the arrangements between the parties concerned:</p> <ul style="list-style-type: none"> (i) the description of the product to be placed, including its main features and associated risk elements; (ii) the corresponding undertakings of the Distributor and Provider (e.g., the extent to which the latter needs to regularly review the relevant structured product performance, the prospective provision of information to investors on the product or the delivering of prompt post-sale services by the Provider, if applicable); (iii) fees or commissions; (iv) representations and warranties; (v) clauses dealing with the limitation of liability of the Provider (e.g., disclaimer stating that the information provided to the Distributor is designed for distributors alone and is not intended for investors to use); or (vi) the level of information or assistance that a Provider is to offer to a Distributor.
SLOVENIA	
SPAIN	A clear and comprehensive split of functions, especially regarding marketing and KYC procedures, as well as clauses/disclaimers dealing with the limitation of liability of the provider.

⁶ Article 94(8) states that : ‘the issuer, offeror or any guarantor, depending on the case, as well as the person responsible for the information contained in the prospectus answer, each in relation to the parts of pertinence, for damages endured by the investor who has reasonably relied on a truthful and complete nature of the information contained in the prospectus, unless it is able to present proof that he took every precaution to ensure that the information in question was conformant with the facts and there were no omissions such to alter the meaning’.

SWEDEN	The products covered, service level provided (administrative dead-lines etc), areas of distribution, restrictions, fee and costs structure, liabilities, compliance with applicable rules and regulations and the usual boilerplate clauses.
UNITED KINGDOM	<p>Key issues that HSBC looks to address in a Distribution Agreement include:</p> <ul style="list-style-type: none"> • HSBC sells to the distributor as principal, and then the distributor on-sells to the retail investors as principal • Distributor will solicit purchases of the product from their retail investors but will not underwrite the product • Distributor will carry out KYC and AML on the end investors and will be responsible for ensuring that the product is only sold to suitable investors and that investors understand the product • Distributor will comply with applicable selling restrictions and other relevant local laws • Provider will make available the prospectus and (where applicable) final terms to the distributor • The parties will agree who will be responsible for producing marketing material (usually the distributor, with HSBC reviewing the use of its name and logo) • Distributor will be responsible for handling complaints from retail investors • If distributor sells to other sub-distributors, who then on-sell to retail investors, the distributor will take responsibility for the actions of its sub-distributors (this is to ensure that the whole distribution chain is covered by the agreement and to manage 'retail cascade' concerns) • Distributor will disclose fees to the extent required by law

e. In your jurisdiction: do the parties enjoy the freedom to allocate rights and obligations between them including disclaimer?	
AUSTRIA	
BELGIUM	
DENMARK	The parties enjoy freedom of contract but their discretion will be subject to scrutiny in relation to Danish rules on unfair contract terms.
FINLAND	Yes, in general.

FRANCE	<p>Under civil law, a contract is freely agreed between the parties ('liberté contractuelle'). However producers or Distributors cannot transfer their respective legal obligations to each other. The agreement can limit the liability of a/the parties (liability only in case of fraud or gross negligence).</p> <p>'Disclaimers' in the pre contractual documentation of a product are usually inserted by the Provider (or the Distributor as the case may be) to comply with legal requirement, such as information requirements (i.e. information on the risk for the client to loose its investment) and to be conformed on certain aspects (e.g. investor buys for its own account, understands the product and has assessed the suitability of the transaction).</p> <p>'Disclaimers' in the products aim at limiting the liability of a party but may not be useful before a court (e.g. it is up to the Distributor to make sure that the investors has understood the product; the Distributor must also make the necessary tests to assess the suitability/appropriateness of the product).</p>
GERMANY	<p>Yes, in principle. Allocation of risks and responsibilities may be limited by overriding principles of equity. Disclaimers may not be fully recognized, if their content is contradictory to what would be reasonably expected from a Provider and/or Distributor as being a core duty or is not consistent with equitable principles. This applies especially to disclaimers in marketing material.</p>
GREECE	
IRELAND	<p>Subject to compliance with the provisions of the Consumer Protection Code, MIFID and any other applicable laws, the parties' contractual negotiations are not subject to any constraints.</p>
ITALY	<p>In connection with the distribution and placing of OTC tailored made products parties are primarily led by market practice, and therefore they tend to use and rely upon of a tested legal documentation, which is accepted also in the international financial market.</p> <p>On the other hand, parties' freedom in connection with the distribution of listed products, whereby the Prospectus Directive and the TUF apply, is limited by the mandatory provisions of those pieces of legislation. For instance, the responsible for the placement cannot limit its liability against investors beyond the limits of Article 94 (9) of TUF.</p> <p>However, in both cases, it is worth mentioning that under Italian law no disclaimer concerning bad faith is neither valid nor enforceable, so that in any event a party is granted an action in the case of <i>exceptio doli</i>, i.e. if it can prove that the other party has acted fraudulently.</p>
LUXEMBOURG	<p>Yes.</p>
THE NETHERLANDS	<p>Yes, in general.</p>

PORTUGAL	Under Portuguese civil law, a contract is freely agreed between the parties concerned (“liberdade da autonomia privada”), provided that some mandatory rules (e.g., the rules on unfair terms) are complied with. Certain responsibilities are excluded from this freedom of contract and may not be waived, like the legal obligations and responsibilities related to prospectus or quality of information requirements.
SLOVENIA	
SPAIN	Generally yes.
SWEDEN	Certain responsibilities can not be allocated; being obligations and responsibilities under law (for example related to prospectus requirements).
UNITED KINGDOM	As discussed above, English law recognises freedom of contract and so the parties are generally free to allocate rights and obligations between them. However, in the context of listed securities, prospectus rules require issuers to take responsibility for the contents of prospectuses and this obligation cannot be delegated to others. In addition, certain regulatory obligations such as KYC and anti-money laundering checks on clients cannot be delegated and so HSBC would conduct KYC on its client (the distributor) and the distributor would conduct KYC on its clients (the end investors).

3. Other Issues /Aspects

a. Are there any rules in your jurisdiction in place addressing transparency issues (i.e. fee split, margin, costs, capital structure of the product)?

AUSTRIA	
BELGIUM	
DENMARK	No rules are in place relating to transparency issues apart from general rules on disclosure of information in prospectus/marketing material. However, the Recommendations state that the total amount of fees payable to producer distributor must be disclosed in the marketing material as well as the structure of the note, yield simulation and expected return on alternative (conservative) investment.

FINLAND	If the structured product is in a form of a bond issue the normal public bond disclosure requirements apply. In addition the FSPA has issued relevant recommendations.
FRANCE	Yes (for fee split and cost) for all intermediaries: investment firm (including asset managers/funds) and insurance. [for investment firms, 'inducement' MiFID rules]. In a general way, article L. 533-12 of the French monetary and financial code stipulates that information has to be fair, clear and not misleading and articles 314-10 to 314-17 of AMF General Regulation provide that the name of the service investment provider, performance, fiscal treatment have to be mentioned.
GERMANY	EU VO 809/2004, MiFID, TUG and court rulings (e.g. about kick-back fees by the German High Court BGH)
GREECE	
IRELAND	Both MIFID and the Consumer Protection Code address disclosure requirements and in particular address the transparency issues specified above. The Consumer Protection Code provides that all costs or fees payable in connection with a product or service must be disclosed. Furthermore, when selling a 'Tracker Bond' a regulated entity must provide its customers with a 'Key Features' document which includes a requirement to address questions such as 'how does the Tracker Bond work?' and 'where does my investment go?'.
ITALY	The wide transparency obligations imposed by MiFID and its implementing provisions provide for a comprehensive regime addressing transparency issues, both with respect to OTC and listed financial instrument. However, whereas in the case of products outside the scope of a prospectus, such as OTC products, the seller has to provide the client (save the case it is a eligible counterparty) with an extensive range of information on the financial instrument, in the case of products offered to the public or listed, it can simply refer to the prospectus. In the absence of a perfect symmetry between the information to be provided under the MiFID and the mandatory content of a prospectus in accordance with the Prospectus Directive, it is feasible that some financial information are not provided identically in the two scenarios. When the MiFID applies, information about costs are provided in the same manner for all instruments since the rule simply introduces a list of information items to be provided irrespective of the nature of the financial instrument. In this respect also the MiFID rules on inducements, as implemented and clarified by Article 52 of the Consob Intermediaries Regulation, are relevant given that the provision of information to clients on the existence and amount of inducements paid by third parties is one of the two exceptions provided for by the law in order to allow an investment firm obtain this kind of inducements. The consequences of the violation of information obligations have been the subject matter of the recent landmark decision 26725/2007 ⁷ of the Supreme Court of Italy. In this decision the Supreme Court held that the violation of the duty to provide complete, fair and clear information to a client can be sanctioned (i) either by a pre-contractual responsibility, (ii) or – once the agreement has been entered into – by a contractual responsibility or a termination

⁷ Cass SU 19 December 2007. See also Trib. Napoli 25 September 2002.

	for damages of the contract. In both cases the client is entitled to damages. The violation of the duty of care of an investment firm, however, does not lead to the nullity of the contract, or of its subsequent execution acts.
LUXEMBOURG	MiFID has been transposed into Luxembourg Law, we do have rules regarding transparency towards clients. However, there are no specific rules for structured products. Regarding the margin, it is considered that it does not need to be disclosed.
THE NETHERLANDS	For notes the usual public offering disclosure requirements apply and there are recommendations by the Netherlands Bankers' Association.
PORTUGAL	<p>As a preliminary remark, please note that any information regarding financial instruments must comply with the general principles on quality of information set out in Article 7 of the PSC, according to which it shall include complete, accurate, updated, clear, objective and lawful information. These general principles apply irrespective of the means of disclosure and even if the information is inserted in an advice, a recommendation, an advertisement or a rating notice. In addition, the MiFID requirements on information provided to investors must be also complied with⁸.</p> <p>In addition, Portuguese law also establishes certain rules on the information contents of certain structured products.</p> <p>In what regards credit-linked notes, Article 6 of CMVM Regulation no. 16/2002 determines that the publicity relating to those notes must include an adequate mention of the following, regardless of the format or medium used:</p> <ul style="list-style-type: none"> (i) the characteristics of the security, distinguishing whether, among other, there exists the possibility of making payments in cash and the conditions under which debt securities may be provided; (ii) the risk of loss, partial or otherwise, of the invested amount. <p>Amongst several other information elements, Article 4 of Bank of Portugal Notice ("Aviso") no. 6/2002, on savings structured products ("<i>instrumentos de captação de aforro estruturados</i>") - a specific category of structured products - establishes that the issuer must provide the identification and characterisation of each of the underlying assets or financial instruments, corresponding composition and appropriate measures of yields and risks. Likewise, CMVM Regulation no. 8/2007, on unit linked securities sets forth the information requirements associated with these products, namely the requirements and mandatory contents that must be included in the respective simplified prospectus, certain marketing requirements and the means of disclosure of associated yields and risks.</p>
SLOVENIA	
SPAIN	Again, following MIFID implementation the new Articles 79, 79 bis, and 79 sexies LMV all deal with different transparency issues.

⁸ Which were fully implemented into Portuguese law pursuant to Article 312 et seq. of the PSC.

SWEDEN	Inducements rules have been implemented through MiFID. Obviously, there are also rules addressing transparency issues based on the prospectus directive, which is implemented in the Swedish legislation.
UNITED KINGDOM	Where a product is to be listed, the listing rules include requirements for disclosure of certain fees. In addition, the MiFID inducement rules require disclosure of fees paid to third parties in certain circumstances and there are general obligations on issuers to provide investors with sufficient information for them to make an informed investment decision (which could include information on fees). However, in general, it is up to the issuer/provider to decide what level of detailed disclosure is appropriate for any particular trade (e.g. whether to disclose the amount of fees, or just the fact that fees will be paid).

b. Are there any rules in place in your jurisdiction governing any potential conflict of interest whether internal (Chinese walls, calculation) or external (Valuation Agent, Paying Agent, Trustee etc.)?

AUSTRIA	
BELGIUM	
DENMARK	No rules are in place relating to external transparency issues. Rules are in place relating to internal transparency issues but those are not specific to structured products.
FINLAND	No specific rules relating to structured products.
FRANCE	Yes [MiFID rules : tied agent]. Note that structured products are usually valued by the producer. MiFID conflicts of interest policy is applicable to structured products when they are sold by investment service providers:
GERMANY	No specific regulations but general civil law aspects do apply (e.g. Treu und Glauben, sittenwidriges Verhalten)
GREECE	

IRELAND	MIFID and the Consumer Protection Code both seek to address the management and disclosure of conflicts of interest.
ITALY	The MiFID implementing measure on organisational requirements and conflict of interests cover the issues connected with these issues both within a given investment firm and in the context of a contractual framework. In respect with UCITS the TUF provides for the mandatory deposit of the financial instruments owned by the fund at a depositary bank, which never coincides with the asset manager. This rule is clearly designed at avoiding even potential conflicts of interests concerning the assets of the fund.
LUXEMBOURG	Yes, the Law on the Financial Sector, as adapted following MiFID and the Règlement grand-ducal 'MiFID' +/- copy / paste the MiFID rules regarding conflicts of interests.
THE NETHERLANDS	Not specifically related to structured products.
PORTUGAL	Under Articles 309 and 309-A of the PSC, a financial intermediary shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to identify and prevent conflicts of interest between themselves, including their managers, employees and tied agents, or any person directly or indirectly linked to them by control and their clients or between one client and another that arise in the course of providing any investment and ancillary services, or any combinations thereof.
SLOVENIA	
SPAIN	Rather more common on the potential internal conflicts of interest than external ones, as some of those figures are unknown in the Spanish market (i.e. trustees). On the internal conflicts of interest Articles 70 ter., 70. quáter, 80 and 83 LMV deal with different aspects of the subject.
SWEDEN	In Sweden there are rules on both potential internal and external conflict of interest.
UNITED KINGDOM	Firms are required to have procedures to identify and manage conflicts of interest and HSBC has internal policies and procedures to do this. These procedures include putting information barriers in place where needed. English courts recognise the importance of information barriers and, in our view, would expect these to be put in place in order to manage conflicts. There is a separate trustee company as part of the HSBC group and trustee functions are performed by that company, not by any of the trading companies such as HSBC Bank plc. Paying agency, issue agency and calculation agency functions, as well as common depositary, registrar, etc are performed by a division of HSBC Bank plc which operates independently of the front office.

c. Marketing Material: Do you consider a prospectus as sufficient information on the structured product and its associated risks or is it in your view necessary to provide additional marketing material to retail clients?

AUSTRIA	
BELGIUM	
DENMARK	Preparation of marketing material should go hand in hand with the prospectus when the structured product is sold to retail clients as the marketing material serves the purpose of being an easy-readable, summarised version of the prospectus.
FINLAND	Additional marketing material to retail clients regarding the specific product is absolutely necessary.
FRANCE	<p>First, please note that a prospectus is not a 'Marketing' Material. It is the contract between the parties.</p> <p>In case of public offering, the risk section of an issuer's prospectus must be in line with the legal requirements (Prospectus Directive and Implementing Rule). In case of private placement, the risk section of the prospectus is generally in line with best practice 'market standards' (usually the Base Document contains general risk disclosures and the Final Terms re. the products contains specific risk disclosures re. the product). Therefore, in respect of a specific structured product privately placed, the quality of the disclosures depends on the quality of the teams involved (notably structuring and legal).</p> <p>Marketing Material (and generally, pre contractual documentation) must also comply with MiFID rules (art.19 MiFID1 and 27 and seq., as transposed in France). In addition, clients are generally provided with scenarios to assess the product.</p> <p>The reading of some prospectuses can be very complicate, so it could be helpful for the retail clients to have, in particular cases,an additional marketing information summarising the main characteristics of the product in a language 'less technical'. In such a case, the document has to be submitted to the AMF prior approval.</p> <p>Please note that a government report was issued on November 2005 [after 2004 (MiFID); MiFID was transposed in France in 2007] in relation to the marketing of the financial products (<i>Rapport Delmas-Marsalet relative à la commercialisation des produits financiers</i>).</p> <p>. This report proposed recommendations to strength the obligations of the financial intermediaries in the information and the advice to the investors in a general way. This report recommends to establish a 'product-form', a new document with which to provide the client:</p> <ul style="list-style-type: none"> - it gives a general survey of the product's main characteristics (nature, risks, investment period, fees, performance, tax..); - It must be provided to the client upon request and be available on Internet; <p>It must be provided to the client systematically before each transaction.</p>

GERMANY	No, flyers are common and are produced to summarize the product-information given in the Final
GREECE	
IRELAND	It appears that the market practice is to publish a prospectus/terms and conditions relating to a particular product and also to prepare marketing material which will be used for purposes of the sale and /or marketing of the product. All marketing material should refer the recipient to the prospectus/ terms and conditions relating to the product. As mentioned at 2(e) above, the Consumer Protection Code requires a regulated entity to distribute a 'key features document' for Tracker Bonds.
ITALY	The prospectus already provide with sufficient information on the product. However, it is clear that the Distributor has also to be compliant with the provisions of Article 31 of the L2 Directive 2006/73, as implemented in Italy by the Consob Intermediaries Regulation, according to which he is required to explain all the relevant aspects of the financial instruments in relation to their nature and risks, so that the investor can make an informed investment decision.
LUXEMBOURG	The prospectus is not sufficient. We always issue comprehensive term sheets for our clients, explaining the product, the risks, etc and containing some disclaimers.
THE NETHERLANDS	In general the prospectus is sufficient information.
PORTUGAL	A prospectus drafted in accordance with the Prospectus Directive and Regulations shall contain all the legally required information on the relevant product and associated risks attached thereto, its specific characteristics and the assets and liabilities, economic and financial position of the issuer or the guarantor, if any, and the prospects for the business and earnings of the issuer and the guarantor, if any. If, according to a business judgment, marketing materials are to be distributed, please note that, under Article 121(2) of the PSC, any advertising and marketing materials that are to be distributed in Portugal to prospective investors ⁹ in connection with a public offer ¹⁰ shall be subject to the prior approval of

⁹ With this respect, it is important to note that Portuguese law does not make a difference between qualified investors and retail investors when regulating the restrictions and requirements on the contents of any marketing / offering materials that may be distributed to prospective investors. However, and due to the fact that the restrictions and requirements that regulate the content of these materials are aimed at protecting investors, it is our understanding that these restrictions and requirements shall not apply if the materials are distributed to qualified investors only.

	<p>the Portuguese Securities Market Commission ("<i>Comissão do Mercado de Valores Mobiliários</i>" or "CMVM"). Moreover, pursuant to Article 121(1) of the PSC such materials shall:</p> <p>(i) comply with the principles concerning the quality of information set out in Article 7 of the PSC. Accordingly, the marketing materials shall include complete, accurate, updated, clear, objective and lawful information.</p> <p>(ii) make reference to the existence or the future availability of a prospectus (i.e., include a disclaimer indicating the places where the documentation relating to the public offer / listing is available for inspection).</p> <p>(iii) be consistent with the content of the prospectus.</p> <p>The marketing materials are subject to the CMVM's review on a case by case basis. According to our previous experience, the CMVM particularly requires that all references made in the marketing materials to capital protection, coupons, maturity and redemption conditions, as well as to the potential gains / losses related to the securities offered shall be clear and not misleading.</p> <p>In view of the above, the marketing materials distribution to the general public in order to appeal the securities subscription / purchase constitutes a public offer, subject to the legal restrictions and requirements set out in Portuguese law. Accordingly, no public offer marketing materials may be publicly distributed or published, before the prior approval of the CMVM is granted.</p>
SLOVENIA	
SPAIN	We consider the prospectus as sufficient information, when required.
SWEDEN	The prospectus should provided information on all associated risks, but there are requirements on risk information on additional marketing material.
UNITED KINGDOM	<p>This will depend on the particular transaction. In some circumstances, a prospectus together with final terms will be sufficient information, particularly if the product is relatively vanilla and is issued off a regular issuance platform such as a MTN programme.</p> <p>For more bespoke and/or complex products, there may be the need to produce additional marketing materials, which could include a scenario analysis setting out how the product will perform in different market conditions (positive and negative).</p> <p>Where the investor may stand to lose some or all of their initial investment, this should be clearly stated as a risk disclosure in a prominent place in the prospectus and/or marketing materials. As discussed above, an important consideration in the U.K. is that investors are given sufficient information to enable them to make an informed investment decision and that the information given to them is clear, fair and not misleading.</p>

¹⁰ Pursuant to Article 109 of the PSC, a public offer of securities is deemed to exist when specifically addressed to individuals or legal entities resident or domiciled in Portugal whenever: (i) the offer is made in all or in part to unidentified addressees (the uncertainty of the addressee is not prejudiced by the fact that the offer takes place through multiple standard communications, even if addressed to individually identified addressee); (ii) an offer addressed to all the shareholders of a public company, even if its share capital is represented by nominative shares; (iii) an offer that, in whole or in part, is preceded or accompanied by promotional material or book-building with unidentified addressees; (iv) offers are addressed to over 100 people that are non-qualified investors and who are domiciled in Portugal. On the other hand, a securities offer will be considered as a private placement when: (a) none of the requirements for a public offer set forth above are met; (b) the offer is made only to qualified investors; or (c) the offer is made by non-public companies, to the majority of its shareholders, except for those cases described in item (iii) in relation to public offers.

d. In your view: who should assume the responsibility of the accurateness of the Marketing Material?

AUSTRIA	
BELGIUM	
DENMARK	The responsibility of the accurateness of the marketing material vis-a-vis the investor should rest with the distributor. As to the internal responsibility allocation between the distributor and the provider a fair allocation would be to share the responsibility as both parties have a commercial interest in the product and typically work together on launching it.
FINLAND	The provider if it has accepted the marketing material.
FRANCE	<p>As mentioned in c. above, Marketing Material must comply with MiFID rules. Usually the Provider determines the investor profile.</p> <p>We are of the view that the Provider must check the Marketing Material established by the Distributor. In that case, the Provider shall not be liable except in case of gross negligence.</p> <p>In some cases, the Provider and the Distributor agree that the Distributor will use only the Marketing Material established by the Provider. In that case, the Provider will be liable.</p> <p>The cases described above are depending upon the distribution channels (platform etc...)</p> <p>The good practices code mentioned in response 2b recommends that the convention between the producer and distributor indicates if the advertising documents concerning the financial product will be exclusively constituted by the distributor or if they can be elaborated, partially or totally, or validated by the producer.</p> <p>When the advertising documents are totally or partially elaborated by the distributor principles mentioned below are applicable :</p> <ul style="list-style-type: none"> - the distributor may ask the producer to verify, in a reasonable time limit, the compliance of the advertising document elaborated by the distributor to the regulatory documents; - the distributor will have to take into account observations of the producer and to bring, if necessary, the modifications necessary for the project of advertising document; - the distributor remains only responsible for the contents of the advertising documents with respect to clients; <p>If it is mentioned in the convention, the producer can require that the distributor subjects him any project of advertising document concerning financial products elaborated by the producer. The distributor will have to take into account observations of the producer and to bring, if necessary, the modifications necessary for the project of advertising document before any distribution to the clients. The distributor remains only responsible for these documents towards the customers.</p>

GERMANY	The party who has produced it, the marketing material should clearly state the producer.
GREECE	
IRELAND	The Distributor should be responsible for the content of the marketing material. In preparing this material, the Distributor must fully understand the product and the Product Provider must ensure that the Distributor has received all necessary information.
ITALY	In the case of listed products, the Prospectus Directive provides for that the marketing must be in line with the content of the prospectus. Also Article 14 of Consob Regulation n. 11971, as subsequently amended, on Issuers is in line with the Directive, as it provides for a duty of the intermediaries to ensure consistency between the prospectus and the information given to clients at all times. In the case of non listed instruments, the Provider is responsible for the information provided to the Distributor, which – on its side – has to verify the information that it has received and has to ensure consistency of the content of marketing material with the information that it has received.
LUXEMBOURG	The entity establishing/using such marketing material.
THE NETHERLANDS	In general the party providing that material.
PORTUGAL	As a general rule, the entity that prepares the marketing materials should be liable for its accuracy and completeness. Accordingly, a Provider is not responsible for what the Distributor says when the latter gives advice or makes sales. However, where a Provider has not supplied sufficient, appropriate and comprehensible information, the Distributor may be entitled to seek redress from the Provider in the courts under the general law. On the other hand, Article 121(3) of the PSC determines that the civil liability for the contents of information disclosed for advertising purposes in connection with a public offer is subject to the provisions set out in Article 149 et seq. of the PSC, to the applicable extent. The basic source of law in respect of the liability for the prospectus is Article 149 of the PSC, which provides that the issuer, the members of the issuer's management body, the members of the supervisory board, the financial intermediaries in charge of assisting the offer, auditors firms, and any other persons, who have certified or, in any other way, verified the accounting documents on which the prospectus and / or the marketing materials, as the case may be, are based and any other entities, which agree to be identified in the prospectus / marketing materials as responsible for any information, forecast or study included therein may be liable for failure to comply with the principles of quality of information referred in Article 7 of the PSC (see Section Error! Reference source not found. above). Likewise, if the arranger or lead manager as well as other managers are indicated on the prospectus and / or the marketing materials, as the case may be, as responsible for the information contained therein, they may be held liable for the failure to comply with these provisions. When several persons or entities are liable for any loss and damage they may be held jointly and severally liable therefore. As for the liability of official

	<p>auditors and official auditors firms, it is limited to the economic and financial information certified by them.</p> <p>Furthermore, Article 150 of the PSC provides that the following entities may also be held strictly liable (i.e., even if they acted in a diligent manner):</p> <p>the offeror (if the members of his management board, the financial intermediaries in charge of assisting with the offer or any other entities that accept being appointed in the prospectus and / or the marketing materials, as the case may be, as responsible for any information, forecast or study included therein are held responsible);</p> <p>the issuer (if the members of his management body, the members of the auditing body, accounting firms, chartered accountants and any other individuals that have certified or, in any other way, verified the accounting documents on which the prospectus and / or the marketing materials, as the case may be, is based are held responsible); and</p> <p>the leader of the placement consortium (if a member of the consortium is held responsible).</p> <p>According to Article 149(3) of the PSC, the aforementioned liability (either in case of malice or negligence) may be excluded, if it is established that the injured party (namely, the investor) knew or ought to have known of the deficient nature of the prospectus / marketing materials contents on the date of the contractual obligation was assumed or when the cancellation thereof was still possible.</p> <p>The entitlement to claim damages must be exercised within six months of the date on which the injured party first became aware of the defective nature of the prospectus / marketing materials contents and is subject to a two-year limitation period as from the date on which the result of the offer was released without the need to prove that they would not have invested if they had been aware of the relevant mistake. Notwithstanding this, the injured party must prove the connection (cause/effect) between the mistake or omission in the prospectus / marketing materials contents and the alleged damage as well as the amount of damages caused by the deficient content of the prospectus and / or the marketing materials, as the case may be.</p> <p>In addition, Article 154 of the PSC provides that the provisions described above are mandatory and cannot be excluded or altered by agreement between the relevant parties or contractual declaration, even if an eventual dismissal of the legal framework set out by the PSC was to be made in the investor's benefit.</p> <p>Furthermore, in accordance with Article 389(1) of the PSC, the non-compliance of the obligations mentioned above in what concerns the information to be included in the prospectus and / or the marketing materials, as the case may be, is considered to be a very serious administrative offence, subject to a fine between € 25,000.00 and € 2,500,000.00.</p> <p>The determination of the actual fine and accessory sanctions is done in consideration of the material illegality of the act, the agent's fault, the benefits obtained and other prevention requirements. Whether the agent is an individual or legal entity, is also taken into account.</p>
SLOVENIA	
SPAIN	The distributor.
SWEDEN	The Provider (Issuer) is responsible for the marketing material it has drafted and presented, in case of any additional marketing material provided by the Distributor that entity will bear responsibility for such material in relation to its clients.
UNITED KINGDOM	This is something that should be addressed in the Distribution Agreement but, in general, the entity that prepares the marketing materials should bear responsibility for its accuracy. HSBC's usual approach is to provide the distributor with the prospectus and, where applicable, final terms but to rely on the distributor to prepare any additional marketing materials. HSBC will check the use of its name and logo, and any description of HSBC as an entity, but will not otherwise take responsibility for the marketing material.

However, in situations where HSBC is originating/promoting the product, it may produce additional marketing materials such as presentations, brochures, etc. In this situation, HSBC would be responsible for the contents of such materials and there are policies and procedures in place for any such documents to be reviewed and approved by appropriate functions, including Compliance.

e. Does it make a difference in that respect (d.) whether the structured product is initiated by the Provider or by the Distributor?

AUSTRIA	
BELGIUM	
DENMARK	Who initiates the structured product should not be of significant importance when it comes to risk allocation. Both provider and distributor share a common interest in launching the product.
FINLAND	No.
FRANCE	. We can suppose that there is no difference when the structured product is initiated by the distributor or by the producer (please see response 3d).
GERMANY	Not really, the responsibility for the product itself will always be with the issuer, but the distributor should be responsible for any marketing material it has produced and the advice it gave to his retail-clients. But an issuer should only be responsible, if it was aware before the issue that the product is intended for retail-distribution.
GREECE	
IRELAND	The initiation or origination of the product by Provider or Distributor should not change the response to (h) above.

ITALY	(Missing answer)
LUXEMBOURG	No.
THE NETHERLANDS	No.
PORTUGAL	The fact that the structured product is initiated by the Provider or by the Distributor is irrelevant in respect to the legal framework described in Section Error! Reference source not found. above on the liability for the marketing materials.
SLOVENIA	
SPAIN	No.
SWEDEN	No.
UNITED KINGDOM	Yes. As discussed above, if the product were initiated by the product provider alone, then the product provider would usually prepare, and be responsible for the marketing materials. If however, the product were initiated by the distributor, the distributor would usually prepare, and be responsible for the marketing materials.

f. Is there any self-regulation initiative related to structured products under MIFID in your country?	
AUSTRIA	
BELGIUM	
DENMARK	At present the only self-regulating initiative is the Recommendations.
FINLAND	Yes, the FSPA.
FRANCE	<p>No soft law. Please note that the DELMAS-MARSALET report on the marketing of financial products, mentioned in response 3c, does not focus on structured products. It deals generally with (i) information to the client (nature of the product, guarantee, recommended holding period, scenario of gain/loss, costs, profile), (ii) profiled marketing and (iii) the Provider/Distributor relationship.</p> <p>Please see answer 2b.</p>
GERMANY	<p>As far as we are aware the answer is “no”.</p> <p>A key problem is not covered by this questionnaire: the problem of unharmonized prospectus liability in the EU / EEA countries that have implemented the Prospectus Directive. So we have harmonized rules about the prospectuses but the liability for these prospectuses is still in the discretion of the national legislators, this is especially problematic in case of passported products.</p>
GREECE	
IRELAND	We are not aware of any self regulation initiative relating to structured products under MIFID in Ireland. There is increasing industry focus on structured products and industry initiatives in this area are being closely followed.

ITALY	No.
LUXEMBOURG	No.
THE NETHERLANDS	Yes, the Netherlands Bankers' Association published two recommendations.
PORTUGAL	At present and to the best of our knowledge, there is no self-regulation initiative in Portugal related to structured products under MiFID.
SLOVENIA	
SPAIN	No.
SWEDEN	The Swedish Securities Dealer's Association has approached Finansinspektionen in order to get acceptance to classify certain structured products as non-complex instruments under the MiFID related regulations. There has also been a bank made initiative related to certain issues on structured products, but it has not yet led to any self-regulation.
UNITED KINGDOM	There are no specific self regulation initiatives however, as discussed above, the MiFID inducement rules may require disclosure of fees paid to distributors and other intermediaries. In addition, the JAC principles are intended to provide some guidance to the market, although these are not specifically related to MiFID and are not a regulatory initiative.