

FAQs

Structured products

(status: 10 September 2014)

- 1. Under Article 5 para. 1 let. a no. 4 of the [Collective Investment Schemes Act](#) (CISA; SR 951.31), a foreign institution must in principle have a branch in Switzerland as set out in Article 4 para. 1 let. b of the [Collective Investment Schemes Ordinance](#) (CISO; SR 951.311) to be permitted to distribute structured products in or from Switzerland to non-qualified investors. To what extent must this branch actively engage in distributing structured products?**

The minimum requirement is that the branch in Switzerland must be able to provide both the preliminary simplified prospectus and the definitive simplified prospectus. Otherwise the branch is not required to be involved in the distribution of structured products.

- 2. Which companies qualify as branches?**

Under Article 4 para. 1 let. b CISO, a branch of a foreign institution may be a representative office, a branch office, a subsidiary, a sister company or a group company provided that it is covered by consolidated supervision at group level.

- 3. Which criteria are used to distinguish structured products from collective investment schemes?**

Compliance with the formal legal criteria for a collective investment scheme under Articles 7 and 119 CISA differentiates such a scheme from structured products. The decision by an issuer to give a product the legal form of a structured product or by a fund management company to give a product the legal form of a collective investment scheme must be made prior to product launch and communicated to investors (for labelling, see question 5).

The supervisory authority retains the right to intervene in the event of misuse of the legal form and the violation of transparency rules. This is the case, for instance, if a structured product is referred to as an "investment fund respectively collective investment scheme" and the expression "investment fund respectively collective investment scheme" is used in any form (including abbreviations) in any kind of misleading way, e.g. if a structured product is claimed to be subject to approval or monitoring by the supervisory authority or if the structured product is insufficiently labelled. Any risk of misunderstanding is to be avoided. The criminal sanctions specified in CISA are applicable.

4. What criteria are used to determine whether a Special Purpose Vehicle (SPV) qualifies as a collective investment scheme, in particular foreign SPVs (with a head office and domiciled abroad)?

A structured product issued through an SPV is distinguished from a collective investment scheme according to the same principle as described in the answer to question 3 above. Hence, it is irrelevant whether the SPV issues only one product ("single issuance"), several products ("multi-issuance") which are segregated from each other (e.g. as cells of a protected cell company), or several products ("multi-issuance") which are not segregated from each other, as long as they do not qualify as a collective investment scheme according to the formal legal criteria prescribed in Articles 7 and 119 CISA.

If an SPV qualifies as a collective investment scheme under the law of its country of domicile or according to the practice of the competent foreign supervisory authority to which it is subject, then a foreign SPV always qualifies as a foreign collective investment scheme in Switzerland. Whether a foreign collective investment scheme can be approved in Switzerland is determined individually based on whether it meets the formal legal criteria for a foreign collective investment scheme (Arts. 119 and 120 CISA). If a structured product does not qualify as a collective investment scheme abroad, it may be distributed or listed in Switzerland without approval as long as it is not deemed to be a collective investment scheme in Switzerland on the basis of formal legal criteria and it fulfils the conditions in Article 5 para. 1^{bis} CISA.

5. How should it be made clear that a structured product is neither a collective investment scheme nor subject to approval by the supervisory authority in order to avoid all risk of confusion and potential deception (labelling)?

Reference to this effect must appear prominently (not in the footnotes in small print) on the first page of the simplified prospectus and all other documentation, and be highlighted in bold (see also no. 3 of the ["Guidelines on informing investors about structured products"](#)).

6. Under what conditions does the distribution of a structured product based on one or more collective investment schemes qualify as indirect distribution of a collective investment scheme? Under what conditions is indirect distribution of this type permissible?

If more than one third (33.3 %) of the value of a structured product depends on a collective investment scheme, this qualifies as indirect distribution of that collective investment scheme.

For passive (static and non-static) products, the above limit applies to the time of issuance. Subsequent adjustments that cause the one-third threshold to be exceeded are of no consequence as long as they follow predefined rules. For actively managed products (with scope for discretionary management), the limit applies to the time at which investment decisions may be made.

Indirect distribution of a collective investment scheme is permissible if the collective investment scheme itself can be offered to investors while also fulfilling the other legal distribution requirements applicable to it. This means that a structured product whose value depends to 100% on:

- a Swiss collective investment scheme approved by FINMA as a collective investment scheme for non-qualified investors may be distributed to non-qualified investors;
- a foreign collective investment scheme approved by FINMA for distribution to non-qualified investors may be distributed to non-qualified investors;
- a Swiss collective investment scheme approved by FINMA as a collective investment scheme for qualified investors may only be distributed to qualified investors;
- a foreign collective investment scheme which may be offered exclusively to qualified investors and fulfils the conditions under Article 120 para. 4 CISA may only be distributed to qualified investors only.

7. According to which criteria may structured products based on a fund of funds be distributed?

A fund of funds is treated just like any other collective investment scheme. There is no "look through" on its investments. Thus, question 6 applies.

8. According to which criteria may structured products based on multiple sub-funds of an umbrella fund be distributed?

Multiple sub-funds of an umbrella fund are treated as independent products. It is therefore irrelevant whether a structured product is based on multiple individual funds or multiple sub-funds of an umbrella fund. See also question 6.

9. Whom can I contact if I have additional questions?

questions@finma.ch or phone +41 (0)31 327 91 00.