



**NOTICE UNDER THE
SECURITIES MARKETS ORDER, 2013**

NOTICE NO. CMU/N-5/2017/10

OFFERING OF STRUCTURED PRODUCTS

1. INTRODUCTION AND APPLICABILITY

- 1.1 This Notice is issued pursuant to Section 239(1) of the SMO and applies to Dealers only.
- 1.2 The structured products that can be offered must only be issued by the Eligible Issuers within the meaning of this Notice.
- 1.3 Any provisions under the SMO which are inconsistent with the requirements in this Notice are deemed to have been varied by this Notice.
- 1.4 This Notice shall take effect on 15 December 2017.

2. DEFINITIONS

- 2.1 For the purposes of this Notice –

“Authority” means Autoriti Monetari Brunei Darussalam;

“Bank” means a bank licensed under the Banking Order, 2006 or an Islamic bank licensed under the Islamic Banking Order, 2008;

“Dealer” means a holder of a capital markets services licence to carry on the regulated activity of dealing and arranging deals in investment and, for the purposes of this Notice, who sells or distributes the structured products;

“Eligible issuer” means the person(s) specified under paragraph 3.2 of this Notice;

“Foreign Related Corporation” means –

- (a) The foreign parent company or related corporation of that Dealer or a Bank and is duly licensed in its home jurisdiction as the equivalent of a Bank or Dealer; or
- (b) An SPV which is sponsored by a foreign related corporation in paragraph (a) above.

"Reference Asset" means —

- (a) any securities, equity interest, commodity or index;
- (b) any basket consisting of any securities, equity interests, commodities or indices;
- (c) any entity or basket of entities; or
- (d) any interest rates or currency exchange rates,

which payments are or will be linked to;

"Related corporation" has the meaning assigned to it under the Companies Act, Chapter 39;

"SMO" means the Securities Markets Order, 2013 and any regulations or other subsidiary legislation made thereunder;

"Special Purpose Vehicle" means an entity or a trust (for its trustee) that is established in order to issue structured products.

"Structured product" means any Securities that have the characteristics of combining a base instrument (such as a note, fund, or insurance contract) with an embedded derivative that provides economic exposure to Reference Assets which provides investors, at predetermined times, with payoffs that are linked to the performance of Reference Assets. For the avoidance of doubt, this definition does not include Structured Deposits;

"Structured Deposits" means a product that combines a deposit with an investment product. The return on a structured deposit depends on the performance of an underlying reference asset, product or benchmark which may include market indices, shares, interest rates, market indices, bonds or other fixed-income securities, foreign exchange rates, or any combination of these.

"White-label" means arrangements where a product is offered under the brand of the dealer while a separate company actually issues the product.

2.2

Any expression used in this Notice shall, except where expressly defined in this Notice or where the context requires, have the same meaning as in the SMO.

3. ELIGIBLE ISSUERS

- 3.1 No person may issue structured products in Brunei Darussalam unless they are an eligible issuer and comply with the provisions of this Notice.
- 3.2 The following categories of persons are deemed as eligible issuers under this Notice:
- (a) A Dealer;
 - (b) A Bank; or
 - (c) A locally incorporated Special Purpose Vehicle (SPV) sponsored by a Bank or a Dealer.
- 3.3 Dealers may make available the structured products :
- (a) of a foreign related corporation; or
 - (b) that are white-labelled by the eligible issuers.

4. ELIGIBLE INVESTORS

- 4.1 The offering of structured products shall only be made to the specific classes of investors as defined in section 20 of the SMO.

5. NOTIFICATION AND REPORTING REQUIREMENT

- 5.1 Any offer of structured products shall be notified to the Authority pursuant to Notice No. CMU/N-1/2016/5 Notification on Private Offerings and Exempt Securities and Transactions.

6. ADVERTISEMENTS

- 6.1 In any offering of structured products, only general advertisements may be issued. For example, an advertisement may convey the following message:

“Company A offers structured solutions”

- 6.2 Advertisements shall not make reference to any specific structured products. For the avoidance of doubt, specific advertisements with full details of the structured products is prohibited.
- 6.3 Advertisements and product disclosure documents shall clearly indicate that structured products are only available for eligible investors as described in paragraph 4 of this Notice.

7. RATING REQUIREMENT

- 7.1 An eligible issuer shall make available its rating from a rating agency that is recognised globally.
- 7.2 If the eligible issuer is not rated or is below investment grade, the structured product that it intends to issue, offer, make an invitation for, or make available, shall be rated separately at the point of issuance.

8. DISCLOSURE REQUIREMENTS

- 8.1 Every Dealer shall ensure that product information disclosed in all publications, including marketing materials, are clear, adequate and not false or misleading.
- 8.2 Every Dealer shall provide every eligible investor with a fair and adequate description of all material information, including:
- a) Details of the structure of the transaction including the nature of the investment of the Reference Asset and how these instruments work;
 - b) If the Dealer is not the issuer of the structured products, details of the issuer;
 - c) Principal terms and conditions of the transaction, including investment terms such as early withdrawal by investor, early termination by issuer, transfer and/or selling restriction, etc.;
 - d) The benefits that are likely to be derived from the structured products, the amount and timing for benefits and whether the benefits are guaranteed or non-guaranteed, where a product provides a guarantee, details of the guarantee shall be clearly disclosed;
 - e) All risk factors that may result in the eligible investor being paid benefits which are less than the illustrated values;
 - f) All fees or charges that may be imposed in respect of the structured products; and
 - g) Any warning, exclusion or disclaimer in relation to the structured products.
- 8.3 A risk disclosure statement shall be made available by a Dealer of structured products to eligible investors when making an offer to sell or prior to selling a structured product. The risk disclosure statement shall include the following information:
- a) A clear explanation highlighting all material risk factors of investing in the structured products;
 - b) Price trends of the Reference Asset (if applicable);
 - c) Scenarios showing a range of potential gains or losses resulting from changes in value of the Reference Asset;
 - d) A rating for the structured product and the definition of such rating (if applicable); and

- e) Other material information relating to the structured products that would enable or assist investors to make an informed decision.
- 8.4 Every Dealer shall make available any updated information that is related to the subscribed structured products to the investor(s) concerned.

9. WARNINGS

- 9.1 A Dealer shall provide a risk warning statement in the offering documents which, at a minimum, shall convey the following:

“THE RETURNS ON YOUR STRUCTURED PRODUCT INVESTMENT WILL BE AFFECTED BY THE PERFORMANCE OF THE UNDERLYING ASSET/REFERENCE ASSET, AND THE RECOVERY OF YOUR PRINCIPAL INVESTMENT MAY BE JEOPARDISED IF YOU MAKE AN EARLY REDEMPTION.”

- 9.2 This risk warning statement shall be in writing and be prominent and clear, and a Dealer shall ensure that this risk warning statement and the risk disclosure statement outlined in paragraph 9.3 have been read and understood by the eligible investor(s) through a signed declaration form.

10. SUITABILITY AND FAIR DEALING REQUIREMENT

- 10.1 A Dealer shall adopt fair dealing best practices when dealing, marketing and/or selling structured products to eligible investors. This includes giving the eligible investors who invests in structured products, during an offer period, the option to obtain a full refund of his total principal investment within three (3) working days of such investment or the remaining offer period, whichever is earlier.

- 10.2 A Dealer shall endeavor to make an eligible investor understand the risks in relation to investing in structured products before marketing and selling structured products to that eligible investor. The following are the minimum key measures that a Dealer shall observe to ensure adequate investor protection with regard to any issue, offer, invitation for, or making available of structured products:

- (a) **KNOW YOUR CLIENT:** To determine whether structured products are suitable for the targeted investor, a Dealer shall take all reasonable steps beforehand to assess the investor's financial position, investment experience and investment objectives. In the case of institutional investors, a Dealer fulfils this key measure if the requirements under Regulation 44(2) of the SMR are met.
- (b) **DUTY OF CARE:** A Dealer shall ensure that the financial risks and potential losses that may arise from investing in structured products are fully explained to the eligible investor before the eligible investor makes his investment decision. Projections of returns on investment are to be based on historical performance, if available, and reasonable expectations of future performance.
- (c) **SALES PERSONNEL:** A Dealer shall ensure that actual and potential eligible investors are only attended by a representative who is licensed to conduct the regulated activity of dealing and arranging deals in investments.

- (d) CONFIRMATION OF DISCLOSURE BY INVESTOR: A Dealer shall ensure that the eligible investor reads the risk disclosure statement, asks questions and shall recommend for the eligible investor to take independent advice. Thereafter, the eligible investor shall sign a confirmation that the relevant disclosure has been made by the Dealer.
- (e) INDIVIDUAL INVESTORS: A Dealer shall ensure that a higher standard of diligence is exercised when dealing with individual investors. Among other things, individual investors shall be provided with the contact information of the relevant person(s) (and not merely an automated answering service) who may be contacted for queries, requests and complaints.

11. ISLAMIC STRUCTURED PRODUCT

- 11.1 Where a structured product is structured based on Hukum Syara', the issuer of the structured product shall:-
 - (a) appoint a Syariah Advisory Body; and
 - (b) obtain approval from a Syariah Advisory Body.
- 11.2 The Syariah Advisory Body shall either be:-
 - (a) a group of individuals; or
 - (b) a corporation,approved by the Authority.
- 11.3 Subject to para 11.1, the issuer shall obtain approval for the structured product from the Syariah Financial Supervisory Board before it can be offered in Brunei Darussalam.



MANAGING DIRECTOR

AUTORITI MONETARI BRUNEI DARUSSALAM

Issue Date: 15/12/2017