

Guidelines on marketing materials for listed structured products

Introduction

1. These Guidelines, which are published under Section 399 of the Securities and Futures Ordinance (the “SFO”), provide guidance on the expected content of marketing materials circulated and distributed to the public to disseminate information relating to listed structured products with the intention or effect of promoting listed structured products.
2. These Guidelines are intended for use primarily by structured products issuers and all persons or entities responsible for marketing materials promoting listed structured products.
3. These Guidelines do not have the force of law and should not be interpreted in any manner which overrides the provisions of any law, codes or other regulatory requirements. In the case of any inconsistency, the provision requiring a higher standard of conduct will apply. However, a failure to comply with any of the requirements of these Guidelines will, in the absence of extenuating circumstances, reflect adversely on the fitness and properness.
4. When considering a person’s failure to comply with these Guidelines, the Securities and Futures Commission (the “SFC”) will adopt a pragmatic approach taking into account all relevant circumstances.
5. Unless otherwise specified or the context otherwise requires, words and phrases in these Guidelines shall be interpreted by reference to any definition of such word or phrase in Part 1 of Schedule 1 to the SFO.

General Principle

Marketing materials relating to listed structured products¹ should not be false, biased, misleading or deceptive and should include appropriate risk warnings.

1. Structured products issuers and all persons or entities responsible for marketing materials promoting listed structured products are required to ensure compliance with these Guidelines.

Definition of marketing materials

“Marketing materials” are all advertisements, marketing, publicity and disclosure materials issued to the public in Hong Kong to disseminate information relating to structured products with the intention or effect of promoting structured products.

2. Marketing materials² include but are not limited to brochures, correspondence, newsletters, circulars, flyers, leaflets, posters, mail shots or promotional features in newspapers, magazines, television, radio, print media, electronic media (including the internet, ATM services, telephone hotlines and any form of wireless video or audio transmission), and any spoken presentation at a seminar or lecture.
3. Marketing materials include every form of communication whether made orally or produced mechanically, electronically, magnetically, optically, manually or by any other means to the public irrespective of whether targeted at or restricted to a particular audience or customer base.
4. Marketing materials do not include materials that only market the expertise of or services offered by a structured products issuer without reference to any particular structured product or group of structured products.

Identification of marketing materials

Marketing materials should be identified as such and should clearly identify the entity responsible for the material.

5. Marketing materials should not be disguised. For example, where marketing materials are included in a newspaper, the material should not give the appearance of being editorial comment.

¹ References to “structured products” refer to listed structured products.

² Where marketing materials falls within section 103(1) of the SFO, they must be authorised by the SFC unless exempted.

6. Where an issuer group³ sponsors an audio or audiovisual programme, seminar or lecture, or a written publication relating to structured products, the nature of the issuer group's involvement and the nature of the material must be disclosed.
7. When:
 - (a) an employee of an issuer group; or
 - (b) a person with whom an issuer group has a commercial or business relationship that may reasonably call into question the person's ability to give objective and independent opinions on structured products,appears on any audio or audiovisual programme, seminar or lecture, or produces written materials discussing or promoting structured products, the structured products issuer has a responsibility to ensure that such person makes appropriate disclosure in such programme, seminar, lecture or written material. This disclosure would include:
 - (i) the nature of his role, for example, is he appearing or writing as the structured products issuer's representative or in his personal capacity;
 - (ii) the nature of his relationship with the structured products issuer; and
 - (iii) any other facts that may cause bias to his opinions.

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Marketing materials should be accurate and not misleading.

8. Any trading recommendation in respect of a structured product should be based on factual analysis. Where the recommendation or suggested trading strategy is based on a projection or a particular view of the future market movement of the underlying securities, such projection or view should be given due emphasis and clearly set out in the body of the material.
9. Any statement of opinion regarding a structured product must be reasonable.
10. Any comparison of performance figures should be fair, accurate and relevant and compare "like with like". If comparisons are drawn with other structured products all relevant factors should be discussed.

Risks

Marketing materials should contain an appropriate explanation of the risks associated with investments in structured products and of the specific risks associated with the structured products referred to in the marketing materials.

11. The level of detail required in the explanation of the risks will depend on:
 - (a) the complexity and nature of the risks; and

³ References to "issuer group" in paragraphs 6 and 7 refer to the structured products issuer and a member of the structured products issuer's group of companies.

- (b) the nature and form of the marketing materials.
12. As a minimum, all marketing materials should advise investors:
- (a) to make their own risk assessment and seek professional advice, where necessary;
 - (b) that prices of structured products may fluctuate; and
 - (c) that they may lose some or all their investments (as applicable);
13. In addition, all marketing materials are expected to advise investors, where appropriate:
- (a) that investors should read the full details of the structured products set out in the listing documents;
 - (b) that at times there may not be any counterparty or that the structured products issuer may be the only person quoting prices on the Exchange;
 - (c) of the significant risks specific to the structured products referred to in the marketing materials; and
 - (d) where past performance is referred to, that it is not indicative of future performance.

Presentation

Marketing materials should provide a balanced view of the structured product referred to.

- 14. Marketing materials should not directly or indirectly imply that investing in structured products is safe or not risky.
- 15. Marketing materials should give a balanced view of the potential gains and losses and the risks involved in investing in the structured products.
- 16. Marketing materials should not contain language, artwork or graphics that are inaccurate or inconsistent with the listing documents for the structured products.

Legibility and prominence

Information required by these guidelines to be included in marketing materials should be prominent and legible or audible as appropriate.

- 17. The information required under the section headed “Risks” above should be presented in the following manner:
 - (a) the font size of the text should be proportionate to the font size that predominates in the marketing materials and must not be presented in a style that is designed to reduce its impact. The text must be capable of being read with reasonable ease;

- (b) for audio broadcast such as radio, the information should be delivered by way of a voice over that is sufficiently distinct from the rest of the content of the broadcast to be prominent; and
- (c) for television and other screen-based media, the information should be presented either:
 - (i) orally, and comply with (b) above; or
 - (ii) in writing, and in a font size and in a manner and for a time that allows a person to read the entire text with reasonable ease. The text must not be presented in a style that is designed to reduce its impact.