

**TRINIDAD AND TOBAGO SECURITIES AND EXCHANGE COMMISSION**



**GUIDELINES ON THE OFFERING AND DISTRIBUTION OF  
STRUCTURED PRODUCTS**

*Issued in accordance with Section 6(b)  
of the Securities Industry Act 1995*

**January 2008**

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### **BACKGROUND AND PURPOSE**

In Trinidad and Tobago Structured Products are fast becoming the newest genre of specialised, custom tailored investment vehicles. By definition they are hybrid forms of investments, having at least two varying traditional investment vehicles (either debt and/or equity) combined to create and produce a highly individual and specialised product.

Although no singular, comprehensive definition for Structured Products can adequately define the numerous forms that this finance and investment vehicle may take, the Trinidad and Tobago Securities and Exchange Commission (“the Commission”) views Structured Products as a form of security that is derived from or is based upon a particular security or commodity, a basket of securities, an index, a debt issuance and/or a foreign currency which has been subjected to sometimes innovative financing techniques creating customised products designed to meet the specific, individual needs of the investors.

The Commission recognises the need for regulation of the offering and distribution of Structured Products given, not only the Commission’s mandate under the Securities Industry Act, 1995, to ensure the orderly development of the capital market, but also the complexity and inherent risks involved in this product.

To regulate this finance and investment form on the basis of its components would likely result in ineffective regulation as this practice fail to take cognisance of the effect of the interaction of the constituents and the net result of the financial engineering undertaken to create the product. In light of the foregoing, the Commission considers the overriding consideration in determining the regulatory regime for the Structured Product as the promotion of transparency through stringent disclosure requirements for issuers of such products.

These Guidelines are intended to apply to the full range of activity in the offering and distribution of Structured Products inclusive of all persons responsible for the marketing and trading of Structured Products.

In addition to complying with the provisions of the Securities Industry Act, 1995 and all By-Laws issued thereto, all persons engaging in the offering and distribution of Structured Products should comply with the information as set out in these guidelines.

## **GUIDELINES**

### **1. INTRODUCTION**

- 1.1. Any person who issues, offers for subscription or purchase, induces any other on the basis of his professional advice or makes available on his behalf or on behalf of any other person, structured products shall conform to the requirements of the Securities Legislation and shall comply with these Guidelines.
- 1.2. These guidelines stipulate the duties, obligations and standards to be met when issuing, offering or making an invitation for structured products to the public, within the meaning of “offer to the public” under section 3(1) of the Securities Industry Act, 1995.

### **2. INTERPRETATION**

- 2.1. In these guidelines, unless otherwise specifically provided for herein, words shall have the meanings ascribed to them under the Securities Legislation.
- 2.2. For the purposes of these guidelines

“Acceptable Accounting Standard” means

- a. an independent audit of annual financial statements,
- b. periodic financial reporting on a timely basis ,
- c. narrative financial disclosure that includes a discussion of results of operations and financial condition, and
- d. the basis of reporting is subject to a well established, internationally accredited and recognised accounting and auditing standard setting regime;

“The Commission” means the Trinidad and Tobago Securities and Exchange Commission, a body corporate established under section 4 of the Securities Industry Act, 1995;

“Securities Legislation” means the Laws of the Republic of Trinidad and Tobago and includes therein the Securities Industry Act, 1995, the Securities Industry By-Laws, 1997, both as amended from time to time and any other legislation connected with or applicable to the interpretation, regulation and control of securities in Trinidad and Tobago;

“Structured Products” means any securities and/or combination of securities which falls within the definition of securities under section 3 of the Securities Industry Act, 1995 and which derives its value by reference to the price and/or value of an underlying reference or underlying references;

“Underlying Reference” means any security, index, currency, commodity or other assets or reference or combination of such assets or references upon which the Structured Products derive their value.

### **3. ELIGIBILITY CRITERIA**

- 3.1. No person shall carry on the business of marketing, trading dealing and/or issuing Structured Products to the public unless that person is registered with the Commission pursuant to the Securities Legislation.
- 3.2. Any person who is not resident in Trinidad and Tobago and proposes to market, trade deal and/ or issue Structured Products in Trinidad and Tobago must be registered with the Commission.
- 3.3. In determining whether a proposed marketer, trader, dealer or issuer resident in a foreign jurisdiction is fit for registration within the meaning of the Securities Legislation, the Commission shall determine, after the provision of documentary evidence in support by said person, whether such person:
  - 1) Is generally reputable;
  - 2) In the jurisdiction of its residence and/or incorporation there is a recognised securities regulatory body with which it is
    - a. registered
    - b. under the obligation to file disclosure documents
    - c. required to comply with financial reporting requirements which satisfies Acceptable Accounting Standard;
  - 3) That all documents required for the publication, delivery, dissemination, filing or use in Trinidad and Tobago shall be written in English;
  - 4) That it appoints an agent resident within the jurisdiction of Trinidad and Tobago who
    - a. is a market actor as defined in the Securities Legislation and is registered with the Commission by virtue thereof,
    - b. shall represent its principal in relation to the satisfaction of its duties, responsibilities, obligations and rights within the jurisdiction in relation to the Structured Products;

- c. may be appointed the Agent for service within the jurisdiction.

#### **4. RATING REQUIREMENTS**

- 4.1. Any person proposing to issue Structured Products may obtain a rating from a rating agency.
- 4.2. When such Structured Product is rated in accordance with provision 4.1 above, such Structured Product shall continue to be rated from time to time as is reasonable during the term of the Structured Product or during the life of the security where such is applicable.
- 4.3. Where any Structured Product is eligible for distribution under a prospectus, such Structured Product and/ or issuer must be rated by a rating agency.
- 4.4. Notwithstanding the foregoing, where Structured Products are being distributed pursuant to prospectus exemptions in the Securities Legislation, such Structured Product and/ or issuer need not be rated nor need be of investment grade.

#### **5. REGISTRATION REQUIREMENTS**

- 5.1. No Structured Product shall be offered to the public until it has been registered with the Commission in accordance with the Securities Legislation and these Guidelines.
- 5.2. An application for registration of Structured Products shall include:
  - a. Registration statement, as outlined in Form 4 annexed to these Guidelines, which has been duly executed by the principal executive officer and at least two senior officers, as described in the Securities Legislation, of the issuer;
  - b. Applicable fees as prescribed by the Securities Legislation;
  - c. Any legal documentation constituting the Structured Product
  - d. Disclosure or promotional materials that are to be utilised in the marketing and promotion of the Structured Product which conform with the standards set out for disclosure in these Guidelines;
  - e. A draft of any prospectus, required conforming to the standards of the Securities Legislation,

- f. Where the offer to the public is exempt from the publication of a prospectus, a copy of the Information Memorandum to be distributed to investors with the Structured Products documentation
- g. A Risk Disclosure Statement made in accordance with these Guidelines
- h. A Statement as to the satisfaction of suitability and fair dealing requirements in accordance with these Guidelines
- i. Any document that the Commission may from time to time require.

## **6. DISCLOSURE REQUIREMENTS FOR PROSPECTUS OR INFORMATION MEMORANDUM**

6.1. Any issuer of Structured Products shall be required to disclose to all potential investors and the Commission the following:

- a. All relevant background particulars of the issuer including its business name, address, name and address of agent for service if the Structured Product issuer is resident outside the jurisdiction, contact details, names of directors and/or senior officers and registration status;
- b. A summary of the issuer's financial health and position for at least the preceding three (3) years based upon audited financial statements. Notwithstanding the foregoing, the issuer shall make available copies of the issuer's audited financial statements available for inspection;
- c. A detailed description of the Structured Product detailing the funding goals, the categories and description of the underlying references, the proposed counterparties and the proposed timetable for tranches therein;
- d. An explanation of the working of the Structured Products;
- e. A detailed description of any measures to minimise principal risk and/ or guarantee that may be applicable. This description shall include, but shall not be limited to a detailed explanation of the funding source(s) of said principal risk minimisation measure(s) and /or guarantee;
- f. Any perceived and reasonable conflict of interest issues relating to the issuer or any other party to the Structured Product and mitigating measures to be employed to address any such conflicts of interest;
- g. The principal terms and conditions to the Structured Product, inclusive but not limited to, early withdrawal by the investor, early termination by the issuer, transfers, assignments and events of default ;

- h. The contents of the prospectus or information memorandum, whichever may be applicable;
- i. Disclosure of any other reasonable material information which would enable investors to make an informed decision;
- j. Any other disclosures that the Commission may require from time to time.

6.2. An issuer herein shall also provide to potential investors and to the Commission a Risk Disclosure Statement which shall include the following:

- a. A clear explanation highlighting all the material risk factors of investing in the Structured Product;
- b. Recent trends of the Underlying Reference;
- c. Information on the liquidity component of the Structured Product, liquidity provider and/or liquidity facilities as may be applicable;
- d. Relevant counterparty risks;
- e. A rating for the Structured Product and the definition of such rating;
- f. A detailed description of any derivative component of the Structured Product and how said derivative component works;
- g. An explanation of how any possible returns will be achieved by investors and the likelihood of such occurring;
- h. A statement that the performance of the Structured Product is linked to the performance of its Underlying Reference;
- i. All other material information pertaining to risks within the possession of the issuer that would allow the potential investor to make an informed decision.

6.3. The issuer shall provide alongside the Risk Disclosure Statement, an Investor Warning in the form prescribed hereto.

6.4. The issuer undertakes that on a reasonable and timely basis and in any event no later than seven (7) days from the date of such material change, it shall provide to all investors and to the Commission, updates on recent material changes in the Underlying Reference, any risk changes and any other relevant or material information.

## **7. CAPITAL ADEQUACY REQUIREMENTS**

- 7.1. Any underwriter of a Structured Product must demonstrate and evidence its possession of net assets covering at least five (5 %) percent of the value of the overall Structured Product, subject therein to a minimum of five million dollars (\$5 000 000), as prescribed by the Securities Legislation.
- 7.2. Where an underwriter proposes to underwrite multiple Structured Products, it must demonstrate and evidence net assets covering at least five (5 %) percent of the value of the total value of those Structured Products.
- 7.3. For the purposes of the foregoing, the net assets of the underwriter are to be determined by analysis of the balance sheet for the most recently concluded three trading months.
- 7.4. The statement of net assets of such underwriter must be certified by the Chief Executive Officer and two (2) directors or senior officers of the underwriter, as being true and accurate.
- 7.5. Where an underwriter is unable to satisfy the requirements of provisions 7.1 and/or 7.2 herein, such underwriter may submit supplementary forms of capital such as letters of credit, guarantees and performance bonds which may be taken into account to satisfy the capital adequacy requirements of this Part.
- 7.6. Whether supplementary forms tendered pursuant to this part are satisfactory shall be determined by the sole discretion of the Commission.

## **8. PROMOTION OF STRUCTURED PRODUCTS**

- 8.1. Issuers, marketers, traders and/or dealers of Structured Products shall present both a fair and balanced picture of the risks and benefits of the Structured Products.
- 8.2. All promotional material required by the Securities Legislation and these Guidelines shall disclose the risks, credit worthiness of the issuer and counterparties and benefits of the Structured Products.



## 9. SUITABILITY AND FAIR DEALING REQUIREMENTS

- 9.1. Any person who markets, trades, sells and/ or deals with Structured Products and makes a recommendation to invest in the Structured Product to a potential investor, is obliged to ensure that such an investor is a suitable investor for the Structured Product.
- 9.2. In determining the suitability of potential investors in Structured Products, the marketer, trader, dealer, seller or broker shall have regard to the following in making his recommendation
  - a. The potential investor's financial situation and level of sophistication;
  - b. The potential investor's securities and investment strategy in the context of the investor's other securities holdings;
  - c. Whether the Structured Product is adequate and reasonable for the potential investor in light of the investor's situation;
  - d. The potential investor's investment objectives and risk tolerance;
  - e. Any other relevant information that the potential investor provides to which the marketer, trader, dealer, seller or broker is privy.
- 9.3. Any person promoting or selling Structured Products undertakes to make a potential investor understand the risks in relation to investing in Structured Products before marketing and selling such Structured Products to that investor.
- 9.4. Any person who markets, trades, sells or deals with Structured Products warrants and represents that such person has the necessary financial background, experience, knowledge and understanding of Structured Products to be reasonably held out as qualified to advise the potential investor as to the Structured Products.
- 9.5. Where the marketer, trader, seller, dealer and/or broker is dealing with non sophisticated potential investors, such person warrants and represents that he will apply a higher standard of diligence when dealing with such a potential investor.
- 9.6. Any potential investor who wishes to acquire independent advice should be encouraged to do so.
- 9.7. An issuer shall maintain in its records copies of written confirmations from all investors in the Structured Product, such confirmation attesting that the relevant disclosures have been made and explained to each investor.

## **10. POST REGISTRATION SUBMISSIONS**

- 10.1. An issuer shall file with the Commission on the same day or in any event not later than seven (7) days thereafter, all documents and materials provided to the investors on the date of issue of the Structured Product.
- 10.2. Where the issuer chooses to deliver such documents and materials to the Commission by electronic means, the hard copy of said documents and materials shall be delivered to the Commission in any event not later than seven (7) days after the date of issue of the Structured Product.
- 10.3. All other documents and materials delivered to investors shall be delivered to the Commission on the same date, or in any event not later than seven (7) days after the date of delivery to the investors.

## **11. CONTINUOUS DISCLOSURE**

- 11.1. An issuer shall file with the Commission a semi-annual notice in the form set out in these Guidelines as prescribed in Appendices 2 and 3 hereto.
- 11.2. The period for determining the time for any semi-annual notice required under these Guidelines shall commence on the date of first registration of the Structured Product.
- 11.3. The issuer is required to furnish the Commission with any information reasonably required and requested by it relative to the Structured Product.

Appendix 1

Form No. 4

Securities Industry By-Laws, 1997

FORM NO. 4  
(By-law 54)

REGISTRATION STATEMENT

(Pursuant to section 64 or 65 of the Securities Industry Act, 1995)

1. Exact name of Registrant as specified in its constituent instrument  
.....  
.....

2. Is Registrant a public company or government entity? (If yes, specify)  
.....  
.....

3. Country of Incorporation or Organization of Registrant  
.....

4. Name and Address of Principal Executive Officer of Registrant  
.....  
.....

5. Names and Addresses of Members of the Board of Directors of Registrant (in the case of a Company)

- (a).....
- (b).....
- (c).....
- (d).....

6. Address and Telephone Number of Registrant's Principal Place of Business  
.....  
.....  
.....

7. Type of Securities issued by Registrant  
.....

8. Amount or Value of each Type of Security as at the Date of Statement  
.....  
.....

9. Proposed Maximum Offering Price per Unit of Security  
.....

10. Proposed Maximum Aggregate Offering Price of Security  
.....

11. Appropriate Date of Commencement of Proposed Sale of Securities to the Public  
.....  
.....

12. Name, Address and Telephone Number of Agent for Service (if applicable)  
.....  
.....  
.....

13 Any other information that is not prohibited by by-law

14. Signature  
.....  
.....  
.....  
.....

NOTE: Where security to be registered, this registration statement shall be signed by:

(a) the principal executive officer of the issuer and at least two members of the board of directors of the issuer; or

(b) in the case of a government entity, the underwriter or designated agent.

**APPENDIX II**

**STRUCTURED PRODUCTS REPORTING FORMS**

Issuer:

Reporting Period:

Form SP1: Structured Product issued during period.

<b>Program Name</b>	<b>Product Name</b>	<b>Registration Date</b>	<b>Issue Date</b>	<b>Closing Date</b>	<b>Tenor</b>	<b>Issue Amount</b>	<b>Underlying Reference(s)</b>	<b>Price Movements of Underlying Reference</b>	<b>Principle Protected (Y/N)</b>	<b>Transferable (Y/N)</b>

Signature of authorized officer:

Date:

**APPENDIX III**

Issuer:

Reporting Period:

Form SP2: Cumulative Structured Product as at end of financial period.

<b>Program Name</b>	<b>Product Size</b>	<b>Registration Date</b>	<b>Outstanding Amount from previous period (A)</b>	<b>Amount Issued this period (B)</b>	<b>Amount redeemed this period (C)</b>	<b>Outstanding amount this period (A+B-C)</b>	<b>Total amount unutilized/undistributed</b>
Total							

Signature of authorized officer:

Date:

## APPENDIX IV

### INVESTOR WARNING

You are being asked to make an investment decision relating to a Structured Product. The term “Structured Product” refers to financial instruments and contractual obligations that are designed, created, bundled, issued, and sold to investors to meet specific investment objectives. The return or payments of structured products are linked to or based on one (1) or more underlying assets.

It is important to note that because the proposed offering of the security(s) is permitted under Trinidad and Tobago securities law does not mean that the particular investment will be successful. Neither the Trinidad and Tobago Securities and Exchange Commission nor any other governmental agency evaluates or endorses the merits of the investments.

**Never believe that the investment is not risky.** The material risks associated with investing in Structured Products are the following: