

Jason Pope
Conduct Policy Division
Financial Services Authority
25 The North Colonnade
London
E14 5HS
Email: dp11_01@fsa.gov.uk

21 April 2011

Dear Mr Pope

JAC Response to FSA Discussion Paper DP11/1: Product Intervention

Introduction

This paper responds to FSA Discussion Paper DP11/1: Product Intervention (**DP11/1**). The Joint Associations Committee on Retail Structured Products (the **JAC**)¹ welcomes the opportunity to comment on the proposals set out in DP11/1. We agree with the objective of consumer protection and fully support an appropriate and proportionate regulatory approach to product intervention to achieve this objective.

We start our response by setting out the product design process generally adopted by product providers (in order to provide context to the earlier intervention proposals set out in DP11/1) and have also set out our general observations in the General Comments section below and responses to specific proposals in DP11/1; both sections include a number of key considerations that we believe are important in considering the appropriateness of the proposals set out in DP11/1 in achieving the objective of consumer protection.

The members of the JAC comprise a large proportion of the major firms involved in the creation and distribution within the EU of retail structured products. DP11/1 covers a wide range of financial products used by retail consumers, including deposits, insurance policies, investment products and mortgages. Of most relevant to the JAC are structured securities, structured funds and structured deposits (**Products**): our response is focussed on these Products.

The JAC members are signatories to the JAC Principles "Retail Structured Products: Principles for managing the provider-distributor relationship" (**JAC Principles**). The JAC Principles seek to address issues that firms have in practice found helpful to consider to ensure good consumer outcomes when performing the function of either provider or distributor in connection with the process of delivering structured products to retail investors. The JAC has also developed principles that apply to the distributor-individual investor relationship, i.e. the Structured Products: Principles for Managing the Distributor-Individual Investor Relationship (**JAC Distributor Principles**). These are both highly relevant to the proposals set out in DP11/1 and we refer to the JAC Principles and JAC Distributor Principles where appropriate in this response. The JAC Principles and JAC Distributor Principles are set out in the Annex to this response.

¹ The JAC is sponsored by multiple associations with an interest in structured products. In the first instance, queries may be addressed to rmetcalfe@isda.org.

We have not responded to each question raised in DP11/1 but have, instead, sought to address, at a high level, the proposals set out in DP11/1. We consider that the proposals set out in DP11/1 must also be considered in light of the European Commission consultation paper on the review of the Markets in Financial Instruments Directive (December 2010) (**MiFID Review**), and proposals on Packaged Retail Investment Products (we have included in the Annex to this response the JAC supplementary submission to the EU Commission on the PRIPS Consultation), and the proposed intervention powers of the Financial Conduct Authority (**FCA**) set out in the HM Treasury consultation paper: A new approach to financial regulation: building a stronger system (February 2011) (**HMT Consultation**). These will reshape consumer protection and improve consumer outcomes: this should be taken into account in formulating any change to rules or supervisory or enforcement practice.

Process and responsibility for product design

Before responding to the proposals set out in DP11/1, we thought it would be helpful to summarise the product design process that is generally applicable to the launch of a Product by a product provider. We consider that it is important to highlight and explain this process in order to put the proposals set out in DP11/1 in context and to be able to evaluate their appropriateness in meeting the consumer protection objective.

The market for retail structured products is highly competitive, with a number of product provider financial institutions competing for business from retail intermediaries. Providers compete on price and client service, which includes sharing information and ideas with their clients.

The vast majority of Products are capable of being provided by a variety of providers. In relation to these, product providers may be approached by a distributor, who will often determine what characteristics a product should have (this is the 'pure manufacturer' role referred to in the Responsibilities of Product Providers and Distributors for the Fair Treatment of Customers (**RPPD**)). There will be a competitive process between different product providers to design a Product that meets the distributor's requirements. Therefore, there is input from distributors at the product design stage and creation of Products is often driven by the needs of the distributors, as well as their clients.

In other cases, the product provider designs a new Product on its own initiative or together with one or more distributors, for example following internal research and development.

The key point to note is that the design of the product and determination of its terms will often fall to the distributor: in the remaining cases it will fall to the distributor and the provider, or to the provider alone.

Regulators need to take into account the heterogeneity of origination processes and in particular responsibility for determining product features when creating and allocating regulatory obligations around product origination, and also when exercising supervisory and enforcement powers. A manufacturer of a product should bear responsibility for ensuring the product 'does what it says on the tin' (i.e. performs in accordance with the reasonable expectations of end investors) and that it complies with product regulation and applicable requirements of the Prospectus Directive; the person or persons who undertake product design should bear responsibility in relation to the design of the product to meet identified consumer needs: and the distributor should continue to bear point of sale responsibilities.

It is key that intervention is proportionate and targeted appropriately to follow these responsibilities, as to do otherwise risks penalising manufacturers for the failings of their distributors or *vice versa*. The reputational implications for a product provider of being involved in disciplinary action as a result of distribution failures are very substantial: it is important that action be targeted at the party responsible for any failings.

General comments

Interrelationship with point of sale regulation

Although the focus of DP11/1 is on earlier intervention in product design before the point of sale, we consider that the role of the distributor is fundamental to the consumer protection objective and we must not lose sight of this in the proposals outlined in DP11/1.

Under point of sale obligations, distributors of retail structured products must assess client needs and determine the appropriateness or suitability of a Product for each client. As a result of the client's best interests rule, the distributor is a quasi-fiduciary of the end investor. (Often it is also a fiduciary of the end investor.)

Product providers consider generic appropriateness of Products for the target market of the distributor following confirmation from the distributor of the investor types that it intends to target. This reflects JAC Principle 7 which provides that a product provider's assessment of a distributor should include consideration of their typical client type. This is good practice not least because of the reputational impact of failing to do so.

We therefore consider that the point of sale obligations are important to the fair treatment of consumers and that, even with a more interventionist approach in relation to product design, ultimately it remains the case that it will be for the distributor to determine whether a Product is suitable (or appropriate, as relevant) for an end investor, following the product provider's general assessment of the Product against the target market. It is the distributor rather than the product provider that can control who a Product is distributed to. However, the question of the allocation of responsibility between product providers and distributors is complex – and cannot rest on the labels for the roles provided by each. It is, therefore, essential to consider the role of each of the product provider and distributor in relation to the distribution of a Product and apply the responsibilities to the right role in the distribution chain. This will ensure that the person best placed to meet the applicable requirements is responsible for them.

We believe that product manufacturers should not be held responsible for consumer detriment where they are suitable for some investors but not suitable for others – it is the distributor's role to ensure that Products are distributed to investors for whom they are suitable/appropriate. It is extremely unlikely that a Product will be suitable/appropriate for all of a distributor's clients. As it is the distributor that interfaces with the individual investor, investor suitability/appropriateness of a product is exclusively a matter for distributors and is not a role that the product provider can play. The distributor and product provider, therefore, have distinct, separate roles which must be recognised. This is emphasised in JAC Principle 4 which provides that "*the distribution structure means that it is often the distributor who interfaces with the individual investor and whose client that investor is. In such circumstances, investor suitability (as determined in the local market) is accordingly exclusively an issue for distributors*".

We also believe that a distributor must understand the products that it distributes to ensure that the consumer is not misled and is treated fairly. This is built into JAC Principle 5 (which provides that distributors must understand the products they distribute) and JAC Distributor Principle 6 and is also reflected in the RPPD. This may be achieved through the materials provided by the product provider or generally through the product provider and distributor's communications.

Regulatory requirements applicable to product providers

Chapter 5 of DP11/1 (Possible Development of the Regulatory Framework) sets out proposals to include greater prescription in the current regulatory framework.

Product providers and distributors must already comply with the FSA's Principles for Businesses (particularly Principles 1, 2, 3, 6, 7 and 8). In addition, the RPPD guidance for the fair treatment of customers sets out guidance for product providers and distributors in treating end investors fairly. As a result, we do not disagree, in principle, with the proposal (set out in chapter 5 of DP11/1) to turn some of the RPPD guidance into rules and consolidating existing rules into a single section of the Handbook, subject to consultation. There is considerable common ground between the RPPD requirements and the JAC Principles, with which members already comply: to that extent the RPPD requirements merely reflect existing good practice. In addition, any conversion of the RPPD requirements into FSA rules would need to be subject to an Article 4 notification to the European Commission under MiFID. As a result, the creation of such rules will need to be justified before implementation in the UK.

Competition

Product providers exist in a highly competitive market. As a result, in relation to the design of a Product there is strong competition between product providers to design a Product that best meets the demands of distributors and end investors. As discussed above, product providers will often be approached by a distributor (who will often determine the characteristics of the relevant product) and product providers will each be competing against each other. This competitive process should result in benefits for consumers in terms of pricing and choice and fosters innovation.

Competition in the market also incentivises good behaviour from product providers. The proposals for earlier intervention in DP11/1 may also lead to less choice for consumers and may also increase costs for consumers because the competitiveness between the product providers would be reduced. It is recognised in chapter 1 of DP11/1 that improved consumer protection must be balanced with competition considerations (*the key theme is how improved consumer protection should be balanced with a healthy level of choice and competition in the market*); we fully support this.

We also note that the FSA acknowledges that where the product intervention proposals implement super-equivalent requirements, those requirements may not apply to firms passporting into the UK (but would apply to UK firms passporting into other EEA states). As a result, FSA regulated firms/firms operating from the UK will be disadvantaged, for example when exercising passporting rights, compared to non-UK based firms passporting from a different jurisdiction.

Responses to specific proposals in DP11/1

Chapter 2 (Our new approach)

Consumer detriment

Further to the proposals set out in chapter 2 of DP11/1 in relation to the new approach to prevent detriment before it occurs, we consider that the applicable regulatory regime must be calibrated to the sophistication of clients. We believe that it is appropriate for the proposals set out in DP11/1 to apply to retail clients only (and not extend to the wholesale market and to investors that may be categorised as professional clients). There are indications in the HMT Consultation that product intervention powers may extend to the wholesale market: we do not consider this appropriate. We, therefore, do not support the proposal that certain categories of Product may be limited to professional clients only. As discussed above, as part of a distributor's point of sale obligations a distributor must consider whether a particular Product is suitable or appropriate for a particular client.

As discussed above, the suitability/appropriateness assessment conducted by distributors are important to ensure that a consumer does not suffer detriment by purchasing an unsuitable product. Although some

products may be complex, they will be suitable for some investors. It does not follow that a Product with a relatively complex legal structure will also have a complex risk/reward profile (or *vice versa*). As a result, it should not be assumed that complexity of a Product equates to higher risk or to narrower suitability/appropriateness.

Chapter 3 (The rationale for product intervention)

In relation to the problematic product feature indicators set out in chapter 3 of DP11/1, it must be noted that the presence of one or more of the factors is not inherently indicative of consumer detriment. There is a danger that the indicators would stigmatise products and would be likely to stifle competition where products are legitimate but have certain of these characteristics. On the specific indicators of problematic product features set out in DP11/1 we have the following points:

- "*Exit charges or other features which act as a material barrier to exiting*" – in relation to this indicator it must be acknowledged that there is no obligation of a product provider to provide a secondary market in a Product for hold to maturity products;
- We are concerned that the indicators "*Complex products, including bundled products or those with opaque structures*" and "*Layers of charging due to multiple products or services included in the package*" can be read widely to catch indices where (i) the end investor is not expected to know exactly how the algorithm works but invests as a result of the investment strategy (for example, this may include the Dow Jones Industrial Average) and (ii) baskets of indices where index fees are paid to each index provider;
- We are also concerned that the "*Use of non-standard assets for investment purposes*" could be read widely so that Products which provide access to assets which otherwise would not have been available to the end investors directly would be included within this indicator, for example we query whether emerging market equities (including Brazil, India and China) would constitute non-standard assets for the purposes of this indicator;
- We query whether "*Products where the customer is attracted by a teaser rate and then tied in*" and "*Products with features outside the core range (e.g. "bells and whistles" or "gimmicks" of little use to most customers or at significantly higher margin)*" may catch common Products such as bonus certificates.

Chapter 4 (The emerging supervisory approach)

Effective product governance processes

We fully support the need to have effective product governance processes in place within product providers and recognise the FSA's desire to scrutinise these processes (as set out in chapter 4 of DP11/1).

We believe that an important element of achieving the FSA's aims of preventing significant consumer detriment is the effectiveness of a product provider's internal product governance processes. Such processes ensure that controls are in place to consider a number of characteristics in relation to a Product that may raise concerns, e.g. design of the product, distribution strategy (including consideration of the target market) and approval of the product.

JAC Principle 3 recognises the importance of product governance processes of product providers and states that such processes must be appropriate for retail structured products. This JAC Principle suggests

that the following issues may be addressed in an approval process: sign off, product structuring, risk-reward and distribution. We believe that compliance with this JAC Principle helps to ensure effective processes are put in place by firms.

The assessment approach set out in DP11/1 to the risks posed to consumers includes reviews of a firm's policies and procedures relating to product development and their effectiveness. We agree that this is an important element of the FSA's assessment approach and that compliance with the guidance set out in the RPPD and JAC Principles seeks to encourage effective governance processes.

An important element of the pre-sale stage of a Product (and so a firm's product governance processes), is the assessment of the distributor. In ensuring that appropriate distributors are appointed, product providers seek to ensure that Products will be distributed responsibly. JAC Principle 7 provides for the use of a "know your distributor" approval process (e.g. on the basis of typical client type, use of sub-distributors, suitability assessment processes, regulatory status, reputation and compliance with selling laws) to ensure that appropriate distributors are appointed. We, therefore, agree with the inclusion of distribution strategy in the assessment approach factors (subject to our comments below) and believe that this is already covered by the JAC Principles. The extent of any assessment should also be tailored to the roles performed by the parties. This will primarily turn on the question of who is responsible for product design: where the distributor is responsible, then it seems inappropriate to have the manufacturer of the product be responsible for dictating the target market (as is implied by paragraphs 3.44 and 4.25 of DP11/1).

A key part of preventing consumer detriment is the use of appropriate disclosures in product documentation. We, therefore, believe that in seeking to meet the consumer protection objective, firms should ensure that clear, plain language is used when describing the product, including its risks when developing a product. This, again, is emphasised in the JAC Principles, at JAC Principle 6 which requires that term sheets should be accurate, fair, balanced and clear and presented in a way that is consistent with their agreed obligations to the distributor. However, in relation to the proposals set out in chapter 6 of DP11/1 in relation to mandated risk warnings, we consider that it would be extremely difficult, and possibly dangerous, to provide for mandated risk warnings, as such risk warnings would be dependent on the characteristics of a particular Product.

Chapter 6 (Additional product intervention options)

Banning products

Chapter 6 of DP11/1 sets out the proposal that the FCA may be able to ban products. We agree that harmful products should not be available to investors (considered in light of whether the product is, in fact, harmful or whether it could be sold in compliance with suitability obligations to certain investors).

This proposal must be considered in light of the MiFID Review proposals to enable national regulators and the EU to ban certain high risk products. In addition, the HMT Consultation also proposes powers of intervention of the FCA in relation to the ban of a product. Product banning is fraught with risks, and should occur only following consultation on detailed rules governing the basis of product bans, appeal rights and due process.

We consider that an extremely careful analysis will need to be conducted before a proposal to ban a product is effected and so such power would need to be used proportionately. In relation to the proposal to introduce minimum criteria for products and banning certain features are also envisaged. We consider that it would be difficult to specify such criteria or features in isolation. We are particularly concerned about the penumbra effect that product banning could have – whereby banning a particular missold product on particular grounds causes a spate of spurious claims in relation to products which may have

similar characteristics but which were not missold and were in fact suitable/appropriate at the point of sale.

In addition, there are timing considerations for the regulator in exercising any banning powers. Following intervention by the FCA, there may be a perception that the FCA has acted too late in circumstances where detriment has already been caused to some investors. This presents moral hazard for the regulator in determining when to ban a product at a time when the product has already been made available to some investors, which risks knee-jerk responses to emerging issues. In addition, the banning of a product where sales have already been made to investors will lead to uncertainty for product providers and distributors in relation to such sales. This uncertainty may have the unintended consequences of stifling innovation and choice for consumers and increased costs of Products to protect against the risk of a Product being banned.

Pricing

Chapter 6 of DP11/1 provides for a more interventionist approach in relation to the pricing of products.

We believe that the potential for consumer detriment arises in relation to pricing where a Product and its documentation does not reflect the time/value of the Product. This means that the product documentation does not reflect the value of the product across the life of the product. We have set out below relevant considerations in relation to Products which are "buy to hold" and also utilising a secondary market in a Product. We do not agree that the appropriate response is for the FCA to necessarily be involved in the pricing of products – instead, a product provider's effective product governance process should govern the pricing of a product.

A Product involves the assumption of risk by the product provider. Reflecting this risk, and also the value add provided by the product provider, the Product will typically include an embedded margin. That margin of a Product is not therefore the same as the profit to be made on a Product because it is at risk, being dependent on the characteristics of the Product and its pricing model. The margin made (or lost) on a Product is not comparable to an asset management fee, for example, for the product provider.

In relation to distribution fees, such fees must be disclosed to investors by the distributors (where they are subject to MiFID). We note that the Retail Distribution Review will also impact the payment, and disclosure to investors, of fees. This may rectify the perceived market failings around pricing and disclosure of commissions.

In relation to a defined return Product, an investor will receive what the Product documentation states the return on the Product will be. These are marketed as "hold to maturity" Products. As an accommodation to the needs of consumers, there may be a secondary market in the Product. The basis on which the secondary market is provided should be made clear to investors. In relation to the availability of the secondary market, it also is generally made clear that, prior to the maturity of the Product, the price an investor may receive for their Product on the secondary market may not be the price the investor paid for the Product (or price payable at maturity). It is, therefore, essential to ensure that investors understand the secondary market. This is reflected in JAC Distributor Principle 7 which provides that investors should be informed before investing of the likelihood of their being able to sell a particular structured product prior to maturity and the ways that this might be done. In addition, this Principle states that investors should be made aware that sales in the secondary market may be at prices that are below the amount payable on the product at maturity, the original offer price or price that they acquired a Product at.

Defined return Products are capable of meeting consumer needs that may not be met as effectively (or at all) by other investment products. The assumption of risk and accordingly reward for the product

provider is intrinsic to the delivery of the Products and does not represent or give rise to consumer detriment provided that clear disclosure is made as to the effect of margin on secondary market pricing.

DP11/1 proposes that the product provider has a duty to consider the appropriate overall charge for Products, this being particularly relevant where there is a risk that the total charge is at a level that undermines the possibility of achieving a reasonable return. However, while we agree the product provider should consider the provider's overall charge for a Product, the product provider may not have knowledge of all layers of charges that the end investor will incur when buying a Product, e.g. the costs imposed by the distributor and/or custodian the investor chooses to hold that Product with. The overall price of a Product should, therefore, be a factor that is taken into account by a distributor in their point-of-sale responsibilities when considering whether a Product is suitable or appropriate for a particular investor. It is therefore, important to delineate the responsibilities of a product provider and distributor when considering the appropriateness of the overall charge for a Product.

DP11/1 also considers the option of finding suitable benchmarks for Products in relation to pricing. We are concerned that this may inadvertently lead, even with the best of intentions and care, to potentially inappropriate benchmarks because of the inherent difficulties in identifying an appropriate benchmark, compounded further by situations where even a slight difference in the characteristics of a Product compared to the benchmark may render any comparison with the benchmark inappropriate for investors, even if the benchmark is the closest comparative Product.

Warnings about products

Chapter 6 of DP11/1 proposes the publication of a list of products that the FSA considers to be generally unsuitable for the mainstream retail market, e.g. leveraged ETFs. DP11/1 provides that this list is intended to act as a signal that the product is likely to only be suitable for certain segments of the retail market. However, we consider that the specific characteristics of each product would need to be considered, including the product documentation and information set out for the investor, before publishing a warning about an entire group of products.

We believe that labels of Products, for example, as leveraged ETFs, are no reflection of the inherent risk of a Product. As a result, the name of a Product is not necessarily indicative of the risk profile of that Product. It is, instead, the characteristics of the Product that determine the potential for consumer detriment. As a result, we do not consider that it would be helpful to have a list of products that are considered to be generally unsuitable for the mainstream retail market (with no reference to the characteristics that raise concerns). DP11/1 already provides a list of problematic product features (in chapter 3) which we consider is the better approach to identifying products that may cause significant consumer detriment.

Preventing non-advised sales

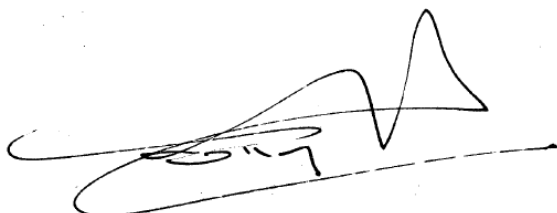
Chapter 6 of DP11/1 also proposes that the FCA may direct advised sales only of certain Products. We believe that this would result in restricted choice for a consumer where there is demand for the non-advised sale of a product (and, again, it would be difficult to provide a list of the products that would be subject to this requirement (for the reasons set out in the section above)). There are also point of sale appropriateness assessments that would need to be undertaken.

Investors should have the choice as to the basis on which services are provided, i.e. whether on an advised or non-advised basis. An investor's choice should, not, therefore, be limited by preventing execution only services in relation to certain Products and will depend on the sophistication of the client.

Pre-approval

We agree with the FSA's proposals, in chapter 6, that the FSA (or FCA) should not pre-approve Products. We believe that this would result in a potentially significant delay to the launch of a new Product and present moral hazard for the FSA.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Timothy R Hailes', written over a horizontal dashed line.

Timothy R Hailes
Chairman, Joint Associations Committee

JAC contact – Richard Metcalfe, ISDA
rmetcalfe@isda.org, 020 3088 3552

Participating Associations

Since its founding in 1985, the International Swaps and Derivatives Association has worked to make over-the-counter (OTC) derivatives markets safe and efficient.



ISDA's pioneering work in developing the ISDA Master Agreement and a wide range of related documentation materials, and in ensuring the enforceability of their netting and collateral provisions, has helped to significantly reduce credit and legal risk. The Association has been a leader in promoting sound risk management practices and processes, and engages constructively with policymakers and legislators around the world to advance the understanding and treatment of derivatives as a risk management tool.

Today, the Association has more than 800 members from 55 countries on six continents. These members include most of the world's major institutions that deal in privately negotiated derivatives, as well as many of the businesses, governmental entities and other end users that rely on over-the-counter derivatives to efficiently manage the financial market risks inherent in their core economic activities.

ISDA's work in three key areas – reducing counterparty credit risk, increasing transparency, and improving the industry's operational infrastructure – show the strong commitment of the Association toward its primary goals; to build robust, stable financial markets and a strong financial regulatory framework.

ISDA is listed on the EU Register of Interest Representatives, registration number: 46643241096-93.



The International Capital Market Association (ICMA) is a unique self regulatory organisation and an influential voice for the global capital market. It represents a broad range of capital market interests including global investment banks and smaller regional banks, as well as asset managers, exchanges, central banks, law firms and other professional advisers. ICMA's market conventions and standards have been the pillars of the international debt market for over 40 years. See: www.icmagroup.org.

ICMA is listed on the EU Register of Interest Representatives, registration number 0223480577-59.



AFME (Association for Financial Markets in Europe) promotes fair, orderly, and efficient European wholesale capital markets and provides leadership in advancing the interests of all market participants. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. AFME participates in a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association through the GFMA (Global Financial Markets Association).

AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76.

For more information please visit the AFME website, www.AFME.eu.

ANNEX

JAC PRINCIPLES AND JAC DISTRIBUTOR PRINCIPLES

JAC PRINCIPLES: "Retail Structured Products: Principles for Managing the Provider-Distributor relationship" (July 2007)

A. Introduction

These Principles seek to address issues that financial services firms have in practice found helpful to consider when performing the function of either provider or distributor in connection with the process of delivering structured products to retail investors.

It should be noted that **the Principles are non-binding and, as such, intended purely to help inform firms' thinking**. The sponsoring associations believe market participants should be free to agree their relationships and relative responsibilities on a case-by-case basis, to the extent these are not prescribed by local law or regulation. The Principles are intended to be sufficiently broad in their applicability to provide a reference framework for managing the provider-distributor relationship in retail structured products markets globally.

The Principles are the product of a global working group of firms, taking in the views of both distributors and providers and supported by a coalition of trade associations: European Securitisation Forum (ESF), International Capital Market Association (ICMA), International Swaps and Derivatives Association (ISDA), London Investment Banking Association (LIBA) and Securities Industry and Financial Markets Association (SIFMA). Furthermore, the associations issued the Principles for public comment, obtaining constructive feedback from other trade associations and market participants.

Structured products include a variety of financial instruments that combine various cash assets and/or derivatives to provide a particular risk-reward profile that would not otherwise be available in the market. The exact risk-reward profile varies from instrument to instrument.

The arrangements between the parties, the applicable regulatory regime and the fact that structured products combine various components may in practice result in different financial services parties being responsible for different aspects of the related regulatory obligations (even though the universal-bank model may entail a 'proprietary product distribution' arrangement). In particular, it is common for the distributor to have a direct interface with the retail investor while the provider does not. These Principles therefore particularly focus on how to address this issue, wherever it arises, given that all parties within this distribution 'chain' have a common interest in ensuring that investors obtain satisfaction with regards to their legitimate expectations as to the nature of the investment.

Retail investors in this context will mean natural persons and may include high-net-worth individuals. The Principles do not, unless otherwise indicated, address the role of entities acting solely as issuer of a product.

The Principles are drafted with no single jurisdiction in mind; they are, on the contrary, intended for global use, at a high level. The specific and possibly more detailed procedures that any firm might in practice (and subject to appropriate cost-benefit analysis) adopt to help it manage provider-distributor relationships with regards to retail structured products will be a function of factors such as the jurisdiction or jurisdictions involved, the distribution channel(s) utilised, the precise nature of the products and the nature of the relationship between the parties.

Regulatory treatment may depend on the nature of the component instruments; for instance, depending on the jurisdiction, structured deposits or exchange-traded notes acquired by investors via brokers on a 'reverse-enquiry' basis may each require separate analysis. Among other matters, due consideration will need to be given to post-sale arrangements such as secondary market-making activity and information provision. The sponsoring associations invite industry to consider adapting the Principles, as appropriate, to take account of such specific factors.

B. Principles

These Principles should be read in conjunction with the Introduction above, which contains important overarching comments on the nature and scope of the Principles. Moreover, the Principles are to be taken collectively, rather than viewing any one Principle in isolation from the others.

1. Distribution to the retail investor in structured products in many, though not all markets, is effected through intermediaries, e.g. private banks, rather than directly by the product 'provider' (sometimes referred to as 'manufacturer').
2. Where a product provider and a private bank (or other retail-facing business) operate within the same institution, they may operate quite distinctly; they may even be subject to different regulation; or have different reporting and management structures. Any such formal separation is generally robust and will be driven by legal, compliance, confidentiality and other requirements. Thus, even where a product is originated and distributed by the same institution, there can, in practice, be a separation between the manufacturing and distribution functions to which these Principles refer.
3. Product providers should consider what internal approval processes are appropriate for retail structured products; any such processes might address such issues as sign-off, product structuring, risk-reward and distribution.
4. The distribution structure means that it is often the distributor who interfaces with the individual investor and whose client that investor is. In such circumstances, investor suitability (as determined in the local market) is accordingly exclusively an issue for distributors, since it must be considered in the context of confidential information provided by the client to the distributor.
5. Distributors must understand the products they distribute. In jurisdictions where distributors provide not only the issuer's prospectus document but also term-sheets or other marketing material (such as brochures) to their clients, the distributors take responsibility for the accuracy and completeness of those marketing materials, even if they incorporate material provided by the product provider; in these circumstances, a distributor must be satisfied with and take responsibility for such materials and their compliance with local law and regulation.
6. Product providers should ensure that their term-sheets are accurate, fair, balanced and clear (respecting, as appropriate, jurisdiction-specific regulation to this effect); and that they are presented in a way which is consistent with their agreed obligations to the distributor. (For example, where the parties understand that the product will be distributed by the distributor to high net worth individuals, the termsheet should not contain rubric that the product is not suitable for retail investors.) Where providers agree to assist the distributor by supplying information, this should be clear and of the kind requested by the distributor in preparing its own term-sheet or product description for its client; this may include scenario analyses and relevant-to-product risk factors.

7. When commencing dealings with a distributor, 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. There is no fixed form for this process, which can vary according to the circumstances, and there are a number of means by which a provider can gain comfort as to the integrity of a distributor's processes. Issues which may typically be considered include a distributor's typical client type (and whether the distributor deals directly with them or via sub-distributors), suitability determination processes, regulatory status, reputation and compliance with selling laws; though the specific details considered will vary widely depending on the distribution, the particular product and the relevant jurisdiction or jurisdictions. Each party does, in any case, retain its own regulatory obligations; no party takes on the regulatory obligations of another or the oversight of that other party's compliance with those obligations.
8. Distributors should also evaluate product provider counterparties ("know your product provider"), particularly as regards the product provider's performance with respect to those items mentioned in 6 above.
9. To the extent that law and regulation may not distinguish sufficiently between the roles of product providers and distributors, this may create points of uncertainty as to where legal or regulatory liabilities may fall. Providers and distributors should be aware of this and its consequences.
10. Product providers and distributors should seek to agree and record their respective roles and responsibilities towards investors.

JAC PRINCIPLES: "Structured Products: Principles For Managing The Distributor-Individual Investor Relationship" (July 2008)

The distributor-individual investor relationship should deliver fair treatment of the individual investor. Individual investors need to take responsibility for their investment goals and to stay informed about the risks and rewards of their investments. Distributors can play a key role in helping them achieve these objectives. In this document, an "investor" means a retail investor who is not an institution, a professional, or a sophisticated investor, and a "distributor" refers to any institution or entity that markets or sells retail structured products directly to an individual investor. This will include an issuer of a retail structured product that markets or sells the same directly to individual investors.

In light of the increased interest in structured products as part of individual investors' investment and asset allocation strategies, it is important for firms to keep these principles in mind in their dealings with individual investors in structured products. These principles complement and should be read in conjunction with our recently released, "Retail Structured Products: Principles for Managing the Provider-Distributor Relationship," available at the websites of the five sponsoring associations,² which focus on the relationship between manufacturers and distributors. These principles apply to the relationship between the distributor and the individual investor.

Although these principles are non-binding (being intended primarily to help inform firms' thinking) and do not create enforceable obligations or duties, firms involved in the distribution of structured products to individual investors are encouraged to reflect these principles in their policies and procedures. Further, each firm is encouraged, given differing regulatory environments and both cultural and client base differences, to consider the extent to which the firm should adapt these principles to its particular circumstances. As stated in the related Provider-Distributor Relationship Principles noted above (Principle 7), "no party takes on the regulatory obligations of another or the oversight of that other party's compliance with those obligations."

For the avoidance of doubt, these principles are intended primarily to apply in the context where structured products are actively marketed and/or recommended by distributors to individual investors, and not where distributors are merely executing transactions for investors on a non-advised, non-discretionary basis. Where distributors are executing on this basis, those parts of these principles that are not appropriate to such relationships (for example, those relating to secondary market making and client appropriateness and suitability) shall not apply.

Overview

The term "structured products" refers to a variety of financial instruments that combine various cash assets and/or derivatives to provide a particular risk/reward profile that allows investors access to broader investment opportunities. The return of a structured product is usually derived from the performance of one or more underlying assets. Examples of underlying assets include, but are not limited to: interest rates; a particular equity or debt instrument; a basket of securities; a securities index or indices; an individual commodity or commodities; a commodities index; an individual currency or currency basket; creditworthiness of a security or basket of securities; or any combination thereof.

Some structured products offer full or partial principal protection, while others have no principal protection. Some offer a yield; others do not. It is possible that the value of an individual structured product may not increase as much as the underlying asset, or may decrease more than the underlying

² European Securitisation Forum, International Capital Market Association, International Swaps and Derivatives Association, London Investment Banking Association, Securities Industry and Financial Markets Association

asset. Some structured products offer individual investors access to new asset classes that may otherwise be difficult to access through other investment alternatives and which can help with portfolio diversification.

Structured products can be more or less risky than other investment products such as equities, fixed income products, or mutual funds: there is no necessary link between product complexity and investment risk - complex products may be low risk, and non-complex products may entail high risk. It is important that an investor understands the role in an investment strategy that can be played by any particular structured product in light of the investor's specific investment objectives, risk tolerance, and investment horizons.

Principles

These Principles should be read in conjunction with the Overview and Introduction section set out above, which contains important overarching comments to the nature and scope of the Principles. Moreover, the Principles are to be taken collectively, rather than viewing any one Principle in isolation from the others.

1. Product Transparency

The party who is primarily responsible for the creation of marketing materials,³ or is responsible for a prospectus, or other offering memorandum, should, to the extent permitted by applicable laws and regulations⁴, use reasonable efforts to ensure that the material features of the particular structured product are clearly articulated and delineated in such marketing materials or prospectus in a way that enables individual investors to evaluate the investment from a risk/reward perspective. Such party should also ensure that structured product descriptions in client materials and prospectuses are clear and not misleading. This will be helpful to both individual investors' and financial advisors'⁵ understanding of the product. Further, to the extent that a distributor is primarily responsible for the creation of marketing materials, such materials should be adapted to, and reflective of, the knowledge and sophistication of individual investors in the target market. For example, it should be clearly disclosed how returns on a structured product are linked to an underlying asset.

Marketing materials that are distributed to, or intended for distribution to, individual investors should be subject to review by the distributor's appropriate supervisory staff, as well as other internal processes, such as compliance or legal, as appropriate.

2. Risk Disclosure

Risk disclosure is important to an investor's understanding of structured products and should be made available to investors before a decision to invest is made. Investors should understand the risks inherent in the product before investing in it. Investors should be informed of the general types of risks associated with structured products, subject to individual regulatory standards as to the specific

³ The relationship between providers and distributors is specifically addressed in "Retail Structured Products: Principles for Managing the Provider-Distributor Relationship," Principle 5, Joint Trade Associations, July 2007.

⁴ In some jurisdictions, law and regulation may specify or limit the form, the content or the presentation of material which may be given to investors. These principles do not require such rules to be disregarded.

⁵ "Financial advisor" refers to the firm's employees, or independent contractors, who interact directly with individual investors and who are registered to solicit trades and effect transactions. The formal term may vary significantly by firm and/or jurisdiction.

language required. Particular prominence should be given to any risk not usually associated with a given product, for example, risk of loss due to any sale of the product before maturity, as well as any material product-specific risk that may apply, such as risks arising from the underlying asset, liquidity and market risks in relation to the product itself, or specific tax considerations. Where information on past performance is given, the presentation should be fair and not misleading, and, in particular, should acknowledge any limitations in available data.

3. Fees and Costs

Investors in a structured product should be informed of the existence of fees, costs, commissions, discounts, and any other sums paid to the distributor for acting as such over the life of that product. Distributors should have internal processes and controls in place to consider the appropriateness of fees and other incentives given local market conditions and regulatory requirements. A distributor's internal processes and controls should also consider the level of disclosure regarding such fees and costs in light of their possible impact on the secondary market of the structured product concerned.⁶

4. Potential Conflicts Management

Distributors should have internal processes and controls in place to consider potential conflicts issues and identify measures designed to mitigate, manage, or disclose material conflicts of interest arising from the sale of structured products. Such processes should, where necessary or appropriate, provide timely, adequate, and clear disclosure related to conflicts of interest or potential conflicts of interest that may exist or arise in connection with the distributor's sale of the structured product, or as a result of the business they conduct.

5. Credit Ratings

Credit ratings of issuers or, where applicable, guarantors, may not represent a rating of the potential investment performance of the individual structured product itself. Credit ratings, however, should be taken into account to the extent that it affects the terms of the product. If credit ratings are provided, the related disclosure should make clear the significance of the rating. Distributors should use credit ratings accordingly.

6. New Product Review

Distributors should understand the products they distribute. New structured products, whether developed by the distributor or developed by a third-party provider or manufacturer, should be subject to the distributor's product review and assessment process. This process should take into account the nature of the new structured product, the target investors, and an assessment as to whether the product is appropriate for its intended target market. Distributors should also have a process for determining what generally constitutes a "new product." It is not sufficient for a distributor to accept a third-party manufacturer's assessment regarding appropriateness of structured products for individual investors who are ultimately customers of the distributor and not the manufacturer. Distributing firms should conduct an independent assessment.

7. Liquidity/Secondary Market

Investors should be informed before investing of the likelihood of their being able to sell a particular structured product prior to maturity, and of the ways in which this might be done. Any secondary market to be provided by the distributor itself or through an exchange, or otherwise,

⁶ Insofar as a secondary market exists for the product. See Principle 7.

should be disclosed. If there is little likelihood of such sale or other liquidation being possible, that fact should be clearly disclosed. Investors should be made aware that sales in the secondary markets, even where possible, may be at prices that are below the amount payable on the product at maturity, the original offering price, or the price at which they acquired the product. In addition, distributors should make a clear distinction between an investment in the structured product and a direct investment in the underlying asset, and that the return on the structured product may not reflect the return of a direct investment in the underlying asset, noting in particular that these respective returns may not necessarily move in tandem. For principal-protected products, it should be made clear to investors that the principal protection applies only at maturity, and the costs of unwinding the product mean that an earlier redemption value may differ materially from the potential value at maturity.

7a. Client Valuations

Structured products should be valued on a regular basis and disclosed to the investor through the distributor's normal client statement process or otherwise.

8. Client Appropriateness and Suitability

Where a firm actively markets a particular product, as opposed to merely executing transactions on clients' instructions, it should determine which particular types of clients the product could properly be sold to (appropriateness) and may also be required to determine whether the particular product is right for a particular client (suitability). Methodologies and standards for making these determinations should be developed by the distributor and adequately communicated to the distributor's financial advisors. Liquid net worth, degree of sophistication, risk profile, age, and investment experience are several variables that may be relevant to such an assessment. Also, financial advisors should consider how a specific structured product would fit into an individual's portfolio. These standards should be reviewed periodically and amended, as needed.

9. Financial Advisor and Supervisor Training

Structured products vary a great deal as to their terms, risk/reward profile, liquidity/availability of a secondary market, underlying asset, and a variety of other factors. As such, it is important that financial advisors interacting with individual investors have an adequate understanding of structured products in general as well as an understanding of the characteristics of the individual structured products being offered. The financial advisor should be able to clearly explain the product's features to an individual investor. Distributors should provide their financial advisors with the necessary training, or access to training, in structured products, including both the benefits and risks of the products, and should consider providing educational materials on structured products generally, in a suitable form (including one-on-one meetings, written materials, class-based training, desktop training, or other forms, as appropriate). Such training should also be provided to those responsible for supervising financial advisors.

10. Oversight and Compliance

Structured product sales to individual investors should be subject to the distributor's internal legal, compliance, and supervisory review processes, policies, and procedures. Distributors should have such supervisory procedures in place covering transactions in structured products, which should involve supervisory staff of appropriate seniority in light of the nature of the particular product and investor target market. Supervisory responsibilities may encompass sales practices, reasonableness of profit/loss potential, fees, and adequacy of training. Managers performing such supervision should have access to appropriate legal and compliance department support.

11. Tax Implications

Investments in structured products may have tax consequences for individual investors depending on their personal circumstances and jurisdiction of residence. Although certain tax implications may be highlighted in product documents, investors should be encouraged to discuss the specific tax implications of structured products with their accountant, tax attorney, or other tax professional.

12. Post-Trade Follow-up/Product Life Cycle Issues

Distributors should provide financial advisors with the necessary information to help their clients monitor performance of any structured product in which they have invested, and provide access to information regarding the terms of that structured product, including its maturity, pay-out details, secondary market price,⁷ and other pertinent information.

⁷ Insofar as a secondary market exists for the product

JAC Supplementary Submission

30 June 2010

Dear Sir/Madam,

The Joint Associations Committee⁸ welcomes the opportunity to make a supplementary submission in relation to the EU Commission's Packaged Retail Investment Products (**PRIPs**) initiative. This submission is supplementary to our earlier submission dated 19 November 2009 (the **JAC November Submission**⁹) and focuses specifically on the content and format of a short form disclosure Key Investor Information Document (**KID**) for PRIPs.

This submission takes the form of a pro forma template KID (the **Template KID**) with accompanying commentary and is the result of several months' collaborative work amongst JAC members. As with our earlier submission, the principal focus of our work has been in relation to the sale of structured securities to retail investors but attempts have been made to ensure that the structure and language used in the template produced could be applied across both other Contractual PRIPs and Collective Investment PRIPs. We note, however, that there are fundamental differences in the nature of the investment being offered in a Contractual PRIP as compared to a Collective Investment PRIP. As such, the KID regime in respect of these two families of PRIPs will need to be different in some respects to ensure that in each case the correct emphasis is placed on the various elements of disclosure¹⁰. If appropriately structured, this need not detract from the product comparison objective. Furthermore, such differences will help in emphasising to investors the distinguishing features of these families of products.

The Template KID aims to build on the work of the Commission and CESR in respect of the UCITS KID. It represents an attempt to transpose this work into the broader PRIPs field, in particular seeking to identify areas in which we feel that the UCITS proposals will require modification to work effectively with this wider range of products. In completing this work, we have also drawn on (i) the work of the Commission, the Council and the Parliament in respect of the review of Directive 2003/71/EC (the **Prospectus Directive**), (ii) the work of the regulators in Hong Kong and Singapore in relation to the short form disclosure initiatives under consideration in those jurisdictions and (iii) useful concepts raised in the Barclays Capital submission to the Commission in relation to KID of 18 December 2009 (the **Barclays Capital KID**). We hope that the Template KID will provide a useful basis for ongoing discussions between the industry and the Commission in relation to the key issues arising in respect of the PRIPs disclosure initiative.

We would very much welcome the views of Commission Services in relation to this Template KID and would be happy to meet with Commission Services to discuss these matters further.

Structure of this submission:

Section A introduces and provides explanatory commentary on the Template KID (attached as a separate document). **Section A.1** covers the general drafting principles applied and **Section A.2** provides section by section commentary.

Section B discusses other essential issues which we feel will need to be addressed under a PRIPs short form disclosure regime, namely:

Scope, Purpose, Responsibility, Liability, Relationship with the Prospectus Summary, Relationship with MiFID and Delivery.

⁸ The JAC is sponsored by multiple associations with an interest in structured products. In the first instance, queries may be addressed to rmetcalfe@isda.org.

⁹ Please see www.isda.org/c_and_a/pdf/PRIPS_JAC_Response_Updated.pdf

¹⁰ In this regard, please see paragraphs 8, 9, 16 to 18 and 33 to 37 of the JAC November Submission.

SECTION A

A.1 General drafting principles

In preparing the Template KID we have sought to adhere to a number of the core principles as set out in the Issues Paper published by the Commission in relation to the PRIPs Workshop held in October of last year. Most notably, the principles that disclosure should:

- be fair, clear and not misleading;
- be expressed in short, simple and plain language;
- follow a harmonised structure and sequence of sections; and
- contain common disclosure elements and key points of comparison that must be included in all PRIPs disclosures.

Further points of note in respect of our approach are:

- **Terminology:** Terminology has been drafted to be as general as possible. This is to allow the same headings to be used for as broad a range of “PRIPs” products as possible, thereby acknowledging the PRIPs initiative’s harmonisation agenda. Examples of such language include: Product Producer, Product Start Date/End Date and Final/Periodic Return.
- **Section headings:** Additional section headings have been added, or proposed UCITS headings reformulated, where this is felt to be either necessary to introduce additional disclosure required in the context of securities products or helpful to facilitate better investor understanding. The intention remains that the headings and the order of sections would be harmonised for all PRIPs KIDs. Observing UK FSA guidance in relation to investor-friendly key features disclosure, where appropriate, headings have been phrased in the form of questions that investors are likely to ask.
- **Principles v Prescription:** The template seeks to strike a balance between prescribed content and principles based prompts. A level of prescription (particularly in relation to structure) aids comparability and ensures that key messages are communicated in a consistent manner. Too much prescribed content risks detracting from clear and effective disclosure. Members agree that a harmonised structure and a requirement that certain key questions are addressed are important to facilitate comparability, but also feel that the flexibility to include certain other relevant questions, where appropriate, allows disclosure to be appropriately tailored. Where additional disclosure is included this would be subject to the overriding requirement that it should be fair, clear and not misleading.
- **Cross references to other documents:** We feel that in the structured securities sphere there is also a balance to be struck between ensuring that the KID is sufficiently comprehensive to aid an investor when considering whether to invest, while at the same time ensuring that the KID does not become over-burdened with detail which is easily accessible elsewhere. This is particularly important if the KID is to remain accessible for investors. We welcome the provisions in the draft UCITS Regulation which permit limited cross-references to the relevant Offering Document. We agree that the party compiling the KID should not use numerous lengthy and non-specific cross references as this will detract from the value of the KID and reduce accessibility. We feel, however, that targeted cross references to specific sections of the Offering Document which contain more comprehensive disclosure in relation to certain prescribed areas is a very positive development. This approach allows the KID to give the investor a flavour of the issues that should be considered

whilst at the same time directly assisting the investor in locating specific and appropriate further reading. This would be of particular benefit in relation to disclosure of risk, charges and (in context of structured securities) relating to the Product Producer which are all already disclosed in an accessible format in the relevant Offering Document. To ensure optimum effectiveness, cross references should be to specific pages or sections in the relevant Offering Document.

- **Length:** We note the requirement proposed in respect of the UCITS KID that the KID be no longer than two pages for standard UCITS and three pages for structured UCITS. Members acknowledge the importance of ensuring that the KID remains a concise document but are of the opinion that an arbitrary page limit which necessitates the removal of important and useful disclosure would be counterproductive. Given the additional disclosure necessary in a KID for structured securities (e.g. more detailed disclosure in relation to return and risk and additional obligor disclosure) members feel that a target of four pages might be appropriate, but that flexibility should be allowed in the context of more complex products, particularly where more extensive disclosure in relation to the Underlying(s) of such product is essential to investor comprehension. As above, appropriate use of cross referencing (and indeed the use of a Glossary) will also be important in ensuring that the document is as concise as possible.

We also note that the Hong Kong “Key Facts Statement” regime allows page limits to be relaxed to permit certain information to be presented in alternative formats which improve investor understanding but take up more space (e.g. graphically). IOSCO’s work in this field also supports the use of alternative formats to assist investor comprehension. We feel that it would benefit investors if a similar flexibility were permitted under the PRIPs regime.

A.2 Section commentary

The commentary below is intended to explain any key drafting features and raise any conceptual issues identified in the course of drafting. It is set out on a section by section basis.

A.2.1 Header and "Purpose" Section

This initial information sets out the product in question and the status of the KID. We note that clear signposting of this nature has been found to assist retail investor comprehension. In respect of specific content:

Product Reference Code: Any standard product identification code (for example, in the case of debt securities, this would be the ISIN and Valor/WKN/Common Code).

Glossary: A prompt has been included to allow for the use of a Glossary document to supplement the KID. Members were generally supportive of the suggestion that, for certain products, an optional Glossary document, in similar format to that proposed for the Barclays Capital KID, might be useful in assisting readability. It would allow for explanation of more specialist terms in the Glossary. This would reduce "clutter" in the KID itself and in allowing for more detailed, retail friendly explanations to be offered, it would also assist in improving the understanding of less sophisticated investors (in line with the Commission's wider investor education goals).

Such a Glossary could be prepared by Product Producers/Distributors on a house-by-house basis or subject to some form of Commission-led standardisation where appropriate. Standard form definitions could be developed for certain common terms. The JAC would be happy to work with the Commission and/or CESR on any such project.

KID validity period: To avoid an undue administrative burden being placed on the party charged with preparation of the KID, it is proposed that the duty to update the KID should be consistent with the current Prospectus Directive regime (i.e. there should be no obligation to update the KID after admission to trading, if relevant, or the end of the relevant offer period, whichever is later). Wording has been inserted in this section of the Template KID making this clear to investors.

A.2.2 Quick Facts

This section is designed to address the product comparison function of the KID. It is a feature used in both the Hong Kong SFC template Key Facts Statement and the Barclays Capital KID. The aim has been to choose headings that are generic, allowing the same headings to be used across the range of both Contractual and Collective Investment PRIPs products and thereby facilitate comparison between them. Comparability is also assisted by the easily accessible "line item" format. The intention would be that investors would become familiar with these commonly used headings which, in turn, would improve their confidence when analysing and comparing different products. There will necessarily be some overlap between this section and the following sections.

The Commission may wish to consider whether this section could be modular. For example, a series of different Quick Facts section templates might be available (one for each Product Category). Whilst the majority of headings could be common to all templates, a modular structure would allow additional headings (which apply exclusively to Contractual PRIPs or Collective Investment PRIPs or indeed only to an individual Product Category) to be included in the relevant module for the relevant Product Categories only (e.g. in the case of securities, whether or not the product is listed). This would be more efficient because where a key point of comparison applies only to certain Product Categories it need only appear in the Quick Facts section for those Product Categories to which it relates.

In respect of specific headings in the Quick Facts section:

Product Category: This is designed to place the product in a category according to its wrapper (e.g. a “structured security”). This could work alongside investor education initiatives to improve investor understanding by making clear the distinction between different product wrappers.

Product Type: This describes the more specific nature of the products within the generic "Product Category" (e.g. a note as opposed to a warrant or certificate). This may not be relevant in relation to products where the Product Category is not subdivided.

Product Start Date/Product End Date: As above, general language has been used to attempt to ensure applicability to a range of PRIPs. For example, in the context of an offering of Notes these terms would relate to the Issue Date and Maturity Date respectively.

Final Return/Periodic Return: This is a further example of using general language. In completing these prompts, the party completing the KID would stipulate the nature of the payment (e.g. “Redemption Amount” or “Interest”/“Coupon” and briefly explain how the payment is calculated (e.g. “linked to the performance of [●]”).

A.2.3 Product Description

This section would contain a more detailed narrative description of the product to assist comparability and accessibility. This section has a standardised structure using a series of prescribed headings (framed as questions). As above, the phrasing of information as questions an investor might ask is in accordance with UK FSA guidance on the preparation of key features documents, reflecting findings that this aids investor understanding. We have also provided for the inclusion of standardised prominent warnings cross-referring to the key risks section to ensure that the disclosure is suitably balanced in terms of risk and return.

A.2.4 Key Risks

In line with the desire to focus on key product specific information only, we would propose that this section contains only disclosure relating to the "key risks" of the product. Risks that would relate to all products of the relevant product category would not be included. Instead cross references would be incorporated referring investors to the disclosure relating to those more general risks set out in the relevant Offering Document. In this regard, please see our comments in relation to the use of cross references in Section A.1 above. The risk headings included are by means of example only and would be deleted (and/or additional headings added) as appropriate.

We are aware that this section is relatively "text heavy" but feel that the approach elected would offer optimum disclosure for investors, again based on a question and answer format to aid comprehension. Each risk should be explained in full in retail friendly language in the KID.

Other formulations considered include:

- (i) the approach adopted in the Barclays Capital KID of a headings based risk section linking to/supported by an explanation of the relevant risk factors in an accompanying Glossary; and
- (ii) a hybrid approach of disclosure based on one or two word "risk tags" (e.g. "Credit Risk"), in line with the Barclays Capital approach, but with the explanation of the tag appearing adjacent to it in the KID itself.

Both of these approaches have their merits. In particular, approach (i), which allows for a "cleaner" document which would be visually easier for investors. However, on balance, members felt that the

"risk tags", whilst easily identifiable to those with investment knowledge, may not be intuitive for retail investors. As such, the preferred approach is to frame the disclosure as questions to which an investor could easily relate. We would nonetheless be happy to discuss further the most appropriate format for this section.

Further to member comment, a Synthetic Risk Reward Indicator (**SRRI**) has not been incorporated. Members strongly supported the arguments against the inclusion of such an indicator as expressed in the Barclays Capital submission to the Commission, namely that:

- “(i) in the context of retail structured securities it would be very difficult (if not impossible) to formulate an indicator calculation methodology which would allow a meaningful comparison between such a broad range of products;*
- (ii) the use of a single figure score would anyway detract from the wider risk disclosure in this section as retail investors are likely to place undue emphasis on the indicator (a similar weakness to credit ratings). This is of greater concern where the indicator is of questionable validity;*
- (iii) where a risk indicator is used in respect of a retail structured security, significant space would be required to set out the explanation of the indicator, the score and the warnings in relation to its reliability. This would reduce the space available for more meaningful disclosure of the actual risks involved in the product and add unnecessary clutter to the document; ...*

In addition:

- (i) Investors tend to place undue emphasis on a risk indicator. This is a particular concern in the context of structured securities since the risk profile is generally more diverse than that involved in a UCITS (in particular, given the additional obligor credit risk dimension). A single figure rating discourages investors from fully engaging with the detail of this risk profile. This must surely detract from the value of the KID as an investor education document.
- (ii) Diverse risk profiles often apply to structured securities and risk is often investor specific. For example, an investor investing in a product denominated in a currency other than that of his home member state takes significant foreign exchange risk which may not be factored into the indicator. Consequently, narrative risk explanations are far more useful to investors allowing them to assess the relevance of each risk factor identified in the context of their specific portfolio. As above, the incorporation of a SRRI would require reasonably significant explanatory narrative which would reduce the space available for explanation of the actual risks involved.
- (iii) Computing a calculation basis for a risk indicator for products for which there is no (or limited) past performance data presents significant challenges. Given the Commission's work in the Rating Agencies sphere, it would seem odd to move towards a formulation that introduces significant new subjectivity and is more conflicted than the existing Rating Agency regime. Furthermore, any element of subjectivity introduced (as may be unavoidable), would open the party calculating the rating to liability risk in respect of investors subsequently seeking to challenge an assumption made in the course of such calculation.
- (iv) Finding a common calculation methodology that could be used across the full range of PRIPs would represent an even greater challenge. The nature of structured securities (and indeed a number of the other Contractual PRIPs products) is fundamentally different to UCITS. For

example, no "strategy" applies and collateral arrangements (if indeed these apply at all) are arranged on a different basis. As such, the regime applying to UCITS would not easily be transposed to other PRIIPs products in a way that would allow for reliable or meaningful ratings to be produced.

Were different methodologies to be applied to different product categories, there is a significant risk that investors would nonetheless regard the index scores as comparable across product categories. This could offer an unfair advantage for certain products for which the categorisation framework was more favourable.

- (v) There are concerns that, in the context of capital protected products which are highly complex but relatively low risk (e.g. complex structuring might be used to reduce risk), an inappropriately designed indicator may incorrectly score these products as higher risk due to their complexity. This potential asymmetry between complexity and risk was a theme discussed in the JAC November Submission at paragraphs 23 to 29.

We note further that it is reported that the numeric indicator was considered but then rejected by the Monetary Authority of Singapore in relation to their proposed Product Highlights Sheet.

In relation to the calculation methodologies considered by CESR in relation to the UCITS KID we note the more detailed analysis included in the JAC's response dated 10 September 2009 to the CESR Consultation Paper (09-552), together with Addendum on technical advice at level 2 on the format and content of Key Information Document (KID) disclosures for UCITS of 8 July 2009, available at www.isda.org/c_and_a/pdf/KID-disclosures-for-UCITS-JACresponse.pdf.

A.2.5 Charges and Taxes

Members were generally supportive of the approach taken to charges disclosure in the Barclays Capital KID and the rationale provided in the accompanying submission.

Excerpt from the Barclays Capital submission:

“2.6 Charges

- *For clarity we have split the charges up into categories.*
- *To facilitate comparison between products, the format of this section could be retained for all products. Hence where no charge relating to a particular category applies in relation to this product we have not removed the category but simply stated that no such charge applies.*
- *For transparency we have:*
 - (i) *disclosed the deduction of all Issuer costs as charges; and*
 - (ii) *disclosed the existence of a bid/offer spread for any secondary market sales. Even though this is not strictly a product charge, it will nonetheless act to reduce the potential return that an investor would receive.*
- *In contrast to the CESR Advice in relation to UCITs, we have not included an illustration of charges in numerical tabular format. We appreciate the rationale for this requirement. However, the costs payable in respect of*

*many retail structured securities are often based on less predictable components (for example, variable funding costs) and as such we feel the number of assumptions that are required to produce numerical data renders the data unreliable from an investor perspective. In the context of retail structured securities, such a numerical illustration of data is, therefore, more likely to mislead investors than provide useful insight. This is of particular concern given the findings of the consumer testing conducted by IFF Research and YouGov in respect of the UCITs KID (the **UCITS Consumer Testing**) that retail investors often treat such illustrative data as fact (i.e. a conclusive list of the actual amount of charges that they will be expected to pay)."*

In terms of the nature of Product Producer fees that should be disclosed, we refer to the JAC November Submission and in particular paragraphs 33-37 thereof which contain more detailed commentary in this regard.

A.2.6 Further Information Available To You

This section mirrors the "Documents Available To You" section incorporated into the Barclays Capital KID. Members generally agreed that a section setting out clearly what other materials were available would be very helpful in improving investors' understanding of the full range of disclosure materials available to them and in that way also further contextualising the KID.

It was felt that this section might also usefully contain reference sources for post-issuance information.

A.2.7 "How do I purchase this product....."

It is intended that this section would provide information in relation to how a prospective investor might purchase the product. It was felt that the KID was not the appropriate forum to disclose full details of the terms and conditions of the offer but that this question should be addressed in outline.

A.2.8 "Who is the Product Producer?"

In the context of structured securities specifically, and Contractual PRIPs generally, obligor credit risk is an important investment consideration. As such, it was felt that a distinct section containing stipulated Product Producer disclosure would assist with clarity. However, members would emphasise that the KID should not be required to contain detailed Product Producer disclosure. This is already set out in an accessible format in the Offering Document. As such cross-references directing investors to the specific pages of those Offering Documents upon which such information can be found would be the most effective way of ensuring that such information is made available to investors. Incorporation of such information into the KID itself would significantly lengthen the document with no apparent additional benefit to investors. Clearly, this section may not be appropriate in the context of Collective Investment PRIPs. For further discussion of the differing disclosure requirements for Collective Investment PRIPs as compared to Contractual PRIPs, please see paragraphs 16 and 17 of the JAC November Submission.

A.2.9 Annex 1 - Scenario Analysis/Historical Performance

In line with the Commission's work in relation to the UCITS KID, a Past Performance section has not been incorporated. Historical performance information is not generally available in relation to structured securities products. Instead, a prompt has been included to allow for the annexing of a scenario analysis/historical performance section.

In this regard please note:

- (i) Members are generally supportive of the Commission's proposal that a low, medium and high return scenario should be included, along with appropriate warnings regarding limitations of the data used and that the scenarios were not equally probable.
- (ii) This section has been included as an Annex to allow the KID producer to incorporate varying formats of information at their election without disrupting the flow, and preserving the uniformity, of the core document. Members felt that allowing the KID producer the flexibility to present scenario analyses in a variety of flexible formats would assist accessibility (e.g. numerically, graphically and/or in a chart format). Product Producers are often used to preparing marketing materials for products of this nature on a regular basis and are, therefore, familiar with what presentational approaches are generally best suited to particular product types and are expected and valued by distributors and end investors. In this regard we note that the Hong Kong SFC has allowed for flexibility to be applied to the length of its Key Facts Statement document where this would allow for the incorporation of information in alternative "investor friendly" formats.
- (iii) Members feel that a degree of flexibility with regards the approach taken for the preparation of scenario analyses would improve the utility of the data prepared. However, prescribing rigid calculation methodologies may risk generating inappropriate results for certain products. A general requirement that the scenario analyses provided are prepared and presented in a manner which is fair, clear and not misleading should ensure appropriate standards are maintained.

A.2.10 Annex 2 – Information relating to the Underlying(s)

For certain structured securities an understanding of the nature and likely performance of the underlying or underlying(s) will be important to an investor's ability to understand his possible return. Therefore, a separate Annex has been incorporated allowing for disclosure in this regard. This has been incorporated as an Annex because such disclosure will not be appropriate in relation to every product (for example, if the underlying is a specific share, this can adequately disclosed in the Quick Facts section of the KID). Using an Annex for this disclosure allows the uniformity of sections in the core document to be maintained in respect of all products, with an Annex relating to the Underlying only added where appropriate.

SECTION B

FURTHER KEY ISSUES

B.1 Scope

As set out in the JAC November Submission, the KID should only be required for products actually sold to “retail” investors (see paragraphs 4 to 6 of that document). The regime will need to be carefully crafted to ensure that products sold to “wholesale” investors are not unintentionally caught by the PRIPs KID regime. The KID document provides no investor/public policy benefit in the “wholesale” space and, as such, the significant additional cost to the KID producer cannot be justified.

Similar concerns apply in relation to "vanilla" products. We note that the currently proposed economic definition of PRIPs (as per the Commission's Update of 16 December 2009) requires that a PRIP will necessarily contain an “element of packaging”. We assume that this reflects the Commission's intention that "vanilla" products will be strictly out of scope. We believe that this must be the correct outcome. The regime would seem both inappropriate and unnecessary for such products with no discernible public policy benefit.

B.2 Purpose

The purpose should be to set out certain *key* information in relation to the product with the goal of “aiding” a prospective investor when considering whether to invest. In this way, consistency would be ensured with the analogous Prospectus summary regime (as set out in the recently approved Directive amending the Prospectus Directive). We note further that the “key information” definition now incorporated into the Prospectus Directive is broader than the information we would expect to be required in a KID document (both in terms of content and the level of detail required, e.g. more detailed issuer disclosure and information regarding use of proceeds). We note that this definition of “key information” would only be appropriate if, in line with the Prospectus summary, the KID is only expected to provide all “key information” when read together with the Prospectus document. In this regard, please see our comments in relation to the use of cross referencing above.

The KID should not be required to contain "all" information that an investor might reasonably require. That is both unnecessary from an investor protection perspective and unrealistic from a disclosure perspective. The role of disclosing "all" information that an investor requires should remain that of the relevant Offering Document.

B.3 Responsibility for preparation

The Commission, in its December communication relating to the PRIPs initiative, discussed two possible approaches:

- (i) Detailed rules setting out responsibilities for preparation of document, to generally sit with Product Producer, but, given the role of Product Distributors in relation to bringing certain PRIPs into the retail market, responsibilities also placed on Product Distributors.
- (ii) A more flexible approach relying on the cooperation between Product Producer and Product Distributor.

Members feel that option (ii) must be the better approach for the reasons set out at paragraphs 19 to 21 of the JAC November Submission. Arguably, the correct approach to responsibility can only be determined once a clearer picture of required content for the document emerges. Whilst some sections of the Template KID are better suited to being completed by the Product Producer, (e.g. Quick Facts and

Key Risks), others would need to be completed by the Product Distributor (e.g. Product Distributor Charges, Further Information, How do I purchase this product, Product Distributor disclosure and elements of the Product Description). More specifically, members are concerned that the extent of the information to be provided under any Product Description section is clearly limited to statements of fact. If it is not, Product Producers may find themselves in a position where the information they are required to provide risks being characterised as investment advice.

Furthermore, the Commission should consider whether the Product Description section is in fact better prepared by the Product Distributor. Product Distributor's often already prepare retail investor friendly Product Description-style summaries as part of their marketing material. As the party directly engaged with the investor, and indeed paid to manage the investor relationship, the Product Distributor is arguably better placed to understand the nature of material that investors require.

B.4 Liability

We note our comments at paragraph 14 of the JAC November Submission. We would suggest that the same level of liability as applies to the Prospectus summary under the revised Prospectus Directive regime should also apply to the KID, i.e. that no civil liability should attach in respect of the KID unless it is misleading, inaccurate or inconsistent, when read together with the other parts of the relevant Offering Document, or it does not provide, when read together with the other parts of that Offering Document, key information in order to aid investors when considering whether to invest in such securities.

A higher level of liability is unnecessary and would likely result in an over-cautious approach being taken by the party charged with compiling the KID. Having a higher liability standard and placing strict limits on the length of the KID would also place an unacceptable risk on the party charged with preparation and is likely to result in a number of Product Producers and Product Distributors electing not to offer certain products to retail investors. This would reduce competition and investor choice.

B.5 Relationship with the Prospectus Summary

The debate as to how the requirement to produce a KID should interact with the requirement to produce a Prospectus Summary is important and a duplication of information should be avoided. We would suggest that, in the context of relevant products sold to “retail” investors, the requirement to produce a Summary should be replaced with a requirement to produce a KID. Alternatively, the two regimes could be harmonised such that the form of Summary required to be produced in these circumstances under the Prospectus Directive regime mirrors the requirements under the PRIPs KID regime. We assume that this may be the intention of Recital 19 to the amending Directive in respect of the PD (A7-0102/2010). Whilst we would welcome this outcome, further aspects which it will be important to consider are:

- (i) how information that it is currently required under the Summary regime but may not be required in such detail under the KID regime should be treated (for example, Product Producer/Issuer disclosure); and
- (ii) the approach that should be taken in the context of “retail” debt issuance programmes, or debt issuance programmes allowing for the issuance of securities to both “retail” and “wholesale” investors. The summary disclosure currently seen in base prospectuses for programmes is generic in nature, referring to types of issuance contemplated under the programme rather than specific issuances. This would not seem to be compatible with the product specific approach likely to be required in relation to KID. A number of suggestions have been made in relation to how this issue could be addressed. We would be happy to discuss this in more detail with the Commission if that would be of assistance.


B.6 Relationship with MiFID

Whilst it would be desirable for a common approach to be taken to retail classification under the MiFID and PRIIPs regimes, the current MiFID approach requires refinement. In considering any proposals for reform of the investor categorisation regime under the MiFID we would urge the Commission to consider carefully how any such changes would work in context of a future PRIIPs regime. As in "Scope" above, it will be important to ensure that the scope of any definition of "retail" for investor classification purposes is carefully considered to avoid products that are essentially "wholesale" being unintentionally caught in the PRIIPs regime. We would be very happy to engage in discussions on this important point.

B.7 Delivery

The KID should be designed to work equally effectively in both soft and hard copy. There should be an obligation to deliver the KID in sufficient time to allow it to inform investment decisions.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Timothy R Hailes', written over a horizontal dashed line.

Timothy R Hailes

Chairman – Joint Associations Committee on Retail Structured Products

JAC contact - Richard Metcalfe, ISDA

rmetcalfe@isda.org, 0044 20 3088 3552

FORM OF TEMPLATE KIID

What is the purpose of this Key Investor Information Document?
<p>This document sets out certain key information relating to the [Insert product name]. Details of further product information are set out in “Further Information Available To You” below. The full legal terms and conditions can be found in [Insert details of relevant offering document]. [Insert if a Glossary is to be used (optional): Highlighted terms are explained in the Glossary.]</p> <p>IF YOU DO NOT UNDERSTAND ANY FEATURE OF THIS PRODUCT OR ARE UNSURE AS TO WHETHER IT IS SUITABLE FOR YOU, YOU SHOULD OBTAIN INDEPENDENT ADVICE BEFORE INVESTING</p> <p>This document was published on [Insert date] and is accurate only as at that date. This document was produced by [Insert name of party responsible for the KID].</p>

Quick Facts	
<p>Product Category: [Structured [Debt] Security][Structured Deposit][Insurance].</p> <p>Product Type: [Note][Certificate][Warrant] [linked to [Underlying Asset]]</p> <p>Product Producer: <i>[Insert the full name and title (e.g. “Issuer”) and specify the Product Producer’s business sector (e.g. Banking, Insurance) and jurisdiction of registration]</i></p> <p>Product Distributor: <i>[Distributor to insert the full name of the Product Distributor or, in the case of affiliate Distributors, the name of the relevant group]</i></p> <p>Product Currency: [●]</p> <p>[Listing: [●]]</p> <p>Offer Price: [●] [per Security][per Unit]</p>	<p>Product Start Date:</p> <p>Product End Date:</p> <p>Early Withdrawal: [Available [(with charge)][(without charge)]] [Not Available]</p> <p>Early Termination: <i>[If applicable (e.g. a Knock-out feature), insert a brief statement to this effect]</i> [Not applicable]</p> <p>[Form of Return: [Cash][Physical Delivery]]</p> <p>Final Return: <i>[Insert brief description of return]</i></p> <p>Periodic Return: [Nature of payment] payable on [●]</p> <p>Underlying: <i>[Insert name and type of Underlying (e.g. Share, Index, Basket of Shares)]. [Optional: For further details please see Annex [1][2]].</i></p>

Product Description <i>[explanation]</i>	<i>[Option to insert symbols here with explanation]</i>
What is the aim of this product?	
<i>[Insert a brief synopsis of the product]</i>	
Why might I buy this product?	
<i>[Insert a generic description of the product objective]</i>	
What return could I receive under this product?	
<i>[Complete in accordance with Completion Note 1 below]</i>	
How and when will I normally receive this return?	
<i>[Complete in accordance with Completion Note 2 below]</i>	
What are the Key Risks involved in this Product? <i>[Complete in accordance with Completion Note 3 below]</i>	
<p>AN INVESTMENT IN THIS PRODUCT INVOLVES RISK. THE LIST BELOW HIGHLIGHTS ONLY CERTAIN KEY RISKS. A DISCUSSION OF FURTHER RISKS WHICH MAY BE ASSOCIATED WITH AN INVESTMENT IN THIS PRODUCT CAN BE FOUND AT PAGES [●]-[●] OF [INSERT DETAILS OF RELEVANT OFFERING DOCUMENT].</p> <p>The risk profile of the product may change through its lifetime. The key risks listed below represent the [Product Producer/Product Distributor]’s assessment of the key risks as of the date of this document.</p>	
<i>What is the risk that I may lose some or all of the money that I invest?</i>	
<i>[Complete in accordance with Completion Note 4 below]</i>	
<i>Can the Product Producer adjust the product or my return without my consent?</i>	
<i>[Complete in accordance with Completion Note 5 below]</i>	
<i>Can the Product Producer terminate the product before the Product End Date, extend the product or delay payment of my return?</i>	
<i>[Complete in accordance with Completion Note 6 below]</i>	
<i>Can I withdraw my money from the product, or otherwise sell the product, at any time?</i>	
<i>[Complete in accordance with Completion Note 7 below]</i>	

How might movements or disruptions in financial markets affect my return?

[Complete in accordance with Completion Note 8 below]

Will other business activities of the Product Producer affect the value of my investment?

[Complete in accordance with Completion Note 9 below]

What Charges and Taxes might I have to pay in relation to this product?

The following charges apply. Overall, they reduce your return.

[See Completion Note 10 and the prompts below]

Product Producer charges:

- **One-off charges on purchase:** [Insert details or if no such charge applies state “Not applicable”]
- **Charges over the product lifetime:** [Insert details or if no such charge applies state “Not applicable”]
- **One-off charges at the end of the product term:** [Insert details or if no such charge applies state “Not applicable”]
- **One-off charges on early withdrawal:** [Insert details or if no such charge applies state “Not applicable”]

[N.B. In each case charges stated should be the maximum possible charge that may apply]

Product Distributor charges: [To be completed by the Product Distributor]

[Where a bid/offer spread may apply in relation to the Secondary Market insert: **Bid/offer spread:** If you wish to sell the product before the Product End Date the price at which a buyer may be willing to buy the product from you may be less than the price at which they may offer to sell the product to you or someone else.]

Taxes: The tax laws of [Insert relevant jurisdictions], your own country and other countries may affect

your investment in this product. For further information, please speak to an adviser.

Further Information Available To You [To be completed by the Product Distributor]

You should also refer to the following documents which are available free of charge both online at [web address] and in hard copy on request from [address]:

[Complete in accordance with Completion Note 11 below]

How do I purchase this product and who should I contact for more information? [To be completed by the Product Distributor]

The period during which this product is initially being offered to you by the [Product Distributor] is [Insert details of the [Offer Period]]. [The product is subject to a minimum investment of [●]]. The product is available for purchase in minimum units [(denominations)] of [●].

For more information or to purchase the [Insert product name] please contact the [[Product Producer][Product Distributor] at: [Insert contact details]][your financial advisor].

Who is the Product Producer?

[Insert Product Producer's name] is [authorised and] regulated by the [Regulatory Authority]. [Insert Product Producer's name] is registered in [Country] [Registration Details (e.g. Company Number)]. Registered Office: [Insert address].

[Insert brief description of the nature of the Product Producer's business to include a prominent statement as to whether or not investments issued by the Product Producer are covered by any investment protection scheme][Insert a cross reference to any more detailed Product Producer disclosure in the relevant Offering Document]

Who is the Product Distributor?

[To be completed by the Product Distributor]

[This document (or any part of it) may not be photocopied, reproduced, distributed or transmitted without the [Product Producer/Product Distributor]'s prior written permission.] [© [Product Producer/Product Distributor] ([Insert year]) (all rights reserved)] [Consider whether other jurisdiction-specific intellectual property wording is appropriate]

[Scenario Analysis][Historical Performance Data] (Optional)

[Include appropriate prominent warnings regarding the limitations of any data included, including whether the scenarios reflect output at maturity only and clarification that the scenarios do not represent a forecast of expected performance. It should be made clear that the scenarios shown may not have an equal probability of occurrence]

[Appropriate scenarios shall be chosen to show the circumstances in which the product may generate a low, a medium and a high return, including, where applicable, an investment loss for the investor]

Information relating to the Underlying (Optional)

[Insert a brief description of the Underlying where required to supplement the information in the Quick Facts section]

COMPLETION NOTES

PRODUCT DESCRIPTION

COMPLETION NOTE 1:

What return could I receive under this product?

Explain the basis of calculation of the return in plain English. Formulae may be included if this will aid investor understanding. If scenario analyses/historical performance data are to be included, these should be incorporated in Annex 1 as prompted. Return for this purpose should include both the return (if any) of the investor's capital or upfront premium and the return on that capital or upfront premium. Details of any capital protection should be included but with corresponding prominent warnings (cross referring to the risk section below) as to limits to such capital protection.

[Insert if appropriate: The return (if any) that you receive under this product is linked to the performance of the Underlying specified above. Before investing you should ensure that you understand the nature of the Underlying.]

[If scenario analyses/historical performance data are to be included insert: Examples of possible payouts for this product can be found in Annex 1 on page [●] below]

[Insert for all products, including capital protected products: **YOUR INVESTMENT MAY GO DOWN AS WELL AS UP AND YOU MAY LOSE ALL OF THE MONEY THAT YOU INVEST.**]

[Where the product contains adjustment provisions insert: **IN CERTAIN CIRCUMSTANCES THE [INSERT RELEVANT PARTY] MAY HAVE A RIGHT TO ADJUST THIS PRODUCT AND YOUR RETURN. FOR FURTHER DETAILS SEE THE "KEY RISKS" SECTION BELOW]**

COMPLETION NOTE 2:

How and when will I normally receive this return?

Insert relevant details. Include details of whether the product return is received in cash or by physical delivery and scheduled payment date.

[Where the product contains early termination or payment deferral provisions insert: **IN CERTAIN CIRCUMSTANCES THE [INSERT RELEVANT PARTY] MAY HAVE A RIGHT TO [TERMINATE THE PRODUCT BEFORE THE PRODUCT END DATE] [OR] [DELAY YOUR RETURN]. FOR FURTHER DETAILS SEE THE "KEY RISKS" SECTION BELOW]**

KEY RISKS

COMPLETION NOTE 3:

General approach

Questions listed in this section are by means of example only - delete and/or reorder as appropriate. Consider whether any additional product/structure specific questions or risks (e.g. knock out provisions) should be added and, if so, set out when the consequences of such features may be most evident.

COMPLETION NOTE 4:

What is the risk that I may lose some or all of the money that I invest?

> Include appropriate explanation of Product Producer and any other relevant counterparty credit risk. Consider including a cross reference to the "Who is the Product Producer?" section below.

- > Include a statement as to whether or not the product is capital protected and, if so, setting out and appropriately explaining any limitations on this protection.
- > Where the product does not have the benefit of a guarantee and/or any government investor/depositor protection scheme, include a specific statement to this effect.
- > Where appropriate, include a statement clarifying that the investor does not have recourse to the underlying asset/assets and an appropriate explanation of the consequences of this from an investor perspective in a default scenario.

COMPLETION NOTE 5:

Can the Product Producer adjust the product or my return without my consent?

- > Include details and appropriate explanations of any adjustment provisions.

COMPLETION NOTE 6:

Can the Product Producer terminate the product before the Product End Date, extend the product or delay payment of my return?

- > Include details of any Product Producer call, early termination or deferral provisions.

COMPLETION NOTE 7:

Can I withdraw my money from the product, or otherwise sell the product, at any time?

- > Include appropriate explanation of any restrictions/charges on early withdrawal, to include appropriate warnings in relation to any charges or restrictions on early withdrawal. Where appropriate, include a warning that the product value may be lower during the term of the product than at the Product End Date.
- > Include contact details for secondary market pricing and sales and, where appropriate, include warning relating to the lack of or limited secondary market for the product and a warning that the return received through a sale in the secondary market may be lower than if the product was held to term.

COMPLETION NOTE 8:

How might movements or disruptions in financial markets affect my return?

- > Include appropriate explanation of market exposure risks, to include warnings relating to any potential volatility and any leverage employed and any specific market or asset class risk related to the Underlying.
- > Include appropriate explanation of any currency risk.
- > Include appropriate plain English explanation of any market disruption risk and the consequences of a market disruption for the investor.
- > Where hedging may be directly relevant to the investor's return, include a brief plain English explanation that the Product Producer has hedged or may hedge its exposure to the product and include an explanation of how this may affect investors, e.g. consequences of hedging disruption events.

COMPLETION NOTE 9:

Will other business activities of the Product Producer affect the value of my investment?

- > Include appropriate explanation of any conflicts of interest the Product Producer may have.

CHARGES AND TAXES

COMPLETION NOTE 10:

The Product Producer and Product Distributor should ensure that all contemplated charges are covered including, for example, custodian charges and platform execution charges. Where charges are investor specific, investors should be prompted to confirm these with the Product Producer/Product Distributor as appropriate prior to purchase.

FURTHER INFORMATION

COMPLETION NOTE 11:

Insert in bullet point format:

- details of relevant Offering Document and useful ancillary materials including the languages in which such information is available; and
- details of where information in relation to any underlying assets (both pre and, if applicable, post-issuance) are/will be available and the languages in which such information is available.