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Swiss Structured Products Association SSPA

International Structured Products Forum 2023

Regulatory Developments in Switzerland

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6. September 2023

Regulatory projects affecting structured products

- No major Swiss regulatory projects that specifically apply to structured products
- Partial revision of Collective Investment Schemes Ordinance
  - Key focus is on the implementation of the "Limited Qualified Investor Fund" (L-QIF")
  - Various amendments affecting existing regulations, including structured products
- Key regulatory topic: Sustainable Finance

Pending revision of Collective Investment Schemes Ordinance –

Distinguishing "collective investment schemes" from structured products, in particular “Actively Managed Certificates”

- Draft of revised Collective Investment Schemes Ordinance provides for a general labeling obligation of structured products
  - similar to the regime prior to the FinSA, all offering and marketing documents for structured products must include a statement that the product is not a collective investment scheme
  - re-introduction of general labeling obligation was initiated and supported by the FINMA
- Federal Administration conducted a non-public consultation that ended December 2022
- Position of SSPA in consultation process
  - delete and not re-introduce the general labeling obligation; or
  - at least amend the provision to make it clear and implementable
- Revision of Collective Investment Schemes Ordinance is still pending
  - apparently the AMAS response was rather negative

Self-regulation in sustainable finance

- Swiss Bankers Association (SBA)
  - Guidelines for the financial service providers on the integration of ESG-preferences and ESG-risks into investment advice and portfolio management (June 2022)
- Asset Management Association Switzerland (AMAS)
  - Self-regulation on transparency and disclosure for sustainability-related collective assets (September 2022)
- Swiss Structured Products Association (SSPA)
  - SSPA Sustainability Transparency Guidelines (June 2023)

- Goal
  - set a minimum standard for structured products that are classified as sustainable so that structured products can be better assessed for their sustainability to protect investors from being misled about the sustainability character of a structured product
- Process – it takes time
  - first draft prepared in June 2022 on the basis of key points agreed by SSPA Ad hoc ESG Expert Group
  - multiple rounds of drafts based on discussions in SSPA Legal & Regulations Expert Group, SSPA Ad hoc ESG Expert Group and SSPA Buy-side Expert Group
  - consultation with Swiss Sustainability Finance (SSF)
  - approval of guidelines by SSPA Board in May 2023
  - entering into force of the guidelines on June 1, 2023

SSPA

SSPA Sustainability Transparency Guidelines
Version: July 14, 2023

I. Introduction

Art. 1

Sustainability takes into account environmental, social and corporate governance (**ESG**) factors and is also a key aspect in the financial sector. Financial investments can help to achieve sustainability goals.

The awareness of sustainable financial investments is growing, and thus the demand for and supply of financial instruments that take sustainability aspects into account is increasing.

Art. 2

As part of a voluntary self-regulation, the Swiss Structured Products Association SSPA (**SSPA**) has issued these guidelines. With these guidelines, the SSPA aims to set a minimum standard for structured products that are classified as sustainable, so that structured products can be better assessed for their sustainability.

Art. 3

Currently, there is no common and generally accepted definition of ESG factors and no common and generally accepted methodology and metrics for assessing and determining the sustainability of financial investments in Switzerland. Therefore, these guidelines cannot and do not intend to provide qualitative or quantitative guidance on ESG factors and cannot and do not intend to introduce a methodology and metrics for assessing and determining the sustainability of structured products.

It is the responsibility of the respective issuer and producer, respectively (together the **Issuer**) of the structured product to apply a Sustainability Framework (as defined in Art. 12 below) when manufacturing and issuing structured products classified as sustainable, and it is the responsibility of the respective financial service provider to have and apply a sustainability framework when investing in or recommending structured products classified as sustainable in relation to its investment advisory and portfolio management services.

Art. 4

The legal and regulatory framework in the area of sustainable financial investments is currently evolving significantly and various industry organizations have issued or plan to issue guidelines, recommendations, standards or rules related to sustainable financial investments. The SSPA is monitoring these developments and will adapt these guidelines to current legal and regulatory developments and market conditions in the area of sustainable financial investments.

1/6

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Key elements of the SSPA Sustainability Transparency Guidelines

- Legal Nature of Guidelines
  - self-regulations issued by the SSPA on a voluntary basis
  - no civil or regulatory obligations but commitment by members to comply with the Guidelines
- Scope of application
  - structured products offered in Switzerland irrespective of type of offer and investors
  - when classified as sustainable
- Classification as sustainable
  - offering or marketing documentation refers to (i) a sustainable investment approach or (ii) terms such as “sustainable”, “ESG”, ”green”, “social”, “ethical” etc.
  - classification must be supported in a material way by evidence of sustainability characteristics, themes or objectives in accordance with the applied Sustainability Framework

Key elements of the SSPA Sustainability Transparency Guidelines

- Sustainability Framework
  - explain in an understandable way how the classification of a structured product as sustainable is assessed and determined
  - items to be addressed:
    1. The methodology used to assess and determine the sustainability of a structured product (ESG strategy)
    2. Use of the proceeds raised with a sustainable structured product, as may be applicable to a particular product
    3. Relevant process and data source used to classify structured products as sustainable
    4. Internal governance structure in respect of the classification of structured products as sustainable
  - must be made publicly available
- Entry into force: June 1, 2023
- Transitional period: 12 months
- Grandfathering: structured produts issued prior to June 1, 2024

– FAQ to support the SSPA Sustainability Transparency Guidelines

SSPA

Frequently Asked Questions (FAQ) to SSPA Sustainability Transparency Guidelines

Version: July 29, 2023

I. Introduction

1 The Swiss Structured Products Association SSPA (**SSPA**) has issued the SSPA Sustainability Transparency Guidelines (the **Guidelines**). This document provides answers to questions in relation to the Guidelines.

2 Defined terms used in this document shall have the same meaning as in the SSPA Sustainability Transparency Guidelines.

II. Questions and Answers

I. Purpose, scope and nature of the Guidelines

1. What is the purpose of the SSPA Sustainability Transparency Guidelines?

3 The requirements introduced by the Guidelines shall protect investors from being misled by an unsubstantiated claim that a structured product is sustainable.

4 With the issuance of the Guidelines, the SSPA sets a minimum standard for structured products that are classified as sustainable, so that structured products can be better assessed for their sustainability and integrated when providing investment advice or portfolio management services in respect of client's ESG-preferences (see articles 2 and 5 of the Guidelines).

2. What is the legal nature of the SSPA Sustainability Transparency Guidelines?

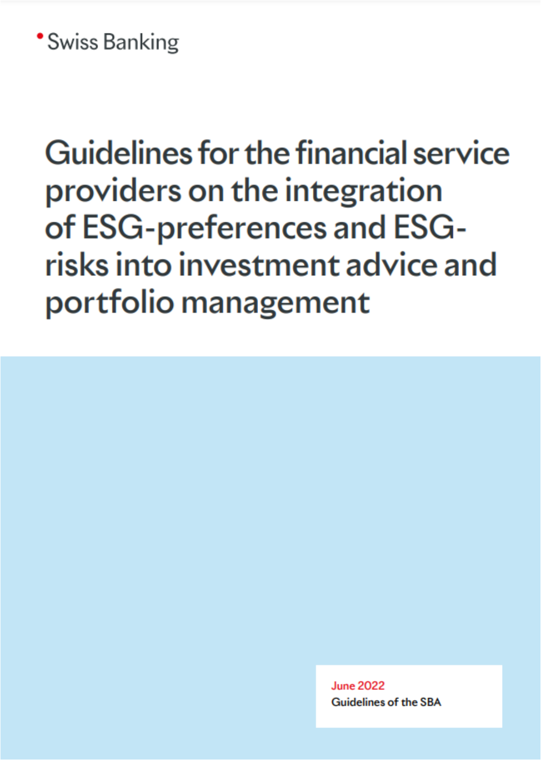
5 The Guidelines are self-regulations issued by the SSPA on a voluntary basis (see article 2 of the Guidelines).

6 The Guidelines may be amended from time to time in order to adapt the Guidelines to current legal and regulatory developments and market conditions in the area of sustainable financial investments (see article 4 of the Guidelines).

7 While the Guidelines do not create any civil or regulatory obligations on the members of the SSPA, the members of the SSPA commit to comply with the Guidelines (see articles 6 and 7 of the Guidelines). Continuous non-compliance with the Guidelines may result in the exclusion of the respective member from the SSPA by the Board of the SSPA.

Swiss Bankers Association (SBA)

- Self-regulation with the intention of integrating clients' ESG-preferences and possible ESG-risks in investment advice and portfolio management
- The guidelines define a uniform minimum standard and shall prevent greenwashing when providing investment advice and portfolio management to clients
- Clients will be asked about their ESG preferences, and then offered appropriate products and services
- The focus of the guidelines is on the financial service level and neither on the financial service provider nor on the financial instrument
- The guidelines provide for information and documentation requirement in connection with the rendering of financial services
- The guidelines entered into force on 01.01.2023 and provide for transitional periods until end of 2024 for new client relationships and end of 2025 for existing client relationships


Swiss Banking

Guidelines for the financial service providers on the integration of ESG-preferences and ESG-risks into investment advice and portfolio management

June 2022
Guidelines of the SBA

Position paper December 2022 - Federal Council wants to prevent greenwashing in financial market

- To ensure the smooth functioning of markets, the Federal Council considers that there is a need for a clear and common understanding about the circumstances under which a financial product or service can be labelled as sustainable
- Federal Council has instructed the State Secretariat for International Finance (SIF) to examine and prepare a report on how this position can be implemented efficiently by end of September 2023
- SIF has reached out to some of the relevant industry and non-governmental organizations, including the SBA, AMAS, SSPA, for their position on how to best protect investors from greenwashing
- Industry organizations are in strong support of self-regulation and do not deem state regulation to be appropriate for now for the lack of flexibility
- FINMA deems self-regulation as not sufficient and favours the introduction of certain principles in financial market regulations to ensure enforceability by FINMA

Thank you for your attention.

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