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## **Deutsche Bank response to Joint Forum consultative document on Point of Sale disclosure in the insurance, banking and securities sectors**

Dear Sirs,

We appreciate the opportunity to comment on the consultative document on Point of Sale disclosure in the insurance, banking and securities sectors.

The exercise carried out by the Joint Forum and the recommendations that resulted from it are a valuable contribution to the debate on how further to improve retail customers' information on investment and savings products and ultimately enhance consumer protection.

Short disclosure documents, delivered to the retail customer at the Point of Sale (POS) could include in many cases the same type of basic information for competing products. Regulators should always take care to maintain a level playing field for the whole range of investment and savings products to reduce the potential for product arbitrage and fully safeguard investor protection. While to some extent, more harmonisation could be considered, we also agree that sectoral or product differences may justify different regulatory approaches with regard to disclosure (especially when product characteristics are different), and that supervisors should also consider costs and benefits associated with new regulations.

We draw particular attention to an issue of self directed investors debated in the context of European and German legislative procedures covering key information documents related to consumer investment operations and which in the German context found a satisfactory solution. Indeed, for technical and practical reasons it may not always be possible to provide a short disclosure document in the language and according to the standards applicable in the investors' home country. In Germany we see among our retail customers more "self-directed investors" emerging. These are customers that do not want to receive advice from the product distributor. Either they are advised by third parties or, on the basis of their experience and knowledge, they are able to take informed investment decisions for themselves. They may ask for products from issuers located in third countries and require their orders to be executed without delay. In these circumstances and given the variety of products available on global capital markets, we will not always be able to deliver an updated POS disclosure document. Under the German law, the distributor is not required to provide such a document, if no advice is provided to the client (execution only). We think that this option provides a balanced solution and avoids an outcome under which self directed retail investors are denied



relevant investment opportunities. (see: *Section 31 of German Securities Trading Act (Wertpapierhandelsgesetz) dealing with the issue of a KID only to be provided in case of advice situation; English version:*[http://www.bafin.de/SharedDocs/Aufsichtsrecht/EN/Gesetz/wphg\\_101119\\_en.html](http://www.bafin.de/SharedDocs/Aufsichtsrecht/EN/Gesetz/wphg_101119_en.html))

Enclosed you will find our more detailed comments on specific points in the consultative document and we trust you find these helpful. Please let us know if we can provide further information.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'A. Procter', with a long horizontal stroke extending to the right.

Andrew Procter  
Global Head of Government and Regulatory Affairs

Encl: 1



## **Deutsche Bank response to Joint Forum consultative document on Point of Sale disclosure in the insurance, banking and securities sectors**

**Recommendation 1:** Jurisdictions should consider implementing a concise written or electronic POS disclosure document, for the product sample identified in this report, taking into account the jurisdiction's regulatory regime.

**Recommendation 2:** The POS disclosure document should be provided to consumers free of charge, before the time of purchase.

**Recommendation 3:** A jurisdiction considering POS disclosure should consider requiring that a POS disclosure document disclose key characteristics including costs, risks and financial benefits or other features of a given product and any underlying or referenced assets, investments or indices, irrespective of the financial sector from which the products are derived.

**Recommendation 4:** The POS disclosure document should be clear, fair, not misleading and written in a plain language designed to be understandable by the consumer.

### **DB Response**

Information about financial products that is clear, complete and not misleading at the pre-contractual phase is an essential precondition for investors being able to make a well informed investment decision.

In the context of POS disclosure standards, we support the use of minimum information requirements about the product in order to ensure comprehensiveness and to allow for comparability with other products. We would however guard against "expected returns" or "simulations" as they do not have predictive power and can mislead clients. We suggest instead clear scenarios that explain in plain language how the product would behave if markets move in a certain direction.

The more mandatory disclosure required, the more the purpose of a short-form or summary disclosure, i.e. to enable the investor to easily analyse and compare, may be jeopardised. Indeed a short form disclosure should not be the only available basis for an investor's decision and should always contain a reference to the relevant long-form disclosure.

In some instances it may not be possible to provide a POS disclosure document before the time of the purchase. Given the variety of investment and savings products available on global financial markets short-form disclosure may be inappropriate, or impractical in a particular case. The obligation to provide a POS disclosure document should be limited to situations where the distributor is advising the client.

**Recommendation 5:** The POS disclosures should include the same type of information to facilitate comparison of competing products.

### **DB Response**

It is crucial to strictly limit any short-form or summary disclosure on financial products to the essentials of a product and to the product specifics without consideration of the individual circumstances of the investor.

Including the same basic type of information on products from across different sectors is possible to some extent but account must also be taken of the product specificities in order to provide the customer with relevant information (e.g. while some products offer variable returns other offer defined return calculated by reference to a formula).



**Recommendation 6:** *The POS disclosure document should be concise, set out key information about a product and may include, as appropriate, links or refer to other information. It should make clear that it does not provide exhaustive information.*

**DB Response:** See our response above to Recommendations 1 - 4

**Recommendation 7:** *Allocation of responsibility for preparing, making available and/or delivering the POS disclosure document should be clearly established, and the POS disclosure document should identify which entity is responsible for its content.*

**DB Response**

A clear allocation of responsibilities is important. Issuers should not be held generally responsible for the actions of distributors. Any responsibility on the issuer should be strictly limited to a general perspective and a product assessment on an abstract basis, *i.e.* without taking into account any potential investor's individual circumstances.

It should, in this context, be recognised that issuers have a vital interest in their reputation and their products. In cases of miss-selling of their products by distributors the issuer's reputation is also at risk. Since, distributors must (economically) be able to offer an attractive range of products to investors, most issuers not only exercise commercial pressure on distributors to sell retail products in accordance with applicable laws, but also offer them training and education tools, such as investor guides and interactive online materials.

Against this background, and given the impossibility of issuers effectively controlling the distribution process, we would consider any mandatory responsibility of issuers for the actions of the distributors as unjustified and impractical. The responsibility of product manufacturers to produce a short disclosure document should be explicitly restricted to cases where their products are offered to retail investors in coordination with distributors. Also, there should only be a liability for the product manufacturers in case of inconsistencies between the content of the POS disclosure document and the content of other legally binding information documents (e.g. prospectus and/or product terms). Product manufacturers should not be held responsible for these disclosure documents in cases where they are not involved in the sale to retail investors. This applies not only where products have been intended by manufacturers for sale to institutional investors only, but also for products for which the manufacturer has agreed to their offering to retail investors, but only for a limited period of time. If distributors provide advice in relation to products no longer intended for offering by the manufacturer, the responsibility for reviewing and potentially updating the disclosure document has to be with the distributor who has decided to provide advisory services independently from the manufacturer.

**Recommendation 8:** *A jurisdiction considering POS disclosure should consider how to use its capabilities and powers to implement these POS recommendations, taking into account the jurisdiction's regulatory regime.*

**DB Response**

We recognise the important role of regulators in the markets for financial products generally, and particularly in observing, and reacting to developments in the retail markets. The possibility for regulators to prohibit the offering and sale of products that result in clear investor detriment should be part of the available regulatory toolkit.



However, the exercise of such measures must always have regard to market practice and regulation for the distribution of financial products. To the extent such distribution rules require distributors to assess, on a case by case basis, which products are suitable or appropriate for which kind of investors, we think that neither product bans nor product standards should give regulators the right to derogate from such general distribution principles. In particular, as long as certain products still appear suitable or appropriate for certain kind of investors (even if sophisticated), we see no room for a general ban of a product. Such measures would be disproportionate.

In any case, regulators should not simply equate complexity of certain products with their riskiness and start to limit product complexity based on, for example, the complexity of the product's calculation formula, overly complex investment strategies or a lack of transparency. Any determination of complexity of a product and resulting attempts to limit such complexity would, in addition to significant resources implications, involve significant risks for the competent regulatory authority as well as for the retail investor. Complexity should be determined based on transparent criteria and in relation to the target investor category.

Mandatory regulatory pre-approval process would similarly entail significant risks for both, investors and the competent regulatory authority while only providing limited benefit. It would involve the risk that retail investors capable of understanding the relevant investment risks will miss relevant investment opportunities. In addition, investors may also assume that they have less responsibility in informing themselves about a proposed investment if they believe that this has been vetted or "checked" by the regulator for them. This may lead to less cautious investor behaviour and an increase in the risk of regulatory failure. Moreover, investors relying on such pre-approval may try to hold the competent regulatory authority responsible for its assessment (even in circumstances where the regulator is afforded some degree of statutory protection).

### **Disclosure practices related to the content of the POS disclosure document**

***Target consumers/typical investor profile:*** *In some jurisdictions a warning on consumers targeted is required to be disclosed.*

**DB Response:** We agree in principle that issuers of retail investment products should play a role in assessing the appropriate end market for their products, in the sense of a targeted class of customer (at least whether the product is intended for professional or private clients), without determining a list of more detailed steps which would always have to be included in practice. The knowledge of the actual investor base is usually with the distributors. As a result, any involvement of the issuer can only be strictly limited to a general perspective and a product assessment on an abstract basis, *i.e.* without taking into account any potential investor's individual specifics. Therefore, the issuer should only indicate whether a product is intended for a broad class of private or professional clients, but provide no further guidance on investor identification which is binding for distributors.

***Product type:*** *In some jurisdictions, the legal form of the wrapper is required to be disclosed to consumers. This may be helpful to consumers for distinguishing the legal framework attached to the product.*

**DB Response:** We agree.



**Manufacturer and counterparty names:** *In some jurisdictions, if the distributor is also the manufacturer of the product or assumes guaranteeing functions, disclosure of this fact is required.*

**DB Response:** Within the EU it is generally the case that distribution and manufacturing take place within the same entity and we see no particular reason for disclosing such a fact.

**Liquidity and related risk:** *In some jurisdictions, the liquidity of the product, related risks and penalties, fees and other consequences in case of early redemption are required to be disclosed. This information could help consumers to analyse how the product can meet their expectations such as their time frame.*

**DB Response:** We agree.

**Product objectives:** *In most jurisdictions, information about the way to achieve the objectives of the product such as the guarantees and the investment policy and also their consequences is required to be disclosed. A clear description of the objectives of the product, any guarantees and a summary of the investment strategy could be provided, showing, where relevant, how the performance of the product depends on the underlying investment assumptions and what the implied risks are. In particular for life insurance contracts, the main categories of underlying investments or eligible assets that are available are required to be disclosed in some jurisdictions that have answered to the mapping exercise.*

**DB Response:** We agree.

**Product risk and reward profile:** *In most jurisdictions, a description of the product risk-reward profile is usually disclosed. A range of risks-rewards could be identified and determined as to facilitate the comparison of risky products. However, a narrative description of the relative risk-reward profile maybe provided, including consequences of it materialising. In the case of insurance contracts, where applicable, this section could state that the risk-profile of the contract depends upon the choice of the underlying investments and can be modified during the term of the contract.*

**DB Response:** The use of different scenarios may increase the likelihood of investors understanding how the product is intended to work. For the purpose of giving effective explanation to investors is it important to recognise the specifics of certain products. E.g. not all structured products, will require scenario analysis providing for the worst, break-even and best cases (e.g. in the case of a reverse convertible bond for example, there are only two possible scenarios for the redemption at maturity). Accordingly, there should not be a requirement to provide an appropriate number of scenarios in all cases. In addition, we think that scenarios should be made part of short-form or summary, but not necessarily of prospectus disclosure.

Standardized risk indicators would not work as no common and unambiguous criteria exist – not cross border and not through the whole value chain (even for various products, criteria might differ under local market framework, in particular having regard to civil law liabilities).



**Guarantees:** *In some jurisdictions, as guarantees could be an important element for some products such as insurance contracts and structured deposits, these features are required to be disclosed.*

**DB Response:** We agree.

**Cancellation rights:** *Some products offer a **cooling off right**. Consequently, this information is disclosed, in some jurisdictions and could enable consumers to be informed on how to use this right.*

**DB Response:** We agree on the need to disclose this right where it exists. We would however guard against introducing such a right for all kind of products as a legal requirement as this could enhance speculation.

**Fees and expenses:** *In most jurisdictions, **loading fees** and all **other expenses** charged, including **structuring fees**, are required to be disclosed. These fees could be important for consumers to **evaluate the impact on product returns** due to the reduction of invested capital or performance.*

**DB Response:** We agree that all external costs should be disclosed to an investor. However the term “structuring fees” is not clear. We would guard against requesting disclosure of disaggregated costs on the level of each component of a product as this would create an overload of information for a typical investor.