

Minutes of the Fourteenth Meeting of the Working Group on Distributions of Securitized Products

1. Date

November 25, 2008 (Tuesday) 15:00 to 17:20

2. Place

JSDA Conference Room

3. Participants

As stated in Appendix 1

4. Agenda

- (1) Self-regulatory rules (continued)
- (2) Application methods for self-regulatory rules

5. Summary of Proceedings

(1) Self-regulatory rules (continued)

A. Enforcement Date

The Deputy WG Chair gave the following explanation regarding the enforcement date for the self-regulatory rules.

- We are thinking of setting the enforcement date as April 1 of next year. This proposal takes into consideration both that it will take time to go through the public comment process and decide on the content of the rules and that it would be best to avoid taking more than one year to implement the rules after the start of the Supervision Guidelines, which were introduced on April 2 of this year.

B. Article A-1

(Core Text)

WG members decided to change “meaning” to “definition.”

(Item 1)

It was decided to insert “actually” before “transfer risk of underlying assets.”

The Deputy WG Chair offered the following explanation of the reasons for (i), (ii), and (iii) being excluded from coverage by the self-regulatory rules.

- There are thought to be no problems with traceability for the products in (i).
- The products in (ii) occur at the formulation stage and are therefore not distributed to investors.
- The products in (iii) are ones for which fund managers and other investment managers provide explanations to investors regarding the substance, risk, and other factors of assets targeted for investment and therefore are of a different nature than products for which regulations for distributors regarding communicating information are needed.

In (i), the WG decided to insert “underlying assets that are to become” before “targeted for investment.” At the same time, the clause “based on this, traceability is ensured” at the end of the text was deleted.

In the section on “the Q&A regarding (i),” the WG decided to move “in accordance with the underlying assets being long-term fixed interest products,” placing it after “interest risk.”

WG members made the proposals below, which were approved.

- There is a concern that the current draft could be read as meaning distributions to non-conduit customers are not covered by the self-regulatory rules. To avoid such a misunderstanding, how

about revising the part in the current draft on “based on the volition of the customer...” to “products distributed to conduits (products distributed to conduits are limited to those distributed without request by customers)”?

A WG member asked whether the exclusion category (ii) included the preferred equity investment to the TMK by persons that were understood to actually be buying the assets, in addition to the subordinated portion that were owned by an originator. In response, the WG Chair said that (ii) applied to products in the case mentioned because they were not sold to investors. However, if said preferred equity investment were distributed to an investor, (ii) would no longer apply at that point and they would be subject to self-regulatory rules.

(Q&A related to Item 2)

With regard to the “Q&A on Intermediaries,” the Deputy WG Chair and a WG member said that there were some problems with the explanation of intermediaries in the current draft. Therefore, they made a proposal to the effect that, with reference to the indications in the Supervision Guidelines, it would be better to indicate that intermediary cases were restricted and referred to cases where the JSDA member plays only a limited role. Based on the approval of this proposal, the WG decided to make the following revisions in Item 2 in “Q&A on Intermediates.”

Q: What behavior does “intermediation” refer to?

A: “Intermediation” in this rule refers, as set out in the Supervision Guidelines,” to cases where the JSDA member plays only the limited role of simply acting as the intermediary for the distribution.

C. Article B-1

(Q&A related to Item 1)

For the “Q&A on Other Bodies,” the WG decided to revise “in Items 1 to 3” to “in Item 1.”

(Items 2 and 3)

The Deputy WG Chair explained that based on the comment made in the previous meeting that expressions using “decision” were used too often, they had been revised to “thought necessary” from the perspective of easier reading.

It was decided to revise the part “Consider communicating the information collected and analyzed as per the previous Item. Having done so,” to “Of the information collected and analyzed as per the previous Item,”.

(Q&A on Items 2 and 3)

For the “Q&A on Third Parties,” a WG member made the proposals below.

- How about revising “For example, when information has already been communicated through the respective servicers, trustees, and information vendors” to “For example, when, based on the contract of each securitized product, information has already been communicated through the respective servicers, trustees, and information vendors.”? This revision makes it clear that the information is being communicated based on a contract and also clarifies that communication to customers by a third party is limited to certain cases only.

In reply, a WG member and the Deputy WG Chair made the following comments.

- Presently, the information that communicated by the information vendors is not necessarily based on contracts, etc.”
- For the section on “point of distribution” in Item 2, wouldn’t it include future communication as well? For example, realistically, there should be no problem with the first round of information disclosure for new issues in cases where the disclosure has been organized by the arranger. However, if you insert the word “already,” the text cannot be read as including such cases.

The WG Chair submitted the following revision proposal, which was approved.

- “For example, when, based on contracts, etc., information has already been communicated through the respective servicers, trustees, and information vendors. (Provided that this includes new issues where JSDA members can confirm that a mechanism is in place to communicate information at a pre-determined point in the future.)”

(Item 3)

The Deputy WG Chair made the proposal below, which was approved by WG members.

- As information that should be collected and communicated, we should include “new information that is thought necessary to communicate to customers at the point of information submission.” Following distribution, it is important to communicate not only an update of the information collected under Item 1, but also to communicate information that has arisen after the fact to investors. The purpose of this addition is to clarify that position.

A WG member expressed the opinion that information collected after distribution is not necessarily analyzed. Therefore, he wondered whether the expression “Collected and analyzed” should be revised. The word “analyzed” also cannot be found in the Supervision Guidelines in the section on post-distribution. In response, the Deputy WG Chair and another WG member made the following comments.

- Since the important aspect of the meaning of “analyzed” is to organize the significance of the information or consider the method of explanation, the word “analyzed” should remain. I think it would be sufficient to insert “as necessary” after “analyzed.”
- Because this part is prefaced with “if requested by the customer,” I don’t think it is necessary to delete “analyzed” just because it isn’t covered in the Supervision Guidelines. Rather, I think it should be left in.

The WG Chair suggested using “analyzed as necessary” since in providing information, analysis, in other words, putting in simple terms, was important. This proposal was approved.

(Item 4)

A WG member made the following proposal.

- It previously was pointed out that the expression “JSDA members will decide” was used often; the word “decision” was revised to “thought necessary” in items 2 and 3 of the present draft. In addition to believing that it would be better to maintain consistency with this revision, I feel that the use of the word “decide” in explaining to customers the reasons for not being able to collect or communicate information is a little severe. If we have rearranged this so “decision” is being used for the action of “collecting” and “thought necessary” is being used for the action of “communicating,” then in Item 4 why don’t we revise “decide” to the expression “thought necessary to explain”?

(Items 2 to 4)

In response to the opinions expressed by a WG member on Item 4, an observer had the following comment.

- If the word “decision” is replaced with another expression, there is a concern that who is making the “decision” becomes ambiguous. This goes the same for Item 2 and Item 3, but if the word “decision” is changed to another expression, I think it will be difficult to understand the difference of the use of “decision” in Item 1. I think that “decision” should be used in items 2 to 4, but if that is not possible, it is necessary to explain their meanings in the Q&A, etc.

In reply, the Deputy WG Chair gave the following opinion.

- Since Items 2 and 3 are the provisions for the “collecting and communicating of information” in Item 1, it is possible to think of “decision” in Item 1 also covering items 2 and 3. Because the information collected and analyzed is basically being communicated, I think we don’t have to use “decision” in items 2 and 3.

The same observer suggested that since the information collected and analyzed is basically being communicated, as a separate proposal, it would be possible to revise the items, for example Item

2 could be changed to “for the information collected and analyzed in the previous item, with the exception of the information that cannot be communicated...” In reply, another WG member made the following comment.

- In reality, there are cases where among the information that is necessary for JSDA members to collect, there is highly detailed information that should not be communicated “as is” to the customer. Therefore, we should not omit the “communication decision” from the process. If we are not going to use the expression “thought necessary,” wouldn’t it be better to revive the use of “decision” in all of the items from 2 to 4?

The WG Chair proposed that for the public comment proposal that the word “decision” be used for all the items from 2 to 4, which was approved by the WG.

(2) Application methods for self-regulatory rules

(Supplemental Provisions)

WG members expressed the following opinions.

- I say this mainly with secondary distribution in mind, but for the securitized products in existence before the enforcement date for the self-regulatory rules, if the purpose is to exclude them from the rules, shouldn’t we say “securitized products formulated and issued before the enforcement date” rather than “securitized products distributed before the enforcement date”?
- It is not clear whether “securitized products distributed before the enforcement date” is referring to distribution at the primary stage or after that at the secondary stage.

The WG Chair stated that there were same problem at the primary stage distribution of the securitized products being held by a securities company that were formulated and issued before the enforcement date, but distributed after the enforcement date. But at any rate, the securitized products formulated and issued before the enforcement date will not have to be reformulated to fit the self-regulatory rules. Although in that sense they will be excluded from coverage under the rules, “it will be desirable for their treatment to be based on the self-regulatory rules.”

The WG decided that the WG Chair, WG Deputy Chair, and the Secretariat would follow up with making a detailed draft of revisions.

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