



BANGKO SENTRAL NG PILIPINAS

OFFICE OF THE GOVERNOR

CIRCULAR NO. 891

Series of 2015

Subject: Sales and Marketing Guidelines for Financial Products

The Monetary Board, in its Resolution No. 1811 dated 29 October 2015, approved the following guidelines governing the sales and marketing of financial products, which replaces the sales and marketing guidelines for derivatives under Appendix 26 of the Manual of Regulations for Banks (MORB) and Appendix Q-16 of the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI).

Section 1. The contents of Appendix 26 of the MORB and Appendix Q-16 of the MORNBFI are hereby transferred to Section X661 of the MORB and Section 4661Q of the MORNBFI, respectively, and amended to read as follows:

"Section X661/4661Q Sales and Marketing Guidelines for Financial Products.

General Principles. A BSP-Supervised Financial Institution (BSFI) shall always act with honesty, fairness, and professionalism, and pursue the best interests of its clients. Due to the increasingly sophisticated products being introduced in the market, a BSFI acting as a dealer or broker shall have a clearly articulated strategy for the sale and marketing of financial products. The BSFI is expected to manage the risks arising from such activities and protect the interest of its clients. In this regard, a BSFI shall have appropriate policies, procedures and controls in place to ensure the suitability of the products being offered to its clients. It shall ensure that (1) the client understands the nature of the transaction and the risks involved and (2) the transaction meets the client's financial objectives and is aligned with the client's risk tolerance. It shall also provide sufficient, accurate and comprehensible information about the products, including inherent risks, in a clear and balanced manner to enable its clients to make informed financial decisions.

The BSFI shall be guided by the principle of proportionality in setting policies and procedures for its sales and marketing activities. It shall differentiate between less and more sophisticated clients, and tailor the manner by which they are engaged in accordance with such sophistication. Controls shall be in place to ensure that the BSFI complies with its internal policies and procedures, as well as relevant rules and regulations. At the minimum, BSFIs must satisfy the expectations set out in these guidelines.

The BSFI's sales and marketing policies, procedures and controls shall form part of its consumer protection risk management system, consistent with the regulations on financial consumer protection set forth under Circular No. 857 dated 21 November 2014.

§ X661.1/4661Q.1 Scope of Application. These guidelines prescribe the minimum standards for sales and marketing activities of BSFIs acting as dealers or brokers of financial products.

These shall apply to all banks and non-bank financial institutions performing quasi-banking functions. Trust departments shall not be covered by these regulations; they shall continue to be governed by the provisions of Part IV of the MORB and MORNBFi as applicable. Likewise, cross-selling activities shall not be covered by these guidelines; they shall be governed by the provisions of Section X172 of the MORB, as amended.

§ X661.2/4661Q.2 Definition of Terms. For purposes of this section, the following terms shall have the meanings set forth below:

- a. Financial products – refer to debt and equity securities, hybrid securities, derivatives as defined under Sections X611 of the MORB and 4611Q of the MORNBFi, securitization structures, and similar products with substantial investment characteristics.
- b. Broker - a person engaged in the business of buying and selling securities for the account of others.
- c. Dealer - a person who buys and sells securities for own account in the ordinary course of business.
- d. Complex products – refer to financial products whose terms, features and risks are not reasonably likely to be understood by a non-sophisticated client because of their complex structure, and which are also difficult to value, particularly when there is a very limited or no secondary market.

§ X661.3/4661Q.3 Client Suitability Guidelines. A BSFI shall ensure that the financial products it recommends to a client are appropriate for that client through a client suitability process, which involves obtaining client information, classifying a client according to financial sophistication and risk tolerance, and conducting a suitability review.

a. Client Information

The BSFI shall obtain necessary and sufficient information about the client that will serve as bases for its suitability assessment. At a minimum, the following information shall be obtained in addition to the basic account information:

- *Investment amount/investible funds or amount of exposure to be hedged;*
- *Financial situation* - the client's financial standing, which includes information on assets, net worth, financial commitments, regular income, and capacity to withstand losses arising from financial transactions;
- *Knowledge of financial products* - the client's knowledge and understanding of the financial markets and products and the risks involved therein;
- *Investment/hedging experience* - the nature of investments and/or derivatives transactions undertaken by the client, including the length of time, frequency of dealings, and the extent to which he/it has relied on the advice of a bank or a financial advisor, if any;
- *Financial objectives* - the client's goal or purpose for entering into a transaction, whether it be for regular income, capital appreciation, capital preservation, maintenance of purchasing power, hedging as against investment, and/or long-term buy and hold as opposed to short-term active trading;
- *Risk appetite* – the level of risk a client is willing to take;
- *Holding period or investment horizon* – the length of time over which the position or exposure to be hedged will be held by the client;
- *Regulatory and legal constraints* – prohibitions or limitations imposed on the activity of the client by existing laws, rules, and regulations, and;
- *Liquidity needs* – the client's need to convert positions into cash and the timing of such requirement.

To foster cooperation from the client, the BSFI shall explain the reason for assessing suitability. If the BSFI is unable to obtain sufficient information, it shall refrain from offering or recommending any financial product.

A BSFI may design and use its own system for obtaining client information, which may include questionnaires and interviews. However, pre-formatted questions and responses shall be fit for the purpose and presented in a clear and understandable manner. Likewise, technical or

unfamiliar terms shall be explained as needed, in order to prevent different interpretations and/or erroneous responses.

While the client is responsible for providing accurate and updated information, BSFI personnel shall exercise diligence in reviewing the consistency of the responses and reliability of the information provided based on available documents, such as publicly disclosed information and those obtained from the client's existing contractual relationships with the BSFI. It is highly recommended that the BSFI requests for documents to support the client's representations, particularly where the client wishes to transact in complex products. Subsequent changes to client information, if any, shall be adequately documented and concurred with by the client along with the discussions and/or clarifications made.

For a legal entity or a group of two or more natural persons, the BSFI shall obtain evidence that: (1) the client is specifically authorized to enter into all or specific kinds of financial transactions, and (2) the client's representative/s is/are authorized to carry out transactions on behalf of the entity/other parties, in accordance with the applicable legal framework.

When gathering information from a representative, the BSFI should be able to demonstrate that it has taken steps to ascertain that the information obtained is reflective of the entity or group's situation. In addition, it shall determine if the client has competent/qualified personnel to handle the proposed activities.

If a corporate client seeks to participate in complex products, the BSFI shall require the client to incorporate in the document authorizing the latter's activities that it likewise has appropriate risk management systems sufficient to manage and monitor the risks it will take.

At a minimum, client information, including client classification, shall be reviewed and updated prior to transacting in a product that is new to the client, or earlier in case of material changes in the client's financial situation or goals. Adequate controls shall be implemented to ensure the confidentiality and security of client information.

b. Client Classification

Based on the information obtained from a client, a BSFI should be able to classify a client into one of the following categories according to financial sophistication:

- *Market counterparty* - refers to any financial institution, only with respect to the instruments in which it is authorized to engage as a broker dealer;
- *Sophisticated institutional client* - refers to an institution that is not a market counterparty but has the level of net worth, knowledge, expertise, and experience to deal with financial products;
- *Sophisticated individual client* - refers to an individual who has demonstrated to the BSFI that he has the level of net worth, knowledge and experience to deal with financial products; or
- *Other clients* – refer to all other institutional or individual clients not categorized as market counterparty, sophisticated institutional client or sophisticated individual client.

BSFIs are encouraged to adopt a more granular categorization according to financial sophistication, provided that the categories can be mapped into the broad classifications above and the differences between categories are clearly set out.

In addition, a BSFI shall classify a client according to risk tolerance. This entails assessing the client's preferences, willingness to take on the risks associated with a product, and ability or capacity to absorb the losses that may arise from such product, as well as whether such losses will have a detrimental impact on the client's financial condition. At a minimum, a BSFI's classification of a client according to risk tolerance shall include, but need not be limited to, the following categories:

- *Conservative* - Client prefers an investment and/or hedging strategy where the primary goal is to prevent the loss of principal;
- *Moderate* - Client is willing and able to expose funds to a moderate level of risk in consideration for higher returns or to meet certain objectives; and
- *Aggressive* - Client is willing and able to accept higher risks involving volatility of returns and even possible loss of investment in return for potentially higher long-term results.

Whenever a scoring system is used for client profiling, the BSFI shall ensure that the system is robust, fit for the purpose, and adequately tested. Any limitation in the system shall be mitigated through client discussions and the suitability review process. The system shall be calibrated as necessary to reflect appropriate results.

The BSFI shall make a record of the classification under which each client is categorized, including sufficient information to support the categorization. The classifications of the client according to sophistication and risk tolerance shall serve as bases for the BSFI's product offerings and the level of disclosures required.

c. *Suitability Review*

Before proposing or recommending a particular product to a client, a BSFI shall determine that the product is:

- Suitable to the client's needs, financial situation, and objectives;
- Consistent with the client's mandate, risk tolerance, and constraints; and
- Aligned with the client's knowledge and experience, such that he/it understands the nature of and risks associated with the product.

Likewise, the BSFI shall inform its client of alternative products that are suitable to his/its circumstances.

A BSFI shall maintain a record of the assessment as well as all information used as bases of its suitability review. This includes written documentation to the extent that such was created to evidence interviews and analyses made in the performance of its due diligence process. The BSFI is expected to conduct a more in-depth assessment before offering complex products. It is highly recommended that a BSFI requires a client to sign his/its conformity to the suitability assessment (including the information on which it is based) in order to avoid disputes with the client.

A client who is classified as conservative may only transact in plain vanilla financial products as follows: (i) peso-denominated Government Securities representing direct obligations of the Government of the Republic of the Philippines; (ii) foreign currency-denominated Government Securities representing direct obligations of the Government of the Republic of the Philippines; (iii) highly liquid sovereign bonds, corporate bonds, and commercial papers issued off-shore rated at least "AA-" or its equivalent by a reputable international credit rating agency; (iv) highly liquid domestic corporate bonds and commercial papers rated at least "AAA" or its equivalent by a reputable credit rating agency; and/or (v) foreign exchange derivatives solely for hedging, subject to the results of the suitability review.¹

In cases where the client is classified as a market counterparty, the BSFI does not need to comply with the required suitability review, considering the client's recognized sophistication. However, a BSFI should be able to provide sufficient support for its classification.

Appropriate controls shall be in place to deter unauthorized overriding of the results of the suitability assessment. A BSFI shall only offer the range of products that is viewed as suitable for the client. Nevertheless, it is recognized that, in certain instances, a client may insist on transacting in a particular product that has previously been assessed as unsuitable for his/its profile. In such cases, the BSFI shall obtain the client's confirmation in writing that:

- (a) The BSFI has informed the client of the protections he/it may lose and conversely, of the risks that he/it is exposed to,
- (b) The client still wishes to proceed with the transaction despite the BSFI's assessment, and
- (c) The client fully understands and is willing to take the risks attendant to the product to be availed of.

However, in no case shall the BSFI offer to its clients the option to automatically and comprehensively waive the outcome of the client classification process and the resulting protections offered by the rules on client suitability.

§ X661.4/4661Q.4 Disclosures. A BSFI shall always be mindful of its statements regarding its products/services, whether the statements pertain to promotion, marketing or sale thereof or in the course of making the required disclosures. It shall institute measures to ensure that its clients understand the nature of and risks in a financial transaction. Although a BSFI can tailor-fit information, marketing and sales presentations/materials depending upon the sophistication of its client, it shall institute measures to ensure that its clients understand the nature of the financial transaction. The BSFI shall also take further steps to adequately disclose the attendant risks of the financial transactions when dealing with an unsophisticated client, either generally or with respect to a particular product being offered. A BSFI shall adopt standards for its publications/materials/disclosure statements and regularly review the aforementioned documents to ensure that they meet the standards.

A BSFI shall not misrepresent or give a false impression of the financial products it offers in any of its advertisements, electronic communications, written materials (whether publicly disseminated or not) or oral representations. A misrepresentation is any statement that deviates from the truth or omits a material fact or even tends to mislead the recipients.

a. Financial promotion (marketing and sales)

A BSFI embarking on a financial promotion, whether through a direct offer or information/sales publications, shall ensure that it gives sufficient information on the entire transaction, including the underlying financial instruments, if any, to enable a client to make an informed decision. A BSFI shall prominently indicate its name in all its promotional materials and specify its role or capacity in the transaction (e.g., issuer, dealer, broker).

A financial promotion is considered clear, fair and not misleading if all of the following requisites are present:

- The information provided does not only emphasize the potential benefits of the product but also presents a fair and prominent description of the relevant risks and assumptions;
- It draws the customer's attention to the warnings, exclusions and disclaimers in all documents relating to the financial product;
- The design, content or format of the presentation does not disguise, obscure or diminish the significance of any statement, warning or other matters that the customer should be aware of;
- A client, by himself, can discern from the presentation whether a statement is a fact, promise or forecast;
- The accuracy of all material statements of fact can be substantiated;
- Any comparison or contrast of a product offered is made with another product that is intended to meet the same needs or to serve the same purpose. The comparison or contrast shall include all relevant factors. The facts presented shall be verifiable; alternatively, the relevant assumptions shall be disclosed;
- No reference to an approval by a regulatory body or its officials is made, unless a written approval was actually obtained;
- A recommendation to consult/refer to a financial advisor is made; and
- It does not omit any information, the omission of which causes a material fact to be misleading, unclear, or unfair.

A BSFI shall consider the client's knowledge of the transaction to which the given information relates. However, it shall not assume that clients/recipients necessarily have an understanding of the product being promoted. It shall also assess its usage of terms, especially those which are technical in nature. If promotional or marketing materials are specially designed for a targeted client base that is reasonably believed to have particular knowledge of the investment, this fact shall be made clear in the materials.

b. *Product disclosures*

A BSFI shall endeavor to explain the financial products it offers to its clients to enable the latter to make an informed decision. Product disclosures shall present an adequate description of (a) the nature and features of the financial product, including any underlying instrument(s), (b) the amount of outlay required, (c) the costs involved, and (d) the risks related to the product. In general, disclosures shall always be presented in a balanced manner whereby the potential benefits of a product are tempered by a fair indication of the risks involved.

Disclosure statements shall be presented in a clear, concise and effective manner to promote the client's understanding of the product. The use of industry and legal jargon shall be minimized to the extent possible. If such cannot be avoided, these terms shall be clearly defined and explained to the client. A greater level of disclosure shall be provided if a product is not generally understood by clients, for instance, in the case of new or complex products.

Should the BSFI make use of materials provided by the issuer of a particular instrument, the client shall be made aware that the issuer is responsible for the representations contained therein. However, the BSFI is responsible for communicating the relevance of said materials to the client.

A product disclosure that includes an illustration of past or future performance shall comply with the following:

- a. When the product's past performance is used to illustrate possible future returns, the disclosure shall state that past performance is not necessarily indicative of future performance. This shall be presented in the main text of the presentation material. Past performance shall

- be culled from a reasonable time frame to provide a fair and balanced indication of a product's performance;
- b. When using any forecast on the economy or financial markets, the disclosure shall state that such forecast is not necessarily indicative of the future performance of the product; and
 - c. Illustrations of returns shall include worst-case scenarios (i.e., not just the likely or best scenarios). Benefits shown in headline rates (pro-forma returns highlighted) should be realistic and achievable, and not based on unreasonably optimistic views of events.

Disclosures for products with some form of guarantee or protection should highlight which benefits are guaranteed/protected and those which are not. In instances where the guarantee or protection involves a cost to the client, the BSFI shall disclose the fees or charges for the same. A BSFI shall also disclose to the client the counterparty (e.g., issuer/guarantor) risk involved so that he/it is not misled about the product's capital security/principal protection. When applicable, a BSFI shall state if the guaranteed or protected amount is payable only at the end of the term.

Product disclosures for leveraged transactions² should emphasize that while these types of products/strategies amplify the potential gain from an investment, they also increase the potential loss thereof. A client who intends to engage in margin buying, a means of applying leverage in investing, shall be cautioned on possible loss exceeding the margin or initial cash outlay.

c. *Minimum required disclosures*

The minimum required disclosures shall always be in writing. A BSFI shall require its client to sign or initial the disclosure statement as affirmation of the client's receipt and understanding of the disclosure statement, unless the client is a market counterparty. A BSFI may opt to draft an individual or separate disclosure statement for its client or incorporate the same in the main transaction agreement/contract.

Product-specific minimum disclosures shall include:

- The nature of the financial product, including the underlying financial instruments, and how these products work;
- Investment horizon or tenor of the financial product;
- Fees and charges, if any;

- Details on the issuing entity in case the dealing BSFI is not the issuing institution (i.e., the BSFI acts as a broker/ dealer or market maker);
- Returns or benefits likely to be derived from the instrument, the amount and timing thereof and whether the benefits are guaranteed or not;
- All risk factors that may result in the client receiving returns less than the illustrated returns and factors affecting the recoverable amount by the client;
- Details of conflicts of interest, if any;
- Information on the handling of complaints related to the product;
- All termination clauses, when appropriate, including charges and restrictions;
- Any warning, exclusion or disclaimer in relation to the risk and rewards of the product, including, but not limited, to the following:
 - The product carries higher risks than those associated with ordinary bank savings or time deposits;
 - The product is risky and may not be appropriate if the client is not willing and able to accept the risk of adverse movements in the underlying securities or reference rates;
 - Past performance of the product is not a guarantee of its future performance.
- Other disclosures that may be required by existing laws, rules and regulations.

Where applicable, a BSFI shall draw the attention of the client to the following:

- The effect of early redemption of a product on the return (e.g., penalties and/or poor returns);
- The availability of maximum benefit advertised after a specified period; and
- The required conditions for the advertised growth rate of income to materialize.

Complex products should carry a standard warning that they are not suitable for all clients, and are intended for experienced and sophisticated clients. They should likewise carry appropriate warnings on the high economic risks of the transaction, such as:

- Loss of all or a substantial portion of the investment due to leveraging or other sophisticated practices;

- Mismatch between the change in the price of a hedge versus the change in the price of the exposure it hedges;
- Volatility of returns;
- Lack of liquidity considering that there may be no secondary market for the instrument;
- Restrictions on transferring interests; and
- Absence of information regarding valuation and pricing.

§ X661.5/4661Q.5 Sales and marketing personnel. Any informational or promotional presentation regarding financial products shall be undertaken only by personnel who are knowledgeable on the products involved. In assessing the knowledge of its personnel, a BSFI may consider their educational background; relevant training; certification; and professional experience in rendering investment advice, making presentations regarding financial products and/or assessing the propriety of financial products for a client. The personnel involved in the transactions shall likewise be familiar with all relevant laws and applicable rules and regulations and shall ensure compliance therewith.

At a minimum, a BSFI shall establish qualification standards for personnel involved in sales and marketing activities and require compliance with the registration requirements prescribed by existing securities laws, rules and regulations. In addition, a BSFI shall implement, and maintain a reasonably comprehensive system of training geared at enhancing the technical knowledge of its personnel to enable them to understand and explain the nature and risks of a BSFI's financial products, and ensure client suitability.

Management shall regularly review the BSFI's compensation and incentive programs and ensure that such remuneration schemes do not place the interests of the sales and marketing personnel in conflict with those of their clients.

The BSFI's board of directors and senior management shall be liable for the acts performed and representations made by sales and marketing personnel in their official capacity. Notwithstanding the foregoing, a BSFI's board of directors and senior management are not precluded from filing the necessary action against the erring sales and marketing personnel.

§ X661.6/4661Q.6 Role of Control Functions. The control functions shall periodically monitor and evaluate the continuing effectiveness and adequacy of the sales and marketing policies and procedures. They shall regularly

provide senior management or the Board, as appropriate, with written reports on the results of their review.

A BSFI's operational risk management framework shall take into account sales and marketing activities in the identification and assessment, monitoring and reporting, and control and mitigation of risks.³ The compliance function referred to in § X180.2/§ 4180Q.5 shall be responsible for monitoring and assessing the BSFI's compliance with applicable laws, rules and regulations in the conduct of sales and marketing activities. The internal audit function shall include in its scope the review and evaluation of the BSFI's compliance with internal policies and procedures for the sales and marketing of financial products, issuance of recommendations based on the results of the audits conducted, and the verification of compliance with those recommendations, in accordance with § X186.2/§ 4186Q.2, as amended by Circular No. 871 dated 05 March 2015.

§ X661.7/4661Q.7 Record Retention. Documents evidencing compliance with this Circular shall be retained for a period of not less than five (5) years unless an investigation is being conducted, or a criminal, civil, or administrative case has been filed in a competent judicial or administrative body where a client is involved or impleaded as a party to the case or investigation. In such cases, the above documents shall be preserved beyond the five-year period until such time that a final judgment has been reached by the judicial or administrative body.

§ X661.8/4661Q.8 Enforcement Actions. The BSP may deploy its range of supervisory tools to promote adherence to the requirements set forth in these guidelines and bring about timely corrective actions and compliance with BSP directives. Sanctions may likewise be imposed on the BSFI and responsible persons, which may include restrictions or prohibitions from certain authorities/activities; and warning, reprimand, suspension, removal and disqualification of concerned directors, officers and employees.

¹ The BSFI is expected to have an internal policy for the identification of reputable credit rating agencies and prudent use of external credit assessments.

² Leverage or gearing can be employed in a structured product in order to offer higher yields.

³ BSFIs should refer to existing Guidelines on Operational Risk Management."

Section 2. Appendices 26 and 26a of the MORB and Appendices Q-16 and Q-16a of the MORNBF are hereby deleted.

References made to Appendix 26 of the MORB and Appendix Q-16 of the MORNBFBI shall be amended to Section X661 of the MORB and Section 4661Q of the MORNBFBI, respectively.

Section 3. Transitory Provision. BSFIs shall be given three (3) months from the effectivity of this circular to make appropriate changes in their sales and marketing policies, processes and materials in order to comply with the above requirements.

Section 4. Effectivity. This Circular shall take effect fifteen (15) calendar days following its publication either in the Official Gazette or in a newspaper of general circulation.

FOR THE MONETARY BOARD:


NESTOR A. ESPENILLA, JR.
Officer-in-Charge

09 November 2015