



GUIDANCE NOTE FOR
BOARD MEMBERS

**STRUCTURED
PRODUCTS DECODED:
MANAGEMENT AND
GOVERNANCE
ESSENTIALS**

WORKING GROUP | BEST PRACTICE
MANAGEMENT & CORPORATE GOVERNANCE

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INTRODUCTION

Structured products are a type of transaction that represents a considerable portion of Luxembourg securitisation market. Structured product transactions often involve the transformation by an **FVC** of an existing security¹ or pool of securities (the **Underlying Asset**) which in turn may be combined and restructured to create a new financial instrument.

For avoidance of doubt, in this paper the Underlying Asset should be understood as an existing issuance which often consists of debt instruments such as corporate and/or government bonds, commercial and/or mortgages, credit cards obligations and other debts.

Structured products allow to tailor made the characteristics of the Underlying Asset to the specific needs or preferences of the targeted investors. It can encompass, *inter alia*, a change of the coupon, currency, maturity, interest payment frequency or it may bundle several assets into a new pool allowing a simplified investment by the subscription to one single security.

The **Arrangers** of such transactions are often banks, who structure the transaction according to the investor needs, allowing the latter to gain exposure to certain risk profiles or assets that they might not be eligible for due to investment restrictions otherwise.

The cash flows of the Underlying Asset are often reprofiled by entering into a derivative transaction such as swaps.

The swap allows for an exchange between the scheduled cash flows, such as currency or interest rate (variable vs. fixed) of the Underlying asset and the amounts due to investors corresponding to the terms of the FVC's notes issuance. In some instances, such transactions are made under a so-called master programme, which then segregates each transaction by series, which themselves are often issued in separate compartments. The transaction parties mostly are the same but could also be different in the various transactions. Depending on the size of the programme, there could be several **Dealers** or **Clearing Agents**.

Terms and abbreviations used in this publication are defined in the glossary at the end of the document.

For a comprehensive overview of this type of transaction from an accounting and reporting perspective, please refer to the guidance note issued by the Accounting and Reporting sub-group, available [here](#).

¹ This term does not encompass fund units.

MAIN PARTIES INVOLVED IN A STRUCTURED PRODUCTS TRANSACTION

The key parties involved in a structured products transaction remain largely the same as in other forms of securitisation², with the exception of a swap counterparty defined below.

Described below are some specificities that shall be noted in this context.

ARRANGER

The **Arranger** in a structured products transaction is typically a financial institution, such as a bank, that was in most cases involved in the initial issuance of the Underlying Asset.

Through a structured product securitisation, the risk associated with the Underlying Asset is transferred, by pooling and packaging these assets into securities, and subsequently selling them to investors via an FVC. The Arranger, often being a bank, structures such transaction for its clients.

SWAP COUNTERPARTY

In transactions whereby a derivative instrument is used, the **Swap Counterparty** is a counterparty to a derivative contract, i.e. the swap agreement, entered into with the FVC when the notes are issued. The parties to the contract agree to exchange the cash flows of the Underlying Asset, which are then channeled through the Swap Counterparty, allowing parameters such as interest, payment frequency, currency, maturity, etc., to be changed. The aim of the swap agreement is to ensure that the investors receive the interest defined under the terms of the notes issued by the FVC.

DEALER

The **Dealer** is typically responsible for facilitating the trading, distributing and market making of the structured products issued by the Arranger.

CALCULATION AGENT

The **Calculation Agent** is responsible for calculation and reporting of the distribution of interest and principal to the Noteholders.

² Please refer to the LuxCMA [Guidance Note for Board Members I Securitisation of Receivables](#) released in April 2023 and available on the LuxCMA website.

PAYING AGENT

The **Paying Agent** is responsible for payments of interest and principal to the Noteholders. The payment instructions are prepared based on the details received from the Calculation Agent in advance of the payment date. The Paying Agent is also in charge of any payments due to the creditors of the FVC.

COMMON REPORTING IN STRUCTURED PRODUCTS TRANSACTION

The below is a non-exhaustive list of examples of commonly observed reporting in structured products transactions.

CALCULATION AGENT REPORTS

The **Calculation Agent** prepares the following reports according to the frequency of the interest payment of the Underlying Asset and the notes issued by the FVC:

- Payment report, which is addressed to the **Management** of the FVC, detailing the amount of funds collected and their allocation; and
- Investor report, which is distributed to the noteholders and includes details of the notes, the Underlying Asset composition and overall performance on the structured products transaction.

EMIR REPORTING

Whenever a derivative instrument is part of the structured products transaction, the FVC will fall within the definition of a non-financial counterparty within the meaning of the [Regulation \(EU\) 2019/834 of the European Parliament and of the Council of 20 May 2019](#) (the **EMIR Refit**) having a reporting obligation.

On 1 December 2023, the CSSF published [Circular 23/846](#), which integrates the ESMA guidelines on reporting under EMIR³ into CSSF's administrative practice and regulatory approach.

³ The [EMIR Reporting Guidelines](#) published on 23 October 2023.

The document provides guidance and clarifications on certain aspects of the revised EMIR reporting obligations and standards for counterparties in the context of the entry into force on 29 April 2024 of the “EMIR Refit Reporting Technical Standards”.⁴

Under EMIR both parties to the swap arrangement have to report their legs of the transaction, but in the case of an FVC such reporting obligation can be delegated back to the Swap Counterparty, as long as it is a financial counterparty (i.e. a bank or a broker dealer).

In practice, the Swap Counterparty will most of the time be the Arranger or **Originator**), which according to the EMIR Refit shall be responsible, and legally liable for reporting the details of the derivative contract entered into with the FVC. The latter however remains responsible for providing the Swap Counterparty with the details which the Swap Counterparty cannot be reasonably expected to possess and for ensuring that those details are correct.

It is the responsibility of the Management to ensure that the relevant reporting obligations are met and required filings are done within the legally prescribed deadlines.

It is also imperative that the Management has the necessary understanding of the derivative transaction valuation and is able to demonstrate its understanding of it and whenever applicable, challenge the valuation provided by the Swap Counterparty.

Whilst in practice the Management will delegate back the EMIR reporting obligation to the financial counterpart, it also has to maintain oversight and enter into an agreement for the dispute resolution, should there be a difference in the records.

Following the EMIR Refit entry into force, the FVC has full access of all reported items and therefore also has to introduce appropriate controls ensuring that the quality of the data reported are appropriate. Where e.g. the FVC is reported as a corporate and also an NFC (Non-Financial Counterparty) - it is clear that the reporting standards are not met, as only one classification per FVC is possible.

⁴ EMIR Refit Reporting Technical Standards include Regulatory Technical Standards ([RTS](#)) and Implementing Technical Standards ([ITS](#)), [Commission Delegated Regulation \(EU\) No 2022/1858 of 10 June 2022](#) and [Commission Delegated Regulation \(EU\) No 151/2013 of 19 December 2012](#), as amended.

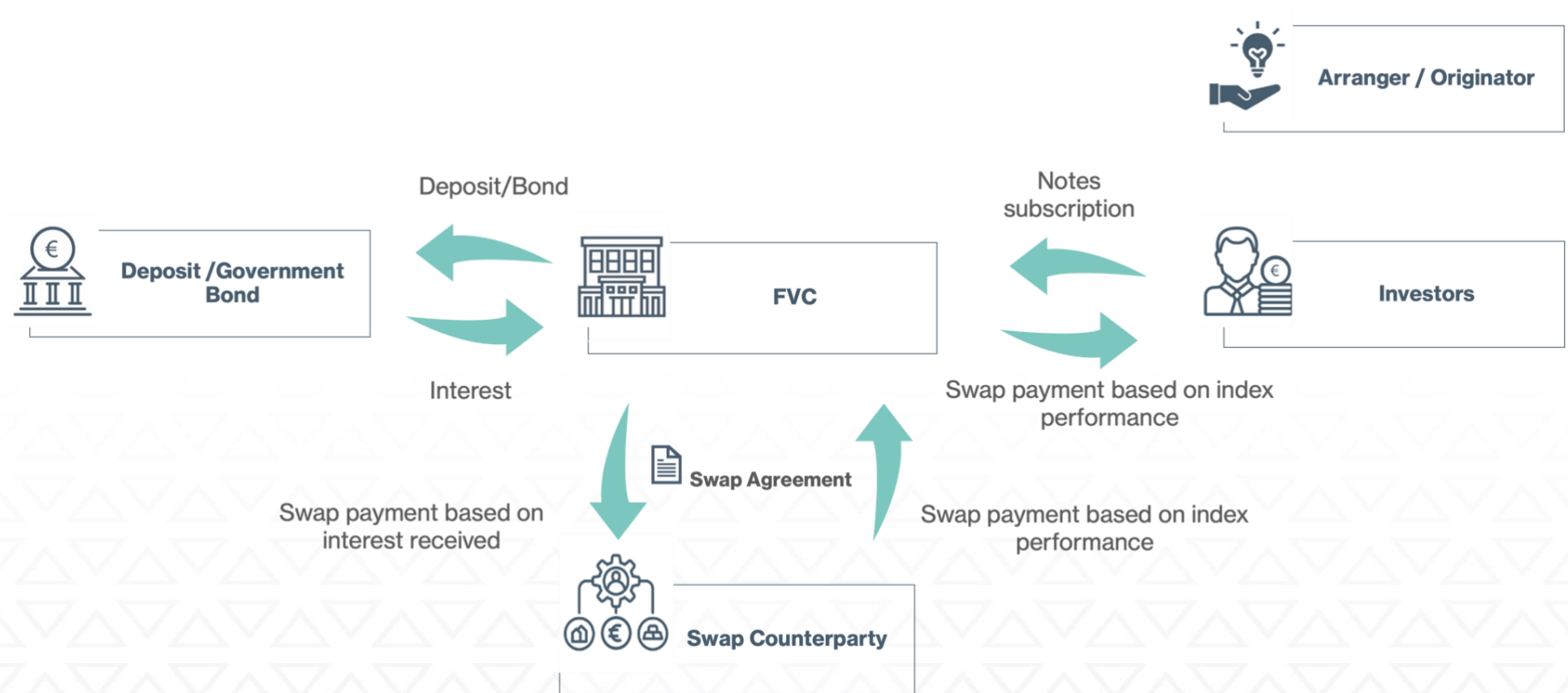
OTHER CONSIDERATIONS

If the Underlying Asset defaults, the transaction is forced to unwind and the Underlying Asset is sold in the market. Investors are only entitled to any amounts remaining after payment of the swap settlement, tax obligations, service fees and any other claims.

In certain cases, the FVC may invest directly into the derivative instrument, backed up by collateral.

Some form of derivative product, such as a **Credit Default Swap (CDS)**, is used to gain exposure to a specified pool of assets; the swap counterparty in the derivative contract agrees to pay the losses incurred by the owner of the assets (usually the **Originator**) if a 'credit event', such as a default, occurs on the assets. In return, the originator agrees to pay the Swap Counterparty premiums based on the perceived probability of such credit events occurring in the assets. As a result, the Swap Counterparty gains exposure to the risks associated with the reference assets without a true sale, i.e. without the transfer of title or other rights to the assets. Such arrangement provides additional protection to the investor(s).

TYPICAL STRUCTURED PRODUCTS STRUCTURE ILLUSTRATION



GLOSSARY AND ABBREVIATIONS

This paper is part of a series of guidance notes for Board Members and we encourage you to read the additional papers focusing on different types of transactions and underlying assets available on our [website](#).

A	Arranger	means the party involved among other things in setting up the Securitisation transaction, the selection of the pool of assets, defining the terms of the securities to be issued and overall the preparation of the structure. Full definition and roles can be found in the LuxCMA Guidance Note for Board Members I Securitisation of Receivables (April 2023).
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C	Calculation Agent	means the party responsible for calculating and reporting on the distribution of interest, principal repayments, profit participation (if applicable) due to Noteholders. Full definition and roles can be found in the LuxCMA Guidance Note for Board Members I Securitisation of Receivables (April 2023).
	Cash Manager	means the party acting as agent of the FVC in administrating the transaction account and the funding account in accordance with the applicable terms and conditions. To this extent, the Cash Manager is responsible of making all the administrative arrangements required to facilitate payments or performance as described in the transaction documents.
	Clearing Agent	means a party, usually a financial institution, that is interposed between the FVC and the Noteholders. It accepts securities as eligible for settlement and is also responsible to properly service those securities. Full definition and roles can be found in the LuxCMA Guidance Note for Board Members I Securitisation of Receivables (April 2023).

C	Corporate Services Provider	means the party that provides the FVC with services including the provision of a registered address, maintenance of corporate records, and delivery of corporate secretarial services. Additional services might include the provision of directorships and tax services.
	Credit Default Swap (CDS)	means a credit derivative where one party pays a periodic fee to the other party in exchange for a guarantee that it will be compensated by the other party if a bond defaults.

D	Dealer	means a party, usually a financial institution, responsible for distributing the structured products to investors and facilitating their trading in the secondary market. The dealer often acts as a market maker, providing liquidity for the securities and supporting the overall functioning of the market for the notes issued.
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E	EMIR Refit	means the European Market Infrastructure Regulation and refers to the Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 (“EMIR Refit”) amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, reporting requirements, risk mitigation techniques for over-the-counter (OTC) derivative contracts not cleared by a central counterparty, registration and supervision of, and requirements for, trade repositories.
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F	FVC	means Financial Vehicle Corporation. This term, used in other LuxCMA publications, is defined by the European Central Bank (“ECB”) as engaging in “securitisation”, where securitisation is defined as “a transaction or scheme whereby an entity that is separate from the originator [...] and is created for or serves the purpose of the transaction or scheme issues financing instruments to investors, and one or
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		<p><i>more of the following takes place: an asset or pool of assets, or part thereof, is transferred to an entity that is separate from the originator and is created for or serves the purpose of the transaction or scheme [...].</i> It therefore implies that there is a transfer of assets from the originator to the securitisation entity for the entity to qualify as “securitisation” under the Regulation (EC) N° 24/2009 of the ECB and for the Securitisation Vehicle (“SV”) to qualify as a FVC.</p>
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L	LuxCMA	<p>means the Luxembourg Capital Markets Association, a not-for-profit association created on 1 March 2019 which represents the common interests of all stakeholders of the primary capital markets industry of Luxembourg.</p>
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M	Management	<p>means the Board of directors or the Board of managers of the FVC or its Management company, as defined in the LuxCMA Guidance Note for Board Members I Identification of the BO for the purposes of filing with the RBE (January 2023).</p>
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O	Originator	<p>means the party assigning assets to the FVC/SSPE in a securitisation transaction.</p>
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P	Paying Agent	<p>means a party, usually a credit institution, responsible for the payments of interest and principal to the Noteholders, as authorised and instructed by the FVC, based on a paying agency agreement. Full definition and roles can be found in the LuxCMA Guidance Note for Board Members I Securitisation of Receivables (April 2023).</p>
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	Publication	means this document as well as the information contained herein.
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S	Servicer	means a party appointed by the FVC to manage the portfolio of receivables on its behalf. Full definition and roles can be found in the dedicated section in this publication.
	Swap Counterparty	means the counterparty to a derivative contract entered into with the FVC when the Notes are issued. The parties to the contract agree to exchange the cash flows of the underlying asset, which are then channelled through the swap counterparty, allowing parameters such as interest rate, payment frequency, currency, maturity, etc. to be changed. The purpose of the swap agreement is to ensure that the investors receive the interest defined in the terms of the notes issued by the FVC.

U	Underlying Asset	<p>refers to the specific issued asset or group of issued assets on which the transaction is based. It is the asset or assets that generate the cash flows or value that are ultimately packaged and sold to investors through the issuance of repackaged notes.</p> <p>The Underlying Asset can be any financial instrument such as loans, mortgages, bonds or derivatives. The repackaging note transaction involves pooling these assets and then issuing repackaged notes backed by the cash flows or value generated by the Underlying Assets.</p>
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About the LuxCMA – Luxembourg Capital Markets Association

Created on 1 March 2019, the LuxCMA is a not-for-profit association (a.s.b.l.), registered at the RCSL (F12205), whose registered office is 6 rue Jean Monnet, L-2180 Luxembourg. The LuxCMA today represents memberships detailed on LuxCMA’s website (www.luxcma.com), which is composed by banks, law firms and services providers, amongst others.

Working Group I Best Practice – Management & Corporate Governance

The aim of this working group is to find practical solutions (or answers) to practical problems. Capital market participants are often confronted with varying practices among the numerous practitioners active in Luxembourg.

The focus of the Management & Corporate Governance group is to provide existing and future members of the securitisation vehicles management bodies with practical insights into corporate governance matters. Through guidance notes, our sub-group members present the views of market practitioners on key aspects concerning management as well as governance, considering the different types of underlying assets of the FVC.

For more information, please contact info@luxcma.lu.