FSMA

FINANCIAL SERVICES AND MARKETS AUTHORITY

Annex Communication

**FSMA_2017_04-01 of 30/01/2017**

# Overview of conditions in order for clauses to be acceptable

| | |
|---|---|
| **Plain and intelligible language (VI.37, § 1 and VI.82, paragraph 2)** | • A clear **overview** of the rights of both parties in the **summary** of the prospectus and **at the start of the chapter in the prospectus** which describes the rights of the parties ("Terms & Conditions").<br>• Plain and intelligible drafting of the **contract terms** themselves. Uniform drafting is recommended. |
| **Alteration of the essential characteristics of the investment instrument (VI.83, 4º).** | • The following are **authorized**:<br>- alteration of the essential characteristics with the consent of the consumer, such as the offer of an amended agreement as an alternative for the (authorized) early termination in the case of force majeure.<br>- alteration of the essential characteristics based on a majority vote by investors, as provided for in the issuance terms.<br>• **Unilateral alteration** of essential characteristics **is in principle not authorized except** (cumulative conditions):<br>- as a result of force majeure or of other occurrences which substantially alter the economics of the contract as initially agreed between the parties and which are not attributable to the issuer; and<br>- the alteration is not substantial, and therefore does not create a significant imbalance in the rights and obligations of the parties to the detriment of the consumer; and<br>- **with no** retention of **costs**. |

| | Force majeure | No force majeure |
|---|---|---|
| **Unilateral early termination (repayment) of the fixed-term investment instrument (VI.83.10º)** | • **Possible** at **market value**.<br>• **With no** retention of **additional costs**. | **In principle not authorized except** (cumulative conditions):<br>• as a result of an occurrence which substantially alters the economics of the contract as initially agreed between the parties and which is not attributable to the issuer; and<br>• provided that the consumer is **compensated** and under terms that ensure that no significant imbalance is created in the rights and obligations of the parties to the detriment of the consumer:<br>- <u>structured products with capital protection</u>: either (i) the highest of the face value and the market value (“**best of**”); or (ii) at least the **monetization with the market value as an alternative.**<br>- <u>structured products with no capital protection</u>: the market value;<br>- <u>unstructured debt instruments which offer the right to payment of the face value at maturity</u>: the market value or the face value, whichever is the highest (“**best of**”); and<br>• **with no** retention of **costs**; and<br>• provided that the costs paid are **refunded pro rata** (for the remaining term to maturity). |