



香港存款保障委員會
HONG KONG DEPOSIT
PROTECTION BOARD

Our Ref: D1/1C

8 June 2021

The Chief Executive
All Scheme Members

Dear Sir/Madam,

Compliance with the Representation Rules – Issues and Good Practices

Further to our circular on the same subject issued on 17 September 2014 (last Circular), this circular updates member institutions of the Deposit Protection Scheme (Scheme members) on some common issues and good practices in relation to representations about their membership and the protection status of deposits identified during compliance reviews and on-site examinations in recent years.

The Deposit Protection Scheme (Representation on Scheme Membership and Protection of Financial Products under Scheme) Rules (the Representation Rules) govern the representations made by Scheme members regarding their membership and the protection status of the financial products offered by them. Such representations serve to help the public better distinguish between deposits protected by the Deposit Protection Scheme from those that are not, so that the public can make informed decisions before entering into a transaction.

In order to monitor Scheme members' compliance with the Representation Rules, Scheme members are required to conduct an annual self-assessment review and report to the Hong Kong Deposit Protection Board (the Board) any exceptions identified. This is supplemented by on-site examinations carried out by the Hong Kong Monetary Authority to ascertain the level of Scheme members' compliance with the Representation Rules.

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The overall compliance level of Scheme members was generally satisfactory. However, some common issues were still identified from the assessments and examinations since the last Circular was issued in 2014. At the same time, a number of good practices were observed from some Scheme members. These common issues and good practices, which warrant further attention by the Scheme members, are summarised in the **Annex**. Scheme members should give due regard to the issues highlighted and are strongly encouraged to adopt the good practices where applicable.

On a related note, since the outbreak of the COVID-19 pandemic, it has become increasingly common for deposit transactions to be conducted through non-face-to-face channels. The Board would like to take this opportunity to remind Scheme members to review their existing controls to ensure that disclosures for those deposit transactions are made in an appropriate manner as required under the Representation Rules.

Should you have any questions on this circular, please contact Ms Holly Tang at 2878 1145 or Ms Kennis Hui at 2878 1320.

Yours faithfully,

Daryl Ho
Chief Executive Officer
for the Hong Kong Deposit Protection Board

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Compliance with the Representation Rules
Issues and Good Practices
(observed during 2015-2020)¹

(A) Negative disclosure as to financial products not protected by the Deposit Protection Scheme (DPS)

Issues

- A few Scheme members failed to inform some customers that their offshore deposits, structured deposits, time deposits with a term exceeding five years or bearer certificates of deposits issued by third parties were not protected by the DPS and failed to obtain these customers' acknowledgements. These incidents were mainly caused by inadvertent oversight and inadequate staff awareness of the relevant staff.
- Some Scheme members offered financial products that did not carry the word "deposit" in the product name and considered that the negative disclosure requirement was not applicable to the products. However, the products were described as deposits in promotional materials or documents, or when relationship managers promoted the products to customers. As a result, the Scheme members failed to provide negative disclosure to their customers and obtain their acknowledgements before each transaction as required under the Representation Rules.
- Some Scheme members failed to indicate clearly in their negative disclosure as to whether a deposit product is protected or not. For example, some Scheme members mentioned that "the product may not be protected by the DPS" or "most of the structured deposits are not protected by the DPS". This caused confusion to customers.
- Scheme members are allowed under the Representation Rules to rely on a negative disclosure made in the first of a series of automatic rollover deposit transactions to avoid repeating the same disclosure before each and every of the same transactions in that series. However, some Scheme members failed to strictly follow the wording set out in section 6B(1)(b)(i) of the Representation Rules, which requires Scheme members to make it clear that "the financial product is not a protected deposit and not protected by the DPS, and will remain so in the case of any automatic re-investment of that investment".

¹ The common issues and good practices summarised in the last Circular issued in September 2014 can be found on the HKDPB's website:
<https://www.dps.org.hk/en/download/guideline/Compliance%20with%20the%20Representation%20Rules%20-%20Issues%20and%20Good%20Practices.pdf>.

Expected standards by the Board

- Negative disclosure and customers' acknowledgements should be made and obtained before each transaction of non-protected deposits unless the exemptions under sections 6B-6D of the Representation Rules can be satisfied. Scheme members should have sound control measures and appropriate training for their staff to ensure compliance with the representation requirements.

Good practices

Examples of good practices include:

- Some Scheme members have put in place control procedures to ensure that the negative disclosure requirement is met before completion of (i) each transaction of non-protected deposits and (ii) the first transaction of automatic re-investment of non-protected deposits. For example,
 - (1) the order placement system of some Scheme members will generate pop-up reminders or require completion of a checklist by the frontline staff prior to execution of each non-protected transaction to reduce the possibility of staff oversight in making the negative disclosure and obtaining customer acknowledgements before transactions; and
 - (2) some Scheme members perform pre-trade checking for each non-protected deposit transaction to ensure that negative disclosure has been made to, and acknowledgement has been obtained from, the customer before the transaction is inputted to the system for execution. The pre-trade checking is carried out by middle office which is independent from the frontline staff.
- To avoid ambiguity and confusion, some Scheme members make reference to the suggested wording set out in the Annex to the Questions and Answers on Representation Rules² for making negative disclosure and obtaining customers' acknowledgements.

(B) Positive disclosure as to deposits qualified for DPS protection

Issues

- Some Scheme members failed to provide a clear positive disclosure statement, and hence a depositor receiving the disclosure was not able to associate that the subject deposit was qualified for protection by the DPS. Examples include the following:
 - (1) Some Scheme members wrongly considered that the provision of an information leaflet issued by the Board to customers or mentioning that "eligible deposits taken by the banks are protected by the DPS" was sufficient to comply with the positive disclosure

² The Questions and Answers on Representation Rules serve to provide guidance on operational issues in relation to achieving compliance with the Representation Rules and are available on the HKDPB's website:
https://www.dps.org.hk/en/download/guideline/DPS_Amended_Rep_Rules_Q&As_web%20version.pdf.

requirement under the Representation Rules. They failed to specify the names or types of deposit products qualified for DPS protection; and

(2) For time deposits, some Scheme members did not clearly set out that only those with a maturity not exceeding five years were qualified for DPS protection.

- Some Scheme members provided positive disclosure through a notice other than account opening documents or deposit confirmation advice. However, the Scheme members failed to maintain a proper audit trail to demonstrate that the notice had been provided to the customers.

Good practices

- Some Scheme members set out clearly all types of deposits qualified for protection under the DPS, so that a depositor can easily associate the subject deposit with the relevant type of deposits shown in the disclosure.
- Some Scheme members have incorporated positive disclosure in their account opening documents or deposit confirmation advice to avoid any possible oversight and provide proper audit trail.

(C) Membership representation

Issues

- Some Scheme members failed to incorporate their registered name³ in their DPS membership sign properly. For example, a Chinese name or the wording of “Hong Kong Branch”, which does not appear in their registered name, has been included in the membership sign.

Expected standards by the Board

- A Scheme member should insert its registered name into the specified field of the DPS membership sign properly. For overseas incorporated Scheme members, there is no need to make reference to “Hong Kong Branch” in their DPS membership sign.

(D) Policies and procedures

Issues

- Some Scheme members failed to incorporate all applicable representation requirements in their policies and procedures (P&Ps). For example:

³ The registered name of a Scheme member is available on the HKDPB’s website: <https://www.dps.org.hk/en/download/ListofSchemeMembers.xls>.

- (1) Some Scheme members which issued certificates of deposits to customers did not include in their P&Ps the negative disclosure requirement under section 6A(2) of the Representation Rules concerning issuance of bearer instruments;
- (2) Some Scheme members did not incorporate in their P&Ps the applicability of the negative disclosure requirements to non-protected financial products which did not carry the word “deposit” in the product name but were described as deposits in their advertisement or promotional materials, and therefore failed to ensure compliance with the related requirements; and
- (3) A few Scheme members did not clearly specify in their P&Ps the time frame and reply manner for handling request from a customer for information as to whether a deposit is protected by the DPS.

Expected standards by the Board

- Scheme members should review their P&Ps on a regular basis to ensure all applicable representation requirements set out in the Representation Rules as well as guidance note and circulars issued by the Board are incorporated properly. In particular, Scheme members should review their P&Ps and give due consideration to compliance with the representation requirements before launching any new products or business activities.

(E) Training for staff

Issues

- Some Scheme members failed to provide relevant training in relation to the DPS representation requirements to staff, especially those frontline staff responsible for handling account opening or conducting deposit transactions with customers in different business lines. In the absence of appropriate training and guidance, the staff might not be fully aware of or fully understand the representation requirements.

Good practices

- In addition to induction training, some Scheme members provide refresher training to relevant staff on a regular basis, and organise quizzes after the training activities to deepen the staff’s awareness and understanding of the representation requirements.

(F) Monitoring and review mechanism

Issues

- Some Scheme members failed to adopt an effective monitoring mechanism to ascertain compliance with the DPS representation requirements. For example, some Scheme members did not review deposit transactions handled by certain business lines or units, while some other

Scheme members solely relied on confirmation provided by the frontline staff on whether disclosures had been provided to customers as required under the Representation Rules.

- Some Scheme members did not establish clear procedures on compliance monitoring, e.g. coverage of review, sampling approach, monitoring frequency, reporting arrangements, and possible follow-up actions on non-compliance issues identified.

Expected standards by the Board

- Scheme members should establish robust procedures for monitoring the level of compliance with the Representation Rules. Scheme members should ensure that each review is conducted independently with adequate coverage and reliable source of information. The procedures and results of the reviews should be properly documented, and easily accessible by the Scheme members themselves, the Board and other regulatory bodies as needed.