The International Capital Markets Review

Tenth Edition

Editor
Jeffrey Golden

The LawReviews

THE INTERNATIONAL CAPITAL MARKETS REVIEW

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THE LAWREVIEWS

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Published in the United Kingdom
by Law Business Research Ltd, London
Meridian House, 34–35 Farringdon Street, London, EC4A 4HL, UK

www.TheLawReviews.co.uk

ISBN 978-1-83862-467-5

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

3 HARE COURT CHAMBERS

AFRIDI & ANGELL

ALLEN & OVERY

ASHURST LLP

CMS REICH-ROHRWIG HAINZ RECHTSANWÄLTE GMBH

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PREFACE

Well, we did not see that one coming!

When the ninth edition of this volume appeared a year ago, we did not see the coming pandemic, lockdowns and working from home (WFH).

We knew even then that there would be new challenges ahead for the capital markets. We knew, for example, that key interbank offered rates (IBORs), benchmarks on which so much financial market activity relies, would be undergoing a period of change and that market participants would have to face up to the adoption of alternative rates and consider adjustments to legacy transactions based on LIBOR or other previously used pricing sources. No one said LIBOR migration would be easy. And that challenge has not gone away. The message from many key regulators is that, pandemic and other operational complications notwithstanding, the shift remains on track. LIBOR, supporting as it does hundreds of trillions of dollars of market activity, is slated for replacement by the end of 2021!

But we did not see and anticipate other challenges brought about by covid-19, basic as some of these may have been, and hidden as they may also have been, in notice provisions and other boilerplate buried in the back recesses of our transaction documents. How do you give effective notice to offices closed (often with the force of law) and with the decentralisation of WFH? If none of the methods contemplated by the parties' agreement can be used, may a different method be used instead?

Challenges though there may be, the capital markets have nonetheless shown their resilience. As I write this preface, Jack Ma's Ant Group has just filed for an initial public offering in Hong Kong and Shanghai that is expected to raise about US$30 billion, in what could be the world's largest offering ever.

And so international capital markets lawyers are still in business, still relevant. But our modus operandi may have changed a bit. In this world of WFH, we keep company with the books on our bookshelves more than we do with the other lawyers in the building. In circumstances such as these, there are ever more compelling reasons to keep this particular volume on our shelf. We can expect to turn more often to published answers when we cannot consult the practitioner in the office next door as easily.

As I have written before, this book serves two purposes – one obvious but the other possibly less so.

Quite obviously, and one reason for its continuing popularity, *The International Capital Markets Review* addresses the comparative law aspect of our readers' international capital market (ICM) workload and equips them with a reference source. Globalisation and technological change mean that the transactional practice of a capital markets lawyer, wherever based (even WFH), no longer enjoys the luxury – if ever it did – of focusing solely on a home market within the confines of a single jurisdiction. Globalisation means that fewer and fewer opportunities or challenges are truly local, and increasingly technology permits practitioners to tackle international issues.

Moreover, clients certainly may have multi-jurisdictional ambitions or, even if unintended, their activities may often risk multi-jurisdictional impact, in which case, it would be a brave but possibly foolish counsel who assumed: 'The only law, regulation and jurisdiction that matter are my own!'

Ironically, the second purpose this book aims to serve is to equip its readers to do a better job as practitioners at home. In other words, reading the summaries of foreign lawyers, who can describe relevant foreign laws and practices, is perfectly consistent with and helpful when interpreting and giving advice about one's own law and practice.

As well as giving guidance for navigating a particular local but, from the standpoint of the reader, foreign scene, the comparative perspectives offered by our authors present an agenda for thought, analysis and response about home jurisdiction laws and regulatory frameworks, thereby also giving lawyers, in-house compliance officers, regulators, law students and law teachers an opportunity to create a checklist of relevant considerations, both in light of what is or may currently be required in their own jurisdiction and also as to where things in that jurisdiction could, or should, best be headed (based on the best practice of another jurisdiction) for the future.

Thus, an unfamiliar and still-changing legal jurisdiction abroad may raise awareness and stimulate discussion, which in turn may assist us as practitioners to revise concepts, practices and advice in both our domestic and international work. Why is this so important? The simple answer is that it cannot be avoided in today's ICM practice. Just as importantly, an ICM practitioner's clients would not wish us to have a more blinkered perspective.

Not long ago, I had the honour of sharing the platform with a United Kingdom Supreme Court Justice, a distinguished Queen's Counsel and three American academics. Our topic was 'Comparative Law as an Appropriate Topic for Courts'. The others concentrated their remarks, as might have been expected, on the context of matters of constitutional law, and that gave rise to a spirited debate. I attempted to take some of the more theoretical aspects of our discussion and ground them in the specific example of capital markets, and particularly the over-the-counter derivatives market.

Activity in that market, I said, could be characterised as truly global. More to the point, I posited that, whereas you might get varied answers if you asked a country's citizens whether they considered it appropriate for a court to take account of the experiences of other jurisdictions when considering issues of constitutional law, in my view derivatives market participants would uniformly wish courts to at least be aware of and consider relevant financial market practice beyond their jurisdictional borders, and comparative jurisprudence (especially from English and New York courts, which are most often called upon to adjudicate disputes about derivatives), notwithstanding that traditional approaches to contract construction may have differed between courts in different jurisdictions.

With so much at stake given the volumes of financial market trading on standard terms, and given the complexity and technicality of many of the products and the way in which they are traded and valued, there appears to me to be a growing interest in comparative law analysis and an almost insatiable appetite among judges at least to know how experienced courts have answered similar questions.

There is no reason to think that ICM practitioners would be situated any differently, from judges in this regard or would be less in need of or benefit less from a comparative view when facing the often technical and complex problems confronting them. After all, it is only human nature to wish not to be embarrassed or disadvantaged by what you do not know.

Of course, it must be recognised that there is no substitute for actual and direct exchanges of information between lawyers from different jurisdictions. Ours should be an interdependent professional world; a world of shared issues and challenges, such as those posed by market regulation. A world of instant communication. A world of legal practices less constrained by jurisdictional borders. In that sense and to that end, the directory of experts and their law firms in the appendices to this book may help to identify local counterparts in potentially relevant jurisdictions (with new jurisdictions having been added this year – Austria and Taiwan). And, in that case, I hope that reading the content of this book may facilitate discussions with a relevant author.

In conclusion, let me add that our authors are indeed the heroes of the stories told in the pages that follow. As I wrote in the preface to the last edition, my admiration for our contributing experts continues. It remains, too, a distinct privilege to serve as their editor, and once again I shall be glad if their collective effort proves helpful to our readers when facing the challenges of their ICM practices amid both the growing interdependence of our professional world and, now, the coronavirus pandemic and its impact on the global economy.

Best wishes for this difficult period. Stay safe, stay well and stay alert.

Jeffrey Golden
Joint Head of Chambers
3 Hare Court
London
October 2020

Chapter 18

SWITZERLAND

François M Bianchi, Daniel Bono, Till Spillmann and Andrea Giger[1]

I INTRODUCTION

For a better understanding of the Swiss capital market, it is worth highlighting that Switzerland is neither a member of the European Union (EU) nor the European Economic Area (EEA). Consequently, the EU Prospectus Regulation and other EU or EEA regulations relating to capital market offerings are not applicable in Switzerland. However, the Swiss financial market regulatory framework has undergone fundamental and comprehensive reforms over the past few years. The main purpose of these reforms is to harmonise Swiss regulations with existing and new EU regulations and to guarantee Swiss capital market participants free and unrestricted access to the European (capital) markets. The most important elements of the reform package in terms of Swiss capital markets are set out in the new Swiss Financial Services Act (FinSA) and its implementing ordinance, the Swiss Financial Services Ordinance (FinSO), which entered into effect on 1 January 2020, subject to a phase-in. The FinSA and FinSO, which are to a large extent modelled after the EU prospectus regime, govern the prerequisites for providing financial services and offering financial instruments in Switzerland. As part of this new legal framework, the FinSA and the FinSO have introduced for the first time in Switzerland a modern, comprehensive and harmonised prospectus regime for the Swiss (primary and secondary) capital markets applicable to all financial instruments, with certain adaptations for debt and equity instruments, as well as structured products, collective investment schemes and derivatives. While some elements of the new Swiss prospectus regime apply with immediate effect, other elements will only apply after a transition period expiring six months after the licensing of the first reviewing body by the Swiss Financial Market Supervisory Authority (FINMA) (i.e., on 1 December 2020).

Swiss equity capital market activity was not strong in 2020. Despite several initial public offerings (IPOs) in the pipeline that were expected to launch during the first quarter of 2020, the outbreak of the covid-19 pandemic and the related volatility in the capital markets has temporarily put the Swiss IPO market on hold. During the first half year of 2020, only two IPOs were launched on SIX Swiss Exchange Ltd, with an aggregate issue volume of approximately 116 million Swiss francs and a total market capitalisation of 699 million francs. However, it is to be hoped that the IPOs will launch once market conditions improve. However, according to the SIX website, the Swiss domestic debt capital market was very active during the covid-19 pandemic, with both the public sector and (excluding the financial sector) the private sector having increased bond issue volumes significantly (the private sector

1 François M Bianchi, Daniel Bono and Till Spillmann are partners and Andrea Giger is a senior associate at Niederer Kraft Frey Ltd.

has almost tripled its issuance volume in Q2 2020 compared to the same period in 2019). According to the SIX website, during the first half year of 2020, 137 initial bond issuances (i.e., no tap issuances or increases of already outstanding bonds) raising over 50 billion francs have been launched. Further, there exists an active market for unlisted bonds or notes and privately placed debt securities.

i Structure of the law

The relevant Swiss capital market legislation governing the primary and secondary securities markets includes:

a the Swiss Code of Obligations governing the prospectus requirements for the public offering of equity and debt securities (only to the extent that during the transition period until 1 December 2020 the offering participants elect not to follow the new prospectus regime nor produce a prospectus in accordance with FinSA);

b the Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (FMIA) governing the organisation and operation of financial market infrastructures and the conduct of financial market participants in securities and derivatives trading;

c the Ordinance on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (FMIO) implementing the provisions of the FMIA;

d the Ordinance of the Swiss Financial Market Supervisory Authority on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (FMIO-FINMA) implementing the provisions of the FMIA;

e the Federal Act on the Swiss Financial Market Supervisory Authority stipulating provisions regarding supervision of the financial markets by FINMA;

f the Ordinance of the Takeover Board on Public Takeover Offers providing rules on the requirements for public takeover offers;

g the Regulations of the Takeover Board, stipulating regulations governing the organisation of the Takeover Board;

h the listing rules and all other rules, directives, circulars, prospectus schemes of SIX Swiss Exchange Ltd governing the listing and trading in securities on the SIX Swiss Exchange and laying down the principles for maintaining listings of equity and debt securities on the SIX Swiss Exchange;

i the Guideline for Notes issued by Foreign Borrowers dated 1 September 2001 of the Swiss Bankers' Association;

j the Federal Act on Collective Investment Schemes (CISA) governing the issue of structured products;

k the Federal Ordinance on Collective Investment Schemes implementing the provisions of the CISA;

l the Federal Act on Intermediated Securities governing the custody, transfer and related issues of securities held with regulated custodians;

m the Federal Act on Banks and Savings Banks;

n the Federal Ordinance on Banks and Savings Banks;

o the Federal Act on Combating Money Laundering and Terrorist Financing and the corresponding implementing ordinances; and

p the FinSA and the implementing ordinance, the FinSO; and

q the Federal Act on Financial Institutions (FinIA) and the implementing ordinance, the Federal Ordinance on Financial Institutions (FinIO).

ii Stock exchange regulation

The principal stock exchange for the listing and trading of equity and debt securities, structured products, derivatives and other securities in Switzerland is the SIX Swiss Exchange in Zurich. It has adopted – based on the principle of self-regulation – a comprehensive set of its own regulations, directives and notices governing, inter alia, certain requirements for admission to trading and listing and disclosure requirements. The second Swiss stock exchange is the BX Swiss Ltd, in Berne, which is comparatively small and mainly focuses on domestic issuers. Since 2018, BX Swiss Ltd has been a wholly owned subsidiary of the Börse Stuttgart GmbH.

iii Structure of the courts

In principle, the Swiss court system is based on a three-tier hierarchy: the first-instance cantonal courts (which apply both cantonal and federal law), the second-instance cantonal appellate courts and the Federal Supreme Court (the highest judicial authority in Switzerland). As an exception to the principle of double instance at cantonal level, there are certain specific matters that are brought directly before an inferior federal court (e.g., the Federal Administrative Court or the Federal Criminal Court) and other matters that can be directly decided by the exclusive first cantonal instance. Some cantons have established a commercial court as a sole cantonal instance competent for certain disputes relating to commercial matters. Judgments of the first-instance cantonal courts are generally subject to appeal to the second-instance cantonal appellate courts, and judgments of an inferior federal court, the second-instance cantonal courts or the sole cantonal instance courts are subject to appeal to the Federal Supreme Court, if certain conditions are met. No special courts with jurisdiction over securities-related actions exist in Switzerland.

iv Regulatory bodies

FINMA is an independent regulatory body monitoring developments at financial institutions under its supervision and the financial market in Switzerland. FINMA has statutory authority to supervise securities exchanges, licensed banks, insurance companies, securities dealers and collective investment schemes. It authorises their operations to engage in financial market activity and ensures that the supervised institutions comply with the requisite laws, regulations and ordinances and maintain their licensing requirements. FINMA has certain limited powers to enforce the provisions of the FMIA and to proceed with and take administrative measures against any failure to disclose shareholdings, insider trading and market manipulation. As a general rule, decisions of FINMA may be challenged at the Federal Administrative Court, the decisions of which may be appealed at the Federal Supreme Court. The prosecution of insider trading and market manipulation is the responsibility of Switzerland's attorney general.

The SIX Swiss Exchange is a self-regulated organisation whose investigative bodies supervise and enforce compliance with its rules, regulations and directives. Any appeals against a sanction decision made by a SIX Exchange regulation or disputes between the SIX Swiss Exchange and any listed company concerning the listing, delisting or trading of securities on SIX are filed with the Sanctions Commission or the Independent Appeals Board and can subsequently be submitted to the Board of Arbitration.

The Swiss Takeover Board enacts rules on public takeover offers and public share buybacks and supervises compliance with those rules. Decisions of the Takeover Board may be challenged before FINMA and, finally, the Federal Administrative Court.

In contrast to the existing Swiss prospectus regime, and for the first time for Swiss capital markets, the FinSA has established supervisory and administrative authorities (the reviewing bodies) licensed and supervised by FINMA as part of the new prospectus regime (see Section II.i). FINMA has granted SIX Exchange Regulation Ltd and BX Swiss Ltd licences as reviewing bodies with effect from 1 June 2020. As a general rule, the reviewing bodies are required to review and approve the relevant prospectuses prior to the public offering of securities in Switzerland or the admission of securities to trading on a trading venue in Switzerland. The new *ex ante* prospectus approval requirement will apply mandatorily from 1 December 2020.

II THE YEAR IN REVIEW

i Developments affecting debt and equity offerings

Of the numerous developments affecting debt and equity offerings in Switzerland, the following are of particular interest.

Entry into force of the FinSA

On 1 January 2020, the FinSA and FinSO entered into effect subject to certain phase-in provisions. As mentioned in Section I, one of the most fundamental changes for Swiss capital markets is the introduction of cross-sector rules (excluding insurance and insurance products) for the provision of financial services, as well as, in particular, the introduction of a new comprehensive and harmonised prospectus regime. The new prospectus regime applies in connection with (1) the public offering of securities in Switzerland, and (2) the admission to trading of financial instruments on a Swiss trading venue. With regard to the offering of equity and debt securities, fundamental innovations in the regulation of the Swiss capital markets include the following:

a New prospectus approval requirement: a process for *ex ante* prospectus approval by a reviewing body (i.e., as a general rule prospectus approval is required prior to a public offering or admission to trading on a Swiss trading platform) has been introduced (subject to exemptions, including for certain types of debt securities). For eligible debt securities (e.g., bonds, equity-linked debt instruments or structured products), prospectus approval may be obtained after publication of the prospectus (i.e., *ex post* approval) provided certain requirements are met to ensure that the Swiss bond market maintains attractive time-to-market conditions for issuers of debt instruments.

b Automatic approval of certain foreign prospectuses: even though Switzerland is not part of the EU and cannot benefit from EU passporting rules, certain non-Swiss prospectuses may be approved by a reviewing body if they are drafted in accordance with international standards established by international organisations of securities regulators and the disclosure and ongoing reporting obligations are equivalent to the requirements under the FinSA. In addition, certain non-Swiss prospectuses that have been approved by a recognised foreign prospectus authority will be deemed to have been automatically approved by a reviewing body. Hence, once such a prospectus has been published and filed with a reviewing body in accordance with the FinSA, it may be used in connection with a public offering or admission to trading, or both, in Switzerland.

c Contents of the prospectus: the Swiss prospectus disclosure requirements have been modernised in line with international standards and explicitly allow for a wide range of documents to be incorporated into the prospectus by reference, provided that the documents have been published prior to or concurrently with the issue date of the prospectus. The contents of the prospectus required for the different types of securities are set out in the applicable schedules to the FinSO. In addition, the prospectus must feature a summary section setting out the essential information contained in the prospectus in an easily comprehensible way and, to the extent that the issuer benefits from an *ex ante* approval requirement exemption, a disclaimer in that regard.

d Duty to publish a prospectus: the FinSA provides for a new obligation to publish a prospectus not only for primary offerings, but also for secondary public offerings of securities in Switzerland.

e Exemptions from the prospectus requirements: the FinSA introduces a set of exemptions to the requirement to publish a prospectus based on long-standing Swiss market practice and the EU Prospectus Regulation. These exemptions will be available to issuers, selling shareholders and underwriters (as applicable) immediately as of 1 January 2020. The available exemptions in the context of public offerings include, among others, (1) offerings to professional clients as defined in the FinSA, (2) offerings addressed to fewer than 500 investors (compared to 150 in the EU), or (3) offerings with a minimum investment amount of 100,000 francs. There are also exemptions to the requirement to publish a prospectus for public offerings of certain types of securities or in connection with the admission to trading (e.g., where, over a period of 12 months, the equity securities admitted to trading account for less than 20 per cent of the total number of the issuer's equity securities of the same category already admitted to trading).

f Key information document: the requirement to prepare a key information document is introduced in the case of offerings of financial instruments other than shares (or comparable equity securities) or non-derivative debt instruments to retail investors containing all necessary information to enable a client to make a decision about its investment, presented in an easily comprehensible way and designed to make financial instruments easier to compare.

It should be noted that prior to 1 December 2020, issuers may continue to comply with the previous prospectus regime, whereby an 'offering and listing' prospectus can be prepared in compliance with the Swiss Code of Obligations or the listing rules of the relevant Swiss stock exchange (as applicable).

The FinSA requires registration with a registration body admitted by FINMA by client advisers of: (1) domestic financial service providers within the meaning of the FinSA that are not subject to prudential supervision, or (2) foreign financial service providers that provide financial services in Switzerland or for clients in Switzerland, except for client advisers of foreign prudentially regulated financial service providers that only serve professional or institutional clients in Switzerland. As of 20 July 2020, FINMA admitted the first registration body for client advisers (regservices.ch by BX Swiss). The admission triggered a transitional period of six months during which affected client advisers must submit an application for registration with a registration body admitted by FINMA.

The FinSA provides for a mediation procedure before a mediator (the Ombudsman's Office) to mediate legal disputes between clients and financial service providers. For this purpose, the financial service providers must be affiliated with an Ombudsman's Office recognised by the Swiss Federal Department of Finance (FDF). As of 24 June 2020, the

FDF has recognised the first Ombudsman's Office. This has triggered a transitional period of six months during which affected financial service providers must file an application for affiliation with a recognised Ombudsman's Office.

Equivalence of Swiss stock exchanges

On 30 June 2019, the recognition by the European Commission of Swiss stock exchanges under Article 23 MiFIR[2] expired. In essence, without this recognition of equivalence, EU investment firms or trading venues (subject to limited exemptions) are no longer permitted to trade equity securities issued by Swiss companies where the equity securities are listed on a Swiss stock exchange or are traded on a Swiss trading venue. On 1 July 2019, the Swiss government implemented certain protective measures intended to remove potential legal barriers under Article 23 MiFIR to ensure that EU market participants continue to have access to the Swiss capital markets and trade in Swiss equity securities, thereby safeguarding the interests and the functioning of the Swiss capital markets. In short, these protective measures introduced a recognition obligation for foreign trading venues that admit equity securities of certain Swiss companies to trading or facilitate such trading. These measures remain in effect only until 31 December 2021 and, hence, the long-term impact for Swiss issuers and Swiss capital markets, as well as whether a solution can be reached with the EU Commission and the United Kingdom on this topic, remains open.

Entry into force of the FinIA

The FinIA and the FinIO entered into force together with the FinSA and FinSO on 1 January 2020, with a transition period of two years. The FinIA introduced a differentiated supervisory and regulatory regime for financial institutions (as defined below) that provide certain financial services to third parties; it is a piece of framework legislation that governs the licensing requirements and further organisational conditions for financial institutions. The aim of the FinIA is (1) to enhance the protection of investors and clients of financial institutions and (2) to ensure the functionality of the financial market.[3] Furthermore, the FinIA provides for harmonised, cross-sectoral regulation to 'create a level playing field for the supervised institutions'. A particular motive for the introduction of the FinIA was to increase the attractiveness of Switzerland as a financial centre.

The FinIA and the FinIO essentially harmonise the authorisation rules for financial service providers and, for the first time in Switzerland, subject independent portfolio managers and trustees to licensing requirements and continuous prudential supervision.

The following aspects relevant to financial institutions are regulated under the FinIA: organisation of financial institutions; licensing requirements; regulatory duties of financial institutions; supervision of financial institutions; foreign financial institutions operating in Switzerland; insolvency measures; and criminal sanctions.

The FinIA applies to the following financial service providers (collectively, the financial institutions), irrespective of their legal form, operating in or from Switzerland: regular asset

2 Markets in Financial Instruments (MiFIR) – Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No. 648/2012.

3 Art. 1 para. 2 FinIA.

managers; trustees; managers of collective assets (asset managers of collective investment schemes and asset managers of Swiss occupational benefit schemes); fund management companies; and securities houses.

SESTA

Simultaneously with the enactment of the FinSA and the FinIA, the SESTA and the corresponding implementing ordinances ceased to exist.

CISA

The entry into force of the FinSA and FinIA leads to important changes to the CISA. It is particularly noteworthy that certain regulatory requirements introduced in 2013 as part of the CISA Revision 2013 have already been amended or abolished. For example, the general requirement to appoint a Swiss representative and a Swiss paying agent for foreign collective investment schemes distributed to qualified investors in or into Switzerland has been altered. Under the revised CISA, the appointment of a Swiss representative and paying agent is only required in the case of an offer to non-qualified investors or high net worth individuals, or a combination of these, regardless of whether the high net worth individuals are non-qualified or qualified investors.[4] Offers directed exclusively at qualified investors (as defined in the CISA) other than high net worth individuals are exempt from the Swiss representative and Swiss paying agent requirement.

The scope of the CISA will be substantially reduced as a result of the entry into force of the FinSA and FinIA: in essence, the CISA will continue to contain the product level requirements for Swiss collective investment schemes and for foreign collective investment schemes offered to investors in Switzerland, whereas in contrast, the licence requirements for fund management companies and asset managers of collective investment schemes will be incorporated in the FinIA and the fund industry-specific point of sale duties of the CISA will be replaced by the new cross-sectoral code of conduct duties of the FinSA.

Under the revised CISA, distributors of collective investment schemes are no longer subject to a licensing requirement, regardless of whether they distribute collective investment schemes exclusively to non-qualified or (also) to qualified investors.

A new limited qualified investor fund (to be known as an L-QIF) will be introduced in the CISA (currently expected in 2022) to increase the attractiveness of Switzerland as a domicile for the establishment of collective investment schemes.

ii Developments affecting derivatives, securitisations and other structured products

FinSA stipulates that structured products may only be offered to private clients (in the absence of a long-term portfolio management investment advisory agreement) in, into or from Switzerland if they are issued, guaranteed or secured in an equivalent manner by a Swiss bank, insurance company securities house or insurance company, or a pertinent foreign institution subject to equivalent standards of supervision.

iii Cases and dispute settlement

Lawsuits involving breaches of securities law are not common in Switzerland. To date in 2020, no relevant decisions have been published in the area of Swiss capital market law.

4 Art. 120 paras. 2 and 4 CISA.

iv Relevant tax law

Corporate tax reform

Following approval of the corporate tax reform package (combined with more than 2 billion francs of additional funding annually for Switzerland's statutory pension system, AHV/AVS) by popular vote in May 2019, the legislation entered into force at Swiss federal level on 1 January 2020. Most Swiss cantons have implemented the necessary amendments to cantonal tax laws, with effect from 1 January 2020. The remaining cantons will introduce the cantonal legislation in the course of the year 2020, also with effect from 1 January 2020.

The reform package allows the creation of an internationally compliant, competitive tax system for companies by abolishing existing tax privileges for companies that operate predominantly internationally and introducing replacement measures, including a general reduction of tax rates, a Patent Box, a research and development super-deduction, a step-up upon migration of companies or activities to Switzerland for tax purposes and the option for cantons (the canton of Zurich only, for the time being) to introduce a notional interest deduction on equity.

Withholding tax reform

Another troubled Swiss tax reform project relates to withholding tax. Currently, a Swiss issuer of bonds must deduct withholding tax at a rate of 35 per cent from interest and certain other payments made to investors inside and outside Switzerland (the debtor-based regime).

Because it may be difficult for investors outside Switzerland to reclaim Swiss withholding tax, the current system makes it impracticable for Swiss issuers to directly access investors outside Switzerland. This has had a material adverse effect on the Swiss capital markets for decades. To address this issue, on 3 April 2020, the Federal Council published a draft consultation on, among other things, replacing the current debtor-based regime with a paying agent-based regime for Swiss withholding tax, which would subject all interest (direct or indirect) payments made to individuals resident in Switzerland to Swiss withholding tax and provide an exemption from Swiss withholding tax for interest payments to all other persons (including Swiss corporations).The outcome of the consultation has yet to be published, but it is expected that any implementation of the proposed reform would take about two years.

To facilitate compliance by banks with the tougher capital requirements under Basel III prior to the reform of the Swiss withholding tax system, the Federal Council has exempted contingent capital instruments and bail-in bonds from withholding tax until 2021.

In close connection with the withholding tax reform, efforts are also under way to abolish stamp duties completely or partially in Switzerland.

v Role of exchanges, central counterparties and rating agencies

Financial market infrastructures (FMIs) in Switzerland include stock exchanges and other trading venues, central counterparties (CCPs), central securities depositories (CSDs), trade repositories and payment systems. FMIs require authorisation from FINMA before they can commence operations. Stock exchanges and trading venues must establish their own independent regulatory and monitoring organisations appropriate to their activities under FINMA supervision. CCPs shall require deposits of collateral in the form of initial margins, variation margins and default fund contributions from all trading participants to enable them to settle transactions in an orderly way. Furthermore, CCPs must have adequate capital and diversify their risk appropriately, and must separate their own assets, receivables and liabilities from the collateral, receivables and liabilities of its participants. CSDs must ensure the proper and lawful custody, recording and transfer of securities, and that the number of securities deposited with them equals the number of securities credited to their clients.

III OUTLOOK AND CONCLUSIONS

With the entry into effect of the FinSA and FinSO as of 1 January 2020, a comprehensive and modern prospectus regime has been introduced in Switzerland; based on well-established Swiss market practice and largely in line with the EU equivalence standards, this regime will ensure that Switzerland's capital market environment remains efficient and attractive, and will enhance transparency for investors and preserve access to the European financial markets.

Appendix 1

ABOUT THE AUTHORS

FRANÇOIS M BIANCHI

Niederer Kraft Frey Ltd

For more than three decades, François Bianchi has specialised in banking and banking regulation. He advises and represents financial institutions in regulatory proceedings before FINMA, the Swiss Financial Market Supervisory Authority. He also has a strong practice in white-collar crime and investigations.

François advises issuing houses, issuers and institutional investors in debt and equity capital market transactions, structuring and registration of collective investment schemes, structuring of derivative transactions, actively managed certificates, structured finance transactions, euro medium-term notes, warrant and structured products programmes.

DANIEL BONO

Niederer Kraft Frey Ltd

Daniel Bono regularly represents Swiss and international clients in some of the largest and most complex capital markets, banking and corporate and M&A transactions in Switzerland.

His practice focuses on capital markets transactions, derivatives and structured finance, corporate governance, general securities law matters as well as mergers and acquisitions. Daniel has represented investment banks, issuers and investors in a wide range of corporate and capital markets transactions, including initial public offerings, rights offerings, listings on the SIX Swiss Exchange, exchange offers and other liability management transactions, public offerings and private placements of debt securities, including regulatory capital instruments, asset-backed securities, high-yield bonds and equity-linked debt securities.

ANDREA GIGER

Niederer Kraft Frey Ltd

Andrea Giger's practice focuses on complex international and domestic private and public M&A, capital markets and corporate finance transactions. She also advises on general securities regulation and other corporate and commercial law matters.

Andrea has extensive experience in representing investment banks and issuers in a wide range of capital market transactions (equity and debt), including initial public offerings, rights offerings (including by way of private placements) and bonds. In addition, Andrea also has expertise in advising corporates and private equity investors on (the structuring of) domestic and cross-border public and private M&A transactions across various industries and sectors, including public to private transactions and related corporate reorganisation issues. Her practice also includes advising clients (including listed companies) on general corporate and commercial law matters, such as the negotiation of joint ventures, shareholders' agreements, corporate reorganisations (such as mergers, asset transfers and contributions), capital increases and disclosure and other obligations of listed companies. Furthermore, Andrea advises borrowers and lenders on domestic and cross-border debt financing transactions.

TILL SPILLMANN

Niederer Kraft Frey Ltd

Till Spillmann specialises in large and complex international and domestic private and public M&A, capital markets and corporate finance transactions. In addition, he advises on corporate governance and other corporate and commercial law matters.

During the past decade, Till has built remarkable expertise in advising private equity firms and corporate organisations on M&A transactions, including public to private transactions and subsequent corporate reorganisation topics. Till regularly advises underwriters and issuers on all aspects of capital market transactions, with a focus on equity capital market transactions, such as initial public offerings and rights offerings. Till's practice also includes advising lenders, borrowers and private equity sponsors on complex financing transactions, in particular acquisition, leveraged, syndicated and real estate financing transactions.

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ISBN 978-1-83862-467-5