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SWITZERLAND: An Introduction

Contributed by Niederer Kraft Frey

With its modern financial market infrastructure and competitive regulatory framework, Switzerland offers an attractive capital markets environment for issuers and investors alike.

Issuers listing shares on exchanges in Switzerland stem from a range of industries and include:

- major banks such as Credit Suisse and UBS, as well as several well-known private banks such as EFG, Julius Bär and Vontobel;
- large reinsurance and insurance corporations like Swiss Re and Zurich International;
- international luxury goods companies such as Richemont and Swatch;
- multinational food and beverage, pharmaceutical and biotech companies such as Alcon, Givaudan, Lindt & Sprüngli, Lonza, Nestlé, Novartis and Roche;
- large industrials such as ABB, Geberit, LafargeHolcim, OC Oerlikon and Schindler; and
- real estate companies such as Allreal, HIAG, PSP Swiss Property and Swiss Prime Site.

There are also a significant number of foreign companies that have opted for primary or secondary equity listings in Switzerland to gain better access to international institutional investors or because of strong representation from certain industries and the desire to be listed among attractive peers. This is especially the case with regard to the pharmaceutical and biotech industries. Selected foreign companies that have primary or secondary equity listings on Swiss exchanges include AMS (A), Cassiopea (I), Cosmo Pharmaceuticals (NL), Newron Pharmaceuticals (I), SHL Telemed (IL) with primary listings and the 3M Company (USA), Abbott Laboratories (USA) and Baxter International (USA) with secondary listings, respectively.

Switzerland's debt capital markets boasts listings by many of the same renowned Swiss companies and financial institutions, in addition to many foreign corporates and financial institutions. Financial institutions active in this segment include the large Swiss players as well as many big foreign banks, such as Bank of America Merrill Lynch, BNP Paribas, Citigroup, Deutsche Bank, Goldman Sachs, JPMorgan Chase, Nomura and Société Générale (to name a few). Swiss exchanges also offer investors a range of additional traded products enabling investors to participate in the performance of the entire Swiss market, including active and passive exchange traded funds, traditional investment funds, sponsored funds and structured products.

Switzerland is not a member of the EU or the EEA. Accordingly, the EU Prospectus Regulation and other EU regulations relating to capital markets offerings are not applicable to offerings conducted 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 ensure access of Swiss financial institutions to the European market by fulfilling equivalence requirements.

The most important parts of the reform package in terms of Swiss capital markets are set out in the new Financial Services Act (FinSA) and its implementing ordinance, the Financial Services Ordinance (FinSO), both of which entered into force on 1 January 2020. The implications of these reforms are discussed in greater detail below, along with an overview of the main exchanges in Switzerland, a brief survey of recent capital markets activity and the status of Swiss stock exchange equivalency.

New Prospectus Regime

As noted above, the FinSA and its implementing ordinance, the FinSO, entered into force on 1 January 2020 (subject to certain phase-in provisions, as discussed further below).

Perhaps the most fundamental change for Swiss capital markets following the implementation of FinSA and FinSO 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 prospectus regime. In connection with the offering and listing of securities in Switzerland, the FinSA and FinSO introduced the following key aspects:

- The introduction of an ex ante prospectus approval process (i.e. prospectus approval is required prior to a public offering or admission to trading) by a new regulatory body (the "review body") that is licensed and supervised by the Swiss Financial Market Supervisory Authority (FINMA) (subject to exemptions, including for certain types of debt securities). For eligible debt securities, prospectus approval may be obtained after the publication of the prospectus (i.e. ex post prospectus approval).
- The new prospectus rules will enter into force six months after the recognition of the review body by FINMA. Prior to the entering into force of the new prospectus rules under FinSA and FinSO, issuers may continue to comply with the previous regime, whereby a so-called offering and listing prospectus can be prepared in compliance with the Swiss Code of Obligations (CO) and/or the listing rules of the relevant exchange (as applicable).
- A new obligation to publish a prospectus not only for primary offerings, but also for secondary public offerings of securities in Switzerland.
- The codification of private placement exemptions and other exemptions from the requirement to publish a prospectus based on long-standing Swiss market practice and the EU Prospectus Regulation. The available exemptions in the context of public offerings include, among others, offerings limited to investors classified as professional clients as defined in the FinSA and offerings addressed to fewer than 500 investors. A prospectus also does not need to be published if, over a period of 12 months, the equity securities to be admitted to trading account for less than 20% of the total number of the issuer's equity securities of the same category already admitted to trading on the same trading venue.
- The requirement to prepare and make available a basic information document when offering financial instruments (other than shares or comparable equity securities or certain debt instruments without derivative character) to retail investors containing all necessary information to make an investment decision, presented in an easily comprehensible way and designed to make financial instruments easier to compare.

The requirement to prepare and make available a basic information document pursuant to FinSA will enter into force on 1 January 2022. During the transition period, the obligation to prepare and make available a "simplified prospectus" for structured products will continue to apply. Specific transitional provisions apply with respect to real estate and securities funds.

- Even though Switzerland is not part of the EU and cannot benefit from EU passporting rules, pursuant to FinSA and FinSO, certain prospectuses produced under foreign legislation may be approved by the review body in Switzerland if they are drafted in accordance with international standards established by international organisations of securities regulators and the disclosure obligations are equivalent to the requirements under FinSA. The review body can also provide that prospectuses approved in certain jurisdictions are considered automatically approved in Switzerland.

Main securities exchanges

SIX Swiss Exchange operates the principal securities exchange in Switzerland and is the fourth largest exchange in Europe. As of 31 March 2020, SIX Swiss Exchange had 253 companies listed (of which 219 were Swiss-domiciled issuers). In terms of debt securities, as of 31 March 2020, a total of 3,549 bonds were listed or admitted to trading on SIX Swiss Exchange, of which 1,835 bonds were denominated in CHF (Swiss francs) and 1,192 were issued by Swiss issuers. SIX Swiss Exchange also offers investors a range of active and passive exchange traded funds, traditional investment funds and sponsored funds.

A particularly attractive aspect of listing on SIX Swiss Exchange in Switzerland is that English-language offering documents do not need to be translated into one of the official languages of Switzerland, which results in a much faster and flexible process. In addition, depending on the regulatory standard applied for, financials can be prepared in accordance with either IFRS, U.S. GAAP or Swiss GAAP FER and securities can be traded in CHF, euros and US dollars. In addition, while foreign issuers of equity securities are subject to certain additional listing requirements, generally these additional requirements are not onerous and, in practice, they do not pose particular issues or result in delays.

It is also worth noting that, subject to certain conditions, Swiss law allows Swiss companies to prepare their accounts and to report in a foreign currency. Hence, if an EU or US-domiciled company decides to list in Switzerland it can either list the shares of the foreign entity on SIX Swiss Exchange or re-domicile to Switzerland by setting up a new Swiss holding company and list the shares of the new holding company on SIX Swiss Exchange. In either scenario, the issuer can continue to report in euros or US dollars.

Offerings on SIX Swiss Exchange can be structured as either so-called "Regulation S" offerings (e.g. with no offers or sales made to United States investors) or "Regulation S and Rule 144A" offerings (e.g. with offers and sales made to qualified institutional investors in the United States). Interestingly, though, offerings in Switzerland often benefit from strong retail demand by large Swiss-based wealth management offices, which can support significant offerings without having to "tap" the United States market, ultimately simplifying the overall process. This unique feature provides issuers with greater flexibility and costs savings. For example, in 2019 the CHF1.4 billion IPO of Stadler Rail was exclusively conducted as a Regulation S offering.

The other exchange in Switzerland is BX Swiss (BX). BX is much smaller than SIX Swiss Exchange and mainly targets small and medium-sized Swiss enterprises. As of 31 March 2020, 18 companies were listed on BX.

Market Activity

Equity Capital Markets

Despite several IPOs in the pipeline that were expected to launch during the first quarter of 2020, the outbreak of COVID-19 and the related volatility in the capital markets has temporarily put the Swiss IPO market on hold. However, as we understand from market participants, these issuers remain hopeful to launch once market conditions improve.

The Swiss IPO market in 2019 was impacted by various global political and economic uncertainties, including the negotiations regarding Brexit, trade policy tensions between the USA, China and Europe as well as other geopolitical concerns. However, despite such mixed market conditions, there were five successful IPOs in 2019 on SIX Swiss Exchange with an aggregate issue volume of approximately CHF3.1 billion, of which the IPO of Stadler Rail was the 6th largest IPO in Europe in 2019 and the IPO of SoftwareOne was the 10th largest. The other IPOs on SIX Swiss Exchange in 2019 included Medacta Group, Aluflexpack and Novavest Real Estate, accompanied by the listing of shares of Alcon following its spin-off from Novartis and the listing of shares of Achiko.

In 2018, there were seven IPOs with an aggregate offering volume of approximately CHF3.8 billion on SIX Swiss Exchange, of which the IPO of SIG Combibloc Group was the 3rd largest IPO in Europe in 2018 and the IPO of CEVA Logistics was the 6th largest. The other IPOs on SIX Swiss Exchange in 2018 included Fundamenta Real Estate, Klingelnberg, Polyphor, Medartis Holding and Sensirion Holding, along with the initial listings of IGEA Pharma, ObsEva, Blackstone Resources and ASMALLWORLD.

In 2017, there were six IPOs with an aggregate offering volume of approximately CHF4.5 billion on SIX Swiss Exchange, of which Landis+Gyr Group was the 3rd largest IPO in Europe in 2017 and the IPO of Galenica was the 5th largest. The other IPOs on SIX Swiss Exchange in 2017 included poenina holding and Zur Rose Group, along with the initial listings of Idorsia (following its spin-off from Actelion Pharmaceuticals) and Rapid Nutrition.

Debt Capital Markets

The Swiss domestic bond market is primarily a retail market with standard denominations of CHF5,000 and offers issuers a relatively quick time to market (i.e. permitting ex post prospectus approval under FinSA). The SIX Swiss Exchange bond segment comprises a wide range of instruments, including straight bonds, floating-rate notes, convertibles/exchangeables, asset-backed securities (ABS) and loan participation notes (LPN), and debt instruments can be listed in all major world currencies. Bonds are also traded on two affiliates of SIX Swiss Exchange:

- SIX Corporate Bonds AG (international bonds denominated in EUR, GBP or USD with an issue volume of at least 250 million); and

- SIX Repo AG (OTC Spot Market for bonds and short-term debentures of the Swiss Confederation).

Amid historically low interest rates and economic growth, the Swiss securitisation market continued its steady growth over the past three years. Public transactions included:

- the auto leasing transactions of Cembra Money Bank, MultiLease (Emil Frey Group's auto leasing company) and AMAG Leasing (the leasing company of AMAG Group, the exclusive importer of Volkswagen Group vehicles in Switzerland);
- credit card receivables transaction by Credit Suisse and American Express' joint venture Swisscard AECS; and
- the first of its kind domestic covered bond programme in the amount of CHF20 billion by Credit Suisse, which completed its inaugural CHF250 million bond issuance in the summer of 2019, followed by second and third issuances CHF350 million bonds and CHF310 million bonds, respectively, in January 2020.

Equivalency of Swiss stock exchanges

On 30 June 2019, the recognition by the European Commission of Swiss stock exchanges under MiFIR Article 23 expired. In essence, without such equivalence, EU investment firms (subject to limited exemptions) are no longer permitted to trade applicable equity securities of Swiss companies on Swiss stock exchanges and trading venues.

However, the Swiss government has implemented certain protective measures intended to remove potential legal barriers under MiFIR Article 23 for EU investment firms to trading Swiss equity securities on Swiss stock exchanges and trading venues (where liquidity for Swiss equity securities is typically greatest). 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. While the measures adopted by the Swiss government will likely serve to protect the Swiss stock exchange infrastructure in the short term, they remain in effect only until 31 December 2021. Thus, the long-term impact for Swiss issuers and Swiss capital markets, as well as whether a solution can be reached with the EU Commission on this topic, remain open.

Summary

Despite its relatively small size, Switzerland offers an efficient, transparent and reliable capital markets environment, which is underpinned by, among other things, its modern financial market infrastructure, competitive regulatory framework, stable political environment, transparent legal system and well-established corporate

About the firm

Niederer Kraft Frey is a leading full service Swiss law firm based in Zurich with an international approach. The firm works closely with its clients in Switzerland and internationally, to implement strategic goals, strengthen businesses and navigate change effectively. Niederer Kraft Frey offers integrated advice across the whole spectrum of corporate, finance and business law. The firm has a long track record of dealing effectively with complex challenges by combining legal excellence with commercial focus. Over decades, Niederer Kraft Frey has worked on the most significant and demanding matters in the Swiss market. This is the foundation of the firm's distinct market knowledge, legal expertise and its capacity for innovative thought.