Initial Public Offerings 2020

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Getting The Deal Through

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Lexology Getting The Deal Through is delighted to publish the fifth edition of *Initial Public Offerings*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Joshua Ford Bonnie and Kevin P Kennedy of Simpson Thacher & Bartlett LLP, for their continued assistance with this volume.

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Getting The Deal Through

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Switzerland

Philippe Weber and Christina Del Vecchio
Niederer Kraft Frey Ltd

MARKET OVERVIEW

Size of market

1 What is the size of the market for initial public offerings (IPOs) in your jurisdiction?

The first quarter of 2019 was marked by various global political and economic uncertainties, including the ongoing negotiations regarding Brexit and trade policy tensions between the USA, China and Europe, as well as other geopolitical concerns. Nevertheless, as of 31 May 2019, there have been two successful IPOs in 2019 on the Zurich-based SIX Swiss Exchange Ltd (SIX) (www.six-swiss-exchange.com) with an aggregate offering volume of approximately 2.1 billion francs, specifically Stadler Rail AG and Medacta Group SA, accompanied by the listing of shares of Alcon Inc following its successful spin-off from Novartis AG.

In 2018, there were seven IPOs with an aggregate offering volume of approximately 3.8 billion francs, specifically Fundamenta Real Estate AG, SIG Combibloc Group AG, Klingelnberg AG, Polyphor AG, CEVA Logistics AG, Medartis Holding AG and Sensirion Holding AG, along with the initial listings of IGEA Pharma NV, ObsEva SA, Blackstone Resources AG and ASMALLWORLD AG.

In 2017, there were six IPOs with an aggregate offering volume of approximately 4.5 billion francs, specifically Poenina Holding AG, Landis+Gyr Group AG, Zur Rose Group AG and Galenica AG, along with the initial listings of Idorsia Ltd (following its spin-off from Actelion Pharmaceuticals Ltd) and Rapid Nutrition PLC.

Issuers

2 Who are the issuers in the IPO market? Do domestic companies tend to list at home or overseas? Do overseas companies list in your market?

Issuers listing on exchanges in Switzerland stem from a range of industries, including the financial, retail, industrial and pharmaceutical industries. Generally, domestic companies tend to list in Switzerland, but Swiss companies may, nonetheless, decide to list outside Switzerland where, for example, their main centre of business is outside Switzerland. This is particularly true for companies that have re-domiciled in Switzerland or where their peer companies have tended to list on a particular market outside Switzerland. Foreign companies do list in Switzerland, especially given the flexible nature of SIX. In addition, the Swiss market has strong representation from certain industries that may attract foreign peer companies, especially with regard to the pharmaceutical, biotech and financial services industries. Of the 261 companies listed on SIX as of 31 May 2019, 37 have their registered offices outside Switzerland. There are three foreign companies listed on the BX Swiss AG (BX) as of 31 May 2019 (www.bxswiss.com/ols/issuers).

Primary exchanges

3 What are the primary exchanges for IPOs? How do they differ?

SIX operates the principal equity exchange in Switzerland. As of 31 December 2018, the market capitalisation of all SIX-listed shares of issuers domiciled in Switzerland and Liechtenstein was approximately 1.4 trillion francs. As of 31 May 2019, 261 companies were listed on SIX.

The only other equity exchange in Switzerland is BX. The BX is much smaller than SIX and mainly targets small and medium-sized Swiss enterprises. As of 31 May 2019, 20 companies were listed on the BX.

REGULATION

Regulators

4 Which bodies are responsible for rulemaking and enforcing the rules on IPOs?

Switzerland is not a member of the EU or the EEA. Accordingly, the EU Prospectus Directive and other EU regulations relating to IPOs are not applicable to IPOs conducted in Switzerland.

In Switzerland, various regulatory and self-regulatory bodies are involved in the rulemaking and enforcement of such rules in connection with IPOs and equity securities markets and exchanges pursuant to authority vested in them from Swiss legislation. Below is a summary of the applicable legislative framework, followed by summaries of the main regulatory and self-regulatory authorities mandated with the implementation, supervision and enforcement of the legislation.

Legislative framework

Generally, the current legislative framework with respect to IPOs and equity securities markets and exchanges in Switzerland consists of the following:

- Swiss Code of Obligations (CO) of 30 March 1911 (unofficial English translation at www.admin.ch/ch/e/rs/2/220.en.pdf);
- Financial Markets Infrastructure Act (FMIA) of 19 June 2015 (unofficial English translation at www.admin.ch/opc/en/classified-compilation/20141779/201901010000/958.1.pdf);
- Financial Market Infrastructure Ordinance of 25 November 2015 (unofficial English translation at www.admin.ch/opc/en/classified-compilation/20152105/201901010000/958.11.pdf); and
- additional ordinances issued by Swiss Financial Market Supervisory Authority (FINMA).

These statutes and regulations contain rules that impose direct obligations on issuers and other market participants, such as specific content requirements for offering and listing prospectuses, disclosure rules in respect of qualified shareholdings and rules on insider trading and market manipulation.

Currently, existing Swiss financial market regulations are undergoing significant reforms. For further information regarding these reforms and their status, see question 20.

Supervisory bodies

FINMA

The main financial market regulatory body in Switzerland is FINMA. FINMA delegates certain aspects of the regulation of the Swiss financial markets to a number of private or semi-private self-regulatory bodies that it licenses and supervises. For example, the SIX Group Ltd is mandated with the issuance, monitoring and enforcement of regulations related to SIX.

As noted above, the regulations governing Switzerland's financial market are currently undergoing significant revisions, including certain changes to the supervisory role and competencies of FINMA and the other regulatory bodies responsible for overseeing the Swiss financial markets. Pursuant to these reforms, FINMA will retain its broad mandate and continue to operate alongside the other regulatory bodies; however, following the full implementation of the FMIA, the Financial Services Act (FinSA) and the Financial Institutions Act (FinIA), FINMA will also become the competent supervisory authority for ensuring compliance with these new pieces of legislation. In addition, FINMA will be granted new enforcement tools under the FinIA and there will be increased cooperation and exchanges of information between FINMA and other Swiss and foreign supervisory, regulatory, governmental and judicial authorities (for further information, see question 20).

SIX Regulatory Board

One of the most important self-regulatory bodies under FINMA's supervision with regard to equity markets and exchanges in Switzerland is the SIX Regulatory Board (www.six-exchange-regulation.com/en/home/profile/regulatory-board.html). This is responsible for issuing the rules and regulations that apply to issuers (eg, rules and directives) and participants (eg, SIX Rule Book and participant directives). Furthermore, the SIX Regulatory Board is the highest supervisory body with respect to the implementation and enforcement of the rules issued by SIX Exchange Regulation.

The issuance or placement of equity securities (as opposed to their listing) does not currently require registration with or authorisation by FINMA or any other regulatory body. However, pursuant to the new prospectus regime under FinSA, which is expected to enter into force together with the implementing ordinances at the earliest on 1 January 2020 (with certain provisions only coming into force thereafter), any prospectus for a public offering will need to be approved by a competent authority (see question 20).

SIX Exchange Regulation Ltd

The SIX Exchange Regulation Ltd (SIX Exchange Regulation), an independent and autonomous entity within SIX Group Ltd (www.six-exchange-regulation.com/en/home/profile/six-exchange-regulation.html), regulates and monitors participants and issuers listed on SIX. In particular, it carries out tasks prescribed under Swiss legislation and under the rules and regulations issued by the SIX Regulatory Board and monitors compliance with these regulations. The SIX Exchange Regulation is, subject to the relevant rules, permitted to prescribe sanctions or submit sanction proposals, as well as inform the chairman of the board of directors of SIX Group Ltd, the supervisory authorities and, where appropriate, the competent public prosecuting authorities of suspected violations of the law or other wrongdoing by market participants.

SIX Disclosure Office

The SIX Disclosure Office, which forms part of the SIX Exchange Regulation under the Listing & Enforcement department, supervises compliance with the reporting and disclosure rules pursuant to articles 120ff of the FMIA, including disclosure of shareholdings in connection with IPOs, receives notifications of shareholdings, grants exemptions or relief from the reporting and disclosure obligation and delivers preliminary decisions on whether an obligation to notify exists or not (www.six-exchange-regulation.com/en/home/issuer/obligations/disclosure-of-shareholdings/board.html).

Authorisation for listing

5 Must issuers seek authorisation for a listing? What information must issuers provide to the listing authority and how is it assessed?

Issuers seeking to list their shares on a stock exchange in Switzerland must comply with the applicable exchange listing rules. The SIX Listing Rules, for example, are largely modelled on the EU Prospectus Directive, although they are less extensive and more flexible. The SIX Listing Rules and various additional rules issued by SIX set out the main steps a company has to undertake for a listing of its shares. In particular, the SIX Listing Rules require that a listing application be submitted and a prospectus be approved and published prior to the shares being admitted to trading on SIX. The SIX prospectus review and approval process takes 20 trading days. Generally, the SIX approval process for prospectuses is less onerous than in most EU jurisdictions and the United States. For example, the review by SIX is typically limited to a scheme rule check, and amended drafts of the listing prospectus can be filed within the 20-SIX-trading-day review period without adversely affecting the offering's timeline. In practice, the approval process is structured so that SIX approval is obtained before printing of the prospectus and the start of the offering period.

The issuance or placement of equity securities (as opposed to their listing) does not currently require registration with or authorisation by FINMA or any other regulatory body in Switzerland. However, pursuant to the new prospectus regime under FinSA, any prospectus for a public offering will need to be approved by a competent authority (see question 20).

Listing application

To ensure efficient processing, the listing application must be submitted pursuant to article 43 of the SIX Listing Rules by a recognised representative to the SIX Exchange Regulation. The listing application must contain a short description of the securities to be listed and a request regarding the planned first trading day, as well as a reference to the enclosures to the application that are required by the SIX Regulatory Board. Generally, the following documentation must be submitted to SIX, together with the duly signed listing application (see also www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/directives/06_08-DPES_en.pdf):

- the listing prospectus (described in greater detail in question 6);
- an official notice pursuant to articles 40a and 40b of the SIX Listing Rules (if required) – an official notice is required:
  - if the listing prospectus is not provided in full to potential investors in order to advise investors where the listing prospectus can be obtained;
  - to set out any material changes made to the information contained in the listing prospectus between the date of its publication and the listing date; or
  - to advise of any supplements to the listing prospectus;
- a copy of a current extract from the commercial register of the issuer;

- a copy of the valid articles of association of the issuer;
- evidence that the auditors of the issuer fulfil the requirements of auditors for public companies set out in articles 7 and 8 of the Federal Act on the Licensing and Oversight of Auditors (AOA);
- an original of the duly signed declaration by the lead manager of the issuer that the free float of relevant equity securities is sufficient;
- if necessary, an original of the duly signed declaration by the issuer that any printed share certificates will comply with the SIX SIS AG (SIX SIS) printing regulations. In the case of book-entry securities, the issuer must submit an explanation of how the holders of such securities may obtain proof of their holding; and
- a duly signed declaration by the issuer in accordance with article 45 of the SIX Listing Rules stating that:
  - its responsible bodies are in agreement with the listing;
  - the listing prospectus and official notice (if required) are complete pursuant to the SIX Listing Rules;
  - there has been no material deterioration in the issuer's assets and liabilities, financial position, profits and losses and business prospects since the listing prospectus was published;
  - it has read and acknowledges the SIX Listing Rules together with any applicable Additional Rules and the corresponding implementing provisions, as well as the SIX rules of procedure and sanction regulations and recognises them expressly in the form of the declaration of consent. The issuer further recognises the board of arbitration determined by SIX and expressly agrees to be bound by any arbitration agreement. The issuer also recognises that its continued listing is conditional upon its agreeing to be bound by the version of the legal foundations that is in force at any given time; and
  - it will pay the listing fees.

Regulatory standards

In preparing the listing application on SIX, issuers must indicate which regulatory standard they are applying to and demonstrate their satisfaction of the corresponding requirements. The following main regulatory standards are available for listings on SIX:

- International Reporting Standard. This is aimed at international investors. It has the most comprehensive transparency requirements and requires the application of international financial reporting standards (IFRS), US generally accepted accounting principles (US GAAP) or another internationally recognised accounting standard;
- Swiss Reporting Standard. This is aimed at domestic investors. Issuers may apply Swiss GAAP FER or the financial reporting standard under the Swiss Banking Act, with the other listing requirements remaining consistent with the International Reporting Standard;
- Standard for Investment Companies. This is for the listing of equity securities issued by investment companies (ie, companies whose sole purpose is to pursue collective investment schemes to generate income and/or capital gains, without engaging in any actual entrepreneurial activity as such and that do not operate under a licence as a collective investment scheme under the Swiss Federal Act on Collective Investments); and
- Standard for Real Estate Companies. This is for the listing of equity securities issued by a real estate company (ie, companies which continually generate at least two-thirds of their revenue from real estate-related activities).

The following table outlines the key listing requirements pursuant to these SIX regulatory standards.

Standard for equity security*	International Reporting Standard	Swiss Reporting Standard	Standard for Investment Companies	Standard for Real Estate Companies
Minimum equity capital requirements (in million francs)	2.5	2.5	2.5	2.5
Financial track record	Three years	Three years	N/A	N/A
Free float in percentage	20 per cent	20 per cent	20 per cent	20 per cent
Minimum free float market capitalisation (in million francs)	25	25	25	25
Financial reporting	IFRS/US GAAP	Swiss GAAP FER/ Standard according to Banking Act	IFRS/US GAAP	Swiss GAAP FER/IFRS

* Additional standards for equity securities are the Standard for Depositary Receipts and the Standard for Collective Investment Schemes.

Minimum equity capital requirements

Pursuant to the regulatory standards, an issuer's consolidated equity capital, as reported on its consolidated balance sheet as at the first day of trading, must amount to at least 2.5 million francs for all the standards listed above. Collective investment schemes must hold assets of at least 100 million francs, but exchange-traded funds differ from classic investment funds in this respect and no minimum capitalisation requirements apply to them (although there is a requirement that one or two market makers commit to posting firm bids and asks, the spread between which does not exceed a predefined percentage of indicated net asset value).

Financial track record

Pursuant to the regulatory standards, an issuer must:

- have existed as a company for at least three years; and
- have produced audited annual financial statements for the three full financial years preceding the listing application.

The three-year rule does not apply to companies that are listed under the Standard for Investment Companies or the Standard for Real Estate Companies; however, companies with a shorter financial history may benefit from exemptions granted by the SIX Regulatory Board (if necessary) where:

- it appears in the interests of the issuer or of the investors, namely in cases where the listed entity:
  - is the result of a corporate reorganisation such as a merger, spin-off or other transaction in which a pre-existing company or portions thereof are continuing as commercial entities; or
  - has not yet been able to present financial statements for the prescribed period of time, but nonetheless wishes to access the capital markets in order to finance its strategy for growth ('young companies'); and
- the SIX Regulatory Board has a guarantee that investors are adequately informed and possess the information required to make a well-founded assessment of the issuer and the securities to be admitted.

Where exemptions are granted, issuers must either comply with, among other conditions, stricter transparency requirements, such as quarterly reporting until annual accounts for three complete financial years are

available (in connection with young companies) or provide additional financial information, such as pro forma financials (in the case of listed entities resulting from corporate reorganisation).

For further details, see the SIX Directive on Exemptions regarding Duration of Existence of the Issuer (www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/directives/06_02-DTR_en.pdf) and the SIX Directive on the Presentation of a Complex Financial History in the Listing Prospectus (www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/directives/06_15-DCFH_en.pdf).

Minimum free float

At least 20 per cent of all of the issuer's outstanding securities of the same category must be publicly owned with capitalisation of at least 25 million francs. The definition of free float for purposes of the SIX Listing Rules is set out in the Directive on the Distribution of Equity Securities (www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/directives/06_03-DDES_en.pdf).

Special listing requirements for foreign issuers

Foreign issuers of equity securities are subject to certain additional listing requirements as set out in the SIX Directive on the Listing of Foreign Companies (www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/directives/06_05-DFC_en.pdf). Generally speaking, these additional requirements are not very onerous and in practice they do not pose particular issues. For further details, see question 14.

Prospectus

6 What information must be made available to prospective investors and how must it be presented?

In connection with public IPOs, issuers are currently required to publish a prospectus pursuant to both Swiss corporate law (the CO) and to the SIX Listing Rules. The requirements of these two regimes are discussed in greater detail below. However, the new prospectus regime under FinSA includes certain requirements regarding the content of prospectuses, which will need to be reviewed and approved by a competent authority with respect to its completeness, coherence and comprehensibility. It is expected that SIX and BX will apply to be competent reviewing bodies pursuant to the FinSA. See question 20 for further information.

Issuance or offering prospectus

Article 652a of the CO requires an offering prospectus when new shares are offered to the public in Switzerland. The offering prospectus must include information on:

- the content of the existing entry in the commercial register, with the exception of details relating to the persons authorised to represent the company;
- the existing amount and composition of the share capital, including the number, nominal value and type of shares and the preferential rights attaching to specific share classes;
- the provisions of the articles of association relating to any authorised or conditional capital increase;
- the number of dividend rights certificates and the nature of the associated rights;
- the most recent annual accounts and consolidated accounts with audit report and, if more than six months have elapsed since the accounting cut-off date, the interim accounts;
- the dividends distributed in the past five years or since the company was established; and
- the resolution concerning the issue of new shares.

The offering prospectus must be made available to investors, but is not currently subject to any filing or approval requirements with any Swiss regulator; however, pursuant to the Swiss financial market reforms under FinSA, any prospectus for a public offering will need to be reviewed and approved by a competent authority (see question 20). Nevertheless, a breach of the CO prospectus requirements may, in any event, lead to prospectus liability claims (see question 19).

The question of whether a prospectus complies with the CO prospectus requirements is also relevant for non-Swiss issuers offering shares to the public in Switzerland without listing shares on SIX. Typically, additional disclosure items, to the extent required, will be included in a Swiss wrapper or in the prospectus.

Listing prospectus

As indicated in question 5, the SIX Listing Rules require that the prospectus be approved and published prior to the shares being admitted to trading on SIX. Often, Swiss issuers that list shares on SIX prepare a prospectus that complies with both the SIX Listing Rules and the CO prospectus requirements: an 'offering and listing prospectus'.

In essence, the listing prospectus must provide sufficient information for competent investors to reach an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the issuer, as well as of the rights attached to the equity securities. In addition, specific mention must be made of any special risks. An issuer of equity securities on SIX must prepare a listing prospectus that contains information prescribed in Scheme A (www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/schemes/04_03-SCHA_en.pdf). Separate schemes are available for the listing of equity securities of investment companies (Scheme B, www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/schemes/04_04-SCHB_en.pdf) and real estate companies (Scheme C, www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/schemes/04_05-SCHC_en.pdf).

Generally, the following information is included in listing prospectuses:

- a summary;
- general information about the issuer, such as its name, registered office, legal form and purpose;
- information on the securities offered, including the rights attached to such securities and information on the offering;
- risk factors;
- use of proceeds;
- dividends and other distributions;
- capitalisation;
- information on the business activities of the issuer, its turnover, assets and investments;
- information on the board of directors and the management of the issuer as well as its auditors;
- shares, share capital and voting rights;
- significant shareholders – for issuers domiciled in Switzerland, this information must be provided in accordance with article 120 of the FMIA;
- offering restrictions;
- taxation;
- audited annual consolidated financial statements for the past three full financial years prepared in accordance with the applicable financial reporting standard and, if the balance sheet in the last audited annual financial statements is more than nine months old on the date on which the listing prospectus is to be published, additional interim financial statements; and
- persons responsible for the content of the listing prospectus.

In addition, an industry overview and market trends section, as well as a management discussion and analysis of financial condition and results of operation section, are typically included in the listing prospectus, but are not technically required. Finally, information contained in previously or simultaneously published documents can be incorporated by reference into the listing prospectus.

In terms of companies applying for the listing of their equity securities on the International Reporting Standard of SIX, financial statements need to be prepared in accordance with IFRS or US GAAP. If a company applies for listing on the Swiss Reporting Standard, the preparation of its financial statements must be in accordance with Swiss GAAP FER or the standard according to the Banking Act. Swiss GAAP FER is comparable with IFRS or US GAAP, but is more principle-based and gives a true and fair view of the net assets, financial position and operational results. A working capital statement is required under IFRS and US GAAP as well as under Swiss GAAP FER and the standard according to the Banking Act (for a more detailed discussion regarding SIX regulatory standards, see question 5).

In addition, if an issuer's financial history is rather complex, SIX may require additional financial disclosure, such as pro forma financials as further described in the SIX Directive on the Presentation of a Complex Financial History in the Listing Prospectus (see www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/directives/06_15-DCFH_en.pdf). In light of this, it is highly recommended to approach SIX in advance to discuss any nuances or complexities in an issuer's financial statements.

Issuers that are not incorporated in Switzerland may also apply the accounting standards of their home country (ie, Home Country Standard), provided that these standards are recognised by the SIX Regulatory Board. Currently, the only additional standard recognised by the SIX Regulatory Board for the listing of equity securities by foreign issuers is EU IFRS.

Publicity and marketing

7 What restrictions on publicity and marketing apply during the IPO process?

Under Swiss law, there are no specific regulations limiting or restricting the type or content of publicity made prior to a public offering of equity securities of operating companies (as opposed to investment companies that may fall within the stricter rules applicable to collective investment vehicles). Accordingly, an issuer of equity securities may generally engage in any type of public relations or marketing activities, including promotion of its products and services and advertising a forthcoming equity offering, without having to observe any regulatory restriction other than the Swiss statutory rules on the issuance of a prospectus and prospectus liability.

Pursuant to article 652a of the CO, any company that undertakes a public offering of new equity securities in Switzerland, including by way of marketing or otherwise, must make a prospectus available to the investing public (see question 6). In addition, article 752 of the CO attaches prospectus liability to any inaccurate or misleading information, or information not in compliance with the statutory requirements, made or disseminated in a prospectus or in similar statements in connection with the issuance of shares. Thus, the term 'similar statements' extends the application of article 752 of the CO beyond the offering prospectus and potentially attaches liability to any misleading publicity relating to a securities offering, regardless of the form of media (see question 19).

Nevertheless, as long as article 652a and article 752 of the CO are observed, permitted activities include press releases, routine publications, the granting of interviews, the holding of press conferences and meetings with the investment community, the dissemination of research reports, the placement of advertisements in newspapers, radios, TV and other media (including websites), and the conducting of roadshows in Switzerland. Publication in connection with equity offerings may be made in any Swiss official language or in English.

Enforcement

8 What sanctions can public enforcers impose for breach of IPO rules? On whom?

Unlike other countries where government agencies closely regulate the financial markets, in Switzerland this supervision has been delegated by FINMA to certain self-regulatory bodies, such as SIX Group Ltd; thus, in the first instance, SIX responds to any breaches of the SIX Listing Rules.

In the case of a breach of the SIX Listing Rules, or of any additional rules or regulations issued by SIX, the SIX Sanctions Commission can impose one or more of the following sanctions on issuers, guarantors or recognised representatives (as applicable):

- warning;
- reprimand;
- a fine of up to 1 million francs (in cases of negligence) or 10 million francs (in cases of wrongful intent);
- suspension of trading or registration;
- issue of a new registration decision under stipulations or conditions;
- delisting or reallocation to a different regulatory listing standard;
- exclusion from further listings; and
- withdrawal of recognition or registration.

As noted in question 4, the SIX Exchange Regulation is also, subject to the relevant rules, permitted to prescribe sanctions or submit sanction proposals, as well as to inform the chairman of the board of directors of SIX Group Ltd, the supervisory authorities and, where appropriate, the competent public prosecuting authorities of suspected violations of the law or other wrongdoing by market participants.

TIMETABLE AND COSTS

Timetable

9 Describe the timetable of a typical IPO and stock exchange listing in your jurisdiction.

The timetable of an equity offering depends on both the type and the size of the offering. In addition, certain offerings may require a greater amount of preparation on the part of the issuer, particularly with respect to corporate governance and corporate structure, as well as accounting and reporting requirements. Nevertheless, IPOs in Switzerland generally take between four and six months and an indicative IPO can generally be organised into the following five phases.

IPO planning and preparation phase

During the IPO planning and preparation phase, there are likely to be many workstreams operating in parallel and which may overlap. During this phase, these workstreams generally address the following tasks:

- discussion and development of the issuer's strategy, business plan, equity story (ie, investment case) and offering structure;
- establishing a timetable and holding kick-off meetings;
- selection of the responsible team both internally at the issuer and externally, including the bookrunners and any other managers (ie, the banking syndicate) and legal and financial advisers;
- making any necessary changes in respect of the company's corporate structure to meet legal or operational requirements (the length of this phase depends on, among other factors, any required restructurings);
- consideration of matters concerning capital, financial and accounting or tax structures; and

- beginning due diligence exercises (which includes business, financial and legal due diligence and will continue throughout the offering process).

Drafting phase

During the drafting phase, the issuer along with its advisers will:

- draft the prospectus and other key legal documents;
- develop marketing and presentation materials, such as early look, analyst and pilot-fishing presentations;
- engage with the issuer's auditors regarding presentation of financial information in the prospectus and delivery of comfort letters; and
- attend courtesy meetings at SIX to discuss the contemplated offering structure and content of the prospectus.

Negotiating and investor education phase

During the negotiating and investor education phase, the IPO workstreams generally address the following tasks:

- shareholders' resolutions in respect of the offering and capital increase (if applicable);
- negotiation of underwriting agreement and any sub-underwriting agreements (if applicable);
- delivery of the analyst presentation and review of research reports;
- preparation of the SIX listing application;
- submission of the listing application together with the preliminary listing prospectus and any additional required documents;
- draft of roadshow presentation and other materials for analysts, press and investors;
- responding to SIX comments (if applicable);
- inclusion of interim financial statements into offering documents and update analysts (if applicable); and
- issuance of a press release regarding the issuer's intention to float, followed by the publication of analysts' research reports.

During this period, issuers typically receive approval by SIX for the listing of equity securities.

Pre-trading and marketing phase

During the period from approximately two weeks prior to the first day of trading, the IPO workstreams generally address the following tasks:

- approval of the prospectus and underwriting agreement by the board of directors of the issuer;
- final price discussions with the board of directors of the issuer and setting of price range;
- execution of the underwriting agreement; and
- beginning the offer period, publication of the prospectus, start of the price-fixing process (eg, book-building process) and beginning roadshow presentations.

During the period from approximately one to two trading days prior to the first day of trading, the IPO workstreams generally address the following tasks:

- subscription and payment of the nominal value of the equity securities to be offered (if applicable);
- registration of capital increase in the commercial register of the issuer (if applicable);
- establishment of the final offer size and price and execution of the pricing agreement to the underwriting agreement and pricing supplement to the offering and listing prospectus (if applicable); and
- allocation of shares to investors.

First day of trading and aftermarket phase

Following the first day of trading, the IPO workstreams generally address the following tasks:

- stabilisation of the shares along with the disclosure of stabilisation measures (within five trading days);
- settlement and payment of net proceeds (usually within two trading days of the first trading day); and
- exercise of the over-allotment option (within 30 calendar days after first trading day) and disclosure of exercise of over-allotment option (within five trading days after exercise).

Costs

10 | What are the usual costs and fees for conducting an IPO?

The costs and fees associated with IPOs in Switzerland can vary greatly depending on the size and nature of the offering. The typical costs and fees associated with a Swiss issuer conducting an IPO exclusively on SIX can generally be allocated as follows:

- SIX listing fees: depending on size and other factors, between 20,000 and 100,000 francs;
- underwriters' fees: depending on size, type of issuer and other factors, typically between 2 and 5 per cent of the gross proceeds of the sale of the shares (reflecting various possible fee appropriations, including base fee, selling fee, management fee and incentive fees);
- issuer's counsel fees: depending on type of offering (eg, Regulation S as opposed to Rule 144A) and other factors, typically between 600,000 and 1.5 million francs;
- underwriters' counsel fees: depending on type of offering (eg, Regulation S as opposed to Rule 144A) and other factors, typically between 300,000 and 650,000 francs;
- financial printer fees: typically, between 20,000 and 40,000 francs;
- Swiss federal stamp duty (if shares are newly issued): 1 per cent on the issue price of the new shares placed in the offering; and
- Swiss federal securities transfer taxes (if shares are already in existence): up to 0.15 or 0.3 per cent of the offer price for the existing shares sold in the offering.

In addition to the above, miscellaneous fees and expenses, such as auditor fees, roadshow fees or the fees of the commercial registry and the notary public (in the event that the IPO involves a capital increase or other changes to the articles of association of the issuer), must also be taken into consideration.

CORPORATE GOVERNANCE

Typical requirements

11 | What corporate governance requirements are typical or required of issuers conducting an IPO and obtaining a stock exchange listing in your jurisdiction?

Prior to becoming a public company, there are no specific corporate governance requirements that issuers have to satisfy ahead of their shares being admitted to trading. Nevertheless, during the IPO planning process, issuers typically evaluate the structure of their board and corporate governance strategy and consult authoritative industry standards for best practices that can and should be adopted prior to becoming a publicly listed company. The four main sources of rules on corporate governance that issuers should bear in mind ahead of conducting an IPO in Switzerland are as follows.

Swiss Code of Obligations

The CO requires, inter alia, that listed companies appoint recognised auditors and disclose significant shareholders in their annual report.

Swiss Ordinance against Excessive Compensation in Listed Companies (OAEC)

The popular referendum on 'say on pay' in Switzerland, known as the Minder Initiative, resulted in an amendment to the Swiss constitution and implemented rules currently codified in the OAEC that apply from the first day Swiss issuers are listed on an exchange in Switzerland or abroad. Among other requirements, shareholders need to separately approve the annual fixed and variable aggregate compensation of the board of directors and the executive management at the annual general meeting. In addition, directors, including the chairman, must be elected annually and the board of directors must prepare a separate compensation report. An issuer's articles of association must also include provisions for members of the board of directors and executive management regarding, among others, loans, retirement benefits, incentive and participations plans and the number of additional board and senior management positions such individuals are permitted to participate in outside of the issuer and related companies. Furthermore, certain categories of compensation are prohibited, including severance payments; thus, employment contracts of an issuer must be reviewed and brought in line with current Swiss law prior to becoming a public company. Notably, these provisions apply only to Swiss companies listed on an exchange in Switzerland or abroad. Foreign issuers with a registered address outside of Switzerland would not need to comply with these requirements.

SIX Swiss Exchange Directive on Information relating to Corporate Governance

The SIX Regulatory Board has issued the Directive on Information relating to Corporate Governance (DCG) (www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/directives/06_16-DCG_en.pdf), which outlines certain corporate governance information issuers are required to publish annually so that investors are able to evaluate the characteristics of securities and the quality of issuers, including details on the issuer's management and control mechanisms. The categories of information that issuers are required to publish include descriptions on the group structure and shareholders, capital structure, board of directors, executive committee, compensation, shareholdings and loans, shareholders' participation rights, change of control and defence measures, the issuer's auditors and information policy. Notably, this directive applies to all issuers whose equity securities have their primary or main listing on SIX once their shares have been admitted to trading. The DCG follows a 'comply or explain' approach, permitting an issuer to deviate from the disclosure obligations set out therein to the extent that the annual report contains substantiated justifications for such deviation or non-disclosure.

Swiss Code of Best Practice for Corporate Governance

This publication is a best practice industry standard in Switzerland that contains recommendations for the organisation of the board of directors, including the formation of committees and the recommended composition of such committees, and the compensation of the board of directors.

New issuers

12 | Are there special allowances for certain types of new issuers?

As discussed in question 5, upon application to the SIX Regulatory Board, issuers with financial histories of less than three full financial years available can apply for an exemption from this requirement.

Anti-takeover devices

13 | What types of anti-takeover devices are typically implemented by IPO issuers in your jurisdiction? Are there generally applicable rules relevant to takeovers that are relevant?

Anti-takeover measures

Issuers in Switzerland can include certain anti-takeover measures in their articles of association. These measures may include:

- share transfer restrictions;
- limitations on the voting rights per shareholder;
- qualified quorum for the cancellation of certain provisions of the articles of association, such as share transfer restrictions;
- shares with enhanced voting rights;
- provisions requiring a certain percentage of voting rights represented in the shareholders' meeting in order to pass resolutions; and
- authorised or conditional share capital with exclusion of pre-emptive rights that the board of directors may use in the event of a tender offer.

Notably, as in the EU, Swiss law restricts the board of directors' ability to take defensive measures once a public tender offer has been announced.

Mandatory tender offers

Pursuant to article 135 of the FMIA, anyone acquiring shares of a Swiss listed company, whether directly or indirectly or acting in concert with third parties, which, when added to the shares already held by such person, exceed 33.33 per cent of the voting rights (whether exercisable or not) of such company, must submit a public tender offer for all listed equity securities of the company. Mandatory tender offers may not be subject to conditions except for important reasons, such as where official authorisation is required for an acquisition, or the equity securities in question do not include any voting entitlement, or the provider wants the specific nature of the target company's economic substance to remain unchanged.

The articles of association of companies may, however, provide for a higher threshold of up to 49 per cent (opting-up) or may declare the mandatory tender offer obligations to be inapplicable at all (opting-out). Such provisions are often put in place where there are large shareholders who may risk accidentally triggering the threshold if their shareholdings change or if they, perhaps along with other family member shareholders, are viewed as a group acting in concert.

If an opting-up or opting-out clause is included following the listing of the company, strict transparency and majority requirements in the shareholders meeting must be observed; thus, many issuers contemplating an IPO consider whether such opting-up or opting-out provisions are important aspects of their corporate strategy.

FOREIGN ISSUERS

Special requirements

14 | What are the main considerations for foreign issuers looking to list in your jurisdiction? Are there special requirements for foreign issuer IPOs?

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 company decides to list in Switzerland, it can either list the shares of the foreign entity on SIX or re-domicile to Switzerland by setting up a new Swiss holding company and list the shares of the new holding company on SIX. In either scenario, the issuer can continue to report in euros or US dollars. In addition, SIX also permits trading of

equity securities in euros or US dollars. Notably, the re-domiciliation route is often taken for tax or regulatory purposes.

Overview

As a general matter, the SIX Listing Rules and their implementing provisions apply equally to issuers that do not have their registered office in Switzerland and intend to list their equity securities on SIX. In addition to these provisions, there are specific requirements that apply only with respect to foreign issuers as set out in the SIX Directive on the Listing of Foreign Companies (www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/directives/06_05-DFC_en.pdf).

In particular, a foreign issuer whose equity securities are not listed on another exchange recognised by the SIX Regulatory Board may only submit an application for a primary listing. For a primary listing, the foreign issuer must demonstrate that it has not been refused listing in its home country pursuant to investor protection legislations. This requirement is usually satisfied by an opinion delivered from an independent law firm or a relevant extract from the rejection decision issued by the competent authority in the issuer's home country in connection with the registration process in question that clearly indicates that the company was not refused listing because it failed to comply with investor protection regulations.

A foreign issuer whose equity securities are listed on another exchange recognised by the SIX Regulatory Board may, however, choose between a primary and a secondary listing on SIX. The same applies if a company is planning on listing simultaneously on another primary exchange and on SIX (a 'dual listing'). In principle, exchanges that are members of the Federation of European Securities Exchange and the World Federation of Exchanges are recognised by the SIX Regulatory Board as having equivalent listing provisions.

In connection with the listing prospectus, foreign issuers must describe those publications in which announcements required by an issuer under the issuer's home country company law will appear. Furthermore, the foreign issuer must recognise the Swiss courts as having jurisdiction over claims arising out of or in connection with the listing on SIX. In addition, the SIX Regulatory Board reserves the right to modify the listing procedure as appropriate if, under the foreign issuer's home country's company law, the time at which the equity securities are legally created is not the same as that under Swiss law (ie, by entry in the commercial register).

In addition to IFRS and US GAAP, foreign issuers who wish to list their shares on SIX according to the International Reporting Standard may also apply their home country standard, provided that these standards are recognised by the SIX Regulatory Board.

Secondary listing requirements

In connection with secondary listings, the applicable issuer requirements are deemed fulfilled if the equity securities are listed on a recognised exchange with equivalent listing provisions. This requirement is usually fulfilled with an opinion from counsel in the respective jurisdiction regarding the sufficiency of investor protection rules in that jurisdiction. Furthermore, if an issuer submits an application for the listing of equity securities to SIX within six months of the same equity securities having been listed on the primary exchange, the SIX Regulatory Board will recognise the listing prospectus prepared in connection with the listing on the primary exchange as approved by the competent body for that exchange, provided that certain technical information (eg, security number, paying agent, settling agent and trading currency) is added for the Swiss market.

If, however, the listing on SIX occurs more than six months after the listing on the primary exchange, the issuer must submit an abridged prospectus that contains most of the information on the equity securities required by prospectus Scheme A as well as a description of the issuer, a 'no material change' declaration and an appropriate responsibility clause. The abridged prospectus must contain a reference to the secondary listing and to the trading currency on SIX. The abridged prospectus must further contain the audited annual consolidated financial statements for the past three full financial years and, if the balance sheet in the last audited financial statements is more than nine months old on the date on which the abridged listing prospectus is to be published, additional interim financial statements. The annual and any interim financial statements must be prepared in accordance with the financial reporting standards of the primary exchange and be submitted to the SIX Exchange Regulation.

The free float is considered adequate for a secondary listing if the capitalisation of the shares circulating in Switzerland is at least 10 million francs or if the applicant can otherwise demonstrate that there is a genuine market for the equity securities concerned.

Selling foreign issues to domestic investors

15 | Where a foreign issuer is conducting an IPO outside your jurisdiction but not conducting a public offering within your jurisdiction, are there exemptions available to permit sales to investors within your jurisdiction?

According to article 652a, paragraph 2 of the CO, an invitation for subscription of equity securities is public unless addressed to a limited number of persons. Generally speaking, a public offering is understood to be an offering made to an indefinite number of investors by means of public advertisement (eg, newspaper announcement, mailshots, web pages with unrestricted access). By contrast, if issuers solicit a limited number of selected investors individually, including by inviting them to roadshows, the offering could arguably be considered private as long as there are no public advertisements or similar communications relating to the offering. In other words, in the absence of public advertising, any offer to a 'selected and limited circle of investors' could arguably be construed as a private placement.

However, because the term 'public offering' is not clearly defined under Swiss law and because there is no express private placement safe harbour for share offerings, what constitutes a selected and limited circle of investors has been and continues to be subject to legal debate. For the purposes of this debate, it is important to bear in mind that the Swiss Federal Act on Collective Investment Schemes contains a definition of qualified investors that practitioners and legal scholars often apply by analogy to equity offerings.

The current views expressed in Swiss legal doctrine can be summarised as follows:

- qualitative approach: this approach considers whether investors were selected based on objective criteria or whether the investors have a pre-existing specific relationship with the issuer (ie, typically existing shareholders or employees); and
- quantitative approach: given the need for numeric guidance, practitioners and legal scholars have developed a quantitative rule of thumb that focuses on the number of offerees. The most restrictive view is that any offer made to more than 20 investors is deemed a public offer. There is a trend among practitioners, however, to advocate an increase of this threshold to up to 100 qualified investors.

Given that there is currently no private placement safe harbour, regardless of whether a qualitative or quantitative approach is applied, each equity offering into Switzerland and the accompanying requirement of a Swiss-compliant offering prospectus must be considered on a case-by-case basis.

Currently, existing Swiss financial market regulations are undergoing significant reforms. For further information regarding reforms

in relation to the codification of exemptions from the duty to publish a prospectus, see question 20.

TAX

Tax issues

16 | Are there any unique tax issues that are relevant to IPOs in your jurisdiction?

The issuance of new shares by, and capital contributions to, a company resident in Switzerland are subject to a one-off capital duty of 1 per cent, with issuances of up to 1 million francs being exempt. Exemptions also apply for certain restructurings.

The transfer of Swiss equity securities is subject to securities transfer tax at a rate of 0.15 per cent, whereas the transfer of foreign equity securities is taxed at a rate of 0.3 per cent, in each case if at least one of the parties or intermediaries involved qualifies as a Swiss securities dealer (as defined in the Swiss Federal Stamp Duty Act). Certain types of transactions or parties are exempt; for example, group restructurings and Swiss and foreign funds.

INVESTOR CLAIMS

Fora

17 | In which fora can IPO investors seek redress? Is non-judicial resolution of complaints a possibility?

IPO investors can seek redress for their claims via the Swiss judicial system with prospectus liability being their main cause of action (see question 19 for a further discussion on prospectus liability claims in Switzerland).

Class actions

18 | Are class actions possible in IPO-related claims?

IPO-related class action claims are not provided for under the current laws of Switzerland.

Claims, defendants and remedies

19 | What are the causes of action? Whom can investors sue? And what remedies may investors seek?

The applicable Swiss civil law rule on prospectus liability (contained in article 752 of the CO) provides redress for investors where information that is inaccurate, misleading or in breach of statutory requirements is included in a prospectus or similar statement disseminated in connection with the issue of shares, bonds or other securities. Any person or entity involved, whether wilfully or through negligence, is jointly and severally liable to the acquirer of such securities for any resulting attributable losses. Thus, prospectus liability claims in relation to prospectuses and similar statements (eg, press releases and roadshows materials) may be brought in Switzerland against all persons involved in the drafting or the dissemination of the prospectus or similar statements, including:

- the issuer or company whose shares are offered to the public;
- the members of its board of directors;
- the management of the issuer;
- the syndicate banks;
- auditors;
- public notaries;
- legal advisers; and
- other external advisers or experts.

Notably, the underwriting agreement executed in connection with an IPO usually provides that the issuer or selling shareholders (if any) will indemnify the underwriters, inter alia, in the event of prospectus liability claims predicated on false or misleading statements provided or material information omitted by the issuer or selling shareholders (if any).

In essence, the following conditions must be met in order to establish prospectus liability:

- the issue prospectus or similar statements and information in connection with the issue of equity securities including, but not limited to, research reports, press releases and information posted on the issuer's website contained information that was inaccurate, misleading or otherwise in breach of statutory requirements;
- the defendant was wilfully or negligently responsible for such statements;
- the claimant suffered damages; and
- the damages were caused by such inaccurate, misleading or legally non-compliant information.

An issuer is in breach of the statutory requirements, for example, if the statutory disclosure requirements pursuant to article 652a of the CO are not met in the prospectus or if there is no prospectus at all where required by law. If facts material to the investment decision are omitted from the prospectus, this is considered to be misleading. As noted above, the claimant investor must prove that the inaccurate or misleading statements or other non-compliance with the statutory requirements is a direct cause of the damage it has suffered and that the defendant responsible for such information acted wilfully or at least negligently. The standard of proof is not a strict evidence standard (balance of probabilities), but rather one of predominant probability.

It is important to note that not only the prospectus, but also any other information provided in connection with the offering, such as press releases, research reports and roadshow materials, may be qualified as 'similar statements' in the sense of article 752 of the CO and therefore could be the basis of a liability claim. Certain risks can be mitigated by including a disclaimer with the relevant materials stating, inter alia, that the document is not a prospectus, that any investment decision should be based on the prospectus and where the prospectus can be obtained. In addition, a restricted period usually applies during which no information about the issuer's business or its earnings and financial situation that is not otherwise contained in the prospectus may be disclosed.

In connection with a prospectus liability claim, defendants can often mitigate and defend themselves against claims of wilful or negligent conduct by evoking a 'due diligence defence'. Switzerland does not have official due diligence guidelines and, thus, the essence of this defence will be based on standard market practice and the adherence to these established due diligence undertakings, which demonstrate that they acted with due care and diligence in the preparation of the prospectus or similar statements. Recognised due diligence undertakings include, inter alia, comprehensive documentary due diligence, meetings with management, review of the issuer's business plan, review of financial statements and meetings with the issuer's accounting personnel and auditors, interviews with third parties (such as customers and suppliers), site visits, directors' and officers' questionnaires, negotiation of representations and warranties in the underwriting agreement, legal opinions and disclosure letters from legal counsel, comfort letters from auditors, officers' certificates and bring-down diligence calls.

In addition to initiating a prospectus liability claim, a plaintiff may also try to invoke general remedies under Swiss contract or tort law.

Furthermore, a person liable for a false or misleading prospectus may also become subject to criminal prosecution under the Swiss Criminal Code (for example, in the case of fraud (article 146) or forgery of documents (article 251)).

Currently, existing Swiss financial market regulations are undergoing significant reforms. For further information regarding reforms in relation to prospectus liability under Swiss law, see question 20.

UPDATE AND TRENDS

Recent developments

20 | Are there any other current developments or emerging trends that should be noted?

The Swiss financial market regulatory framework is currently undergoing fundamental and comprehensive reforms. 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 the equivalence requirements under Directive 2014/65/EU on markets in financial instruments.

These new financial market regulations are predominately set out in the:

- FMIA (which came into force on 1 January 2016);
- FinSA; and
- FinIA.

The FMIA is of particular relevance in the context of equity capital markets in Switzerland, because it primarily regulates financial market infrastructure, disclosure of shareholdings, insider trading, market manipulation and public takeover offers. In addition, the FinSA includes, among other things:

- a new prospectus regime for public offerings of securities in Switzerland;
- the codification of exemptions from the duty to publish a prospectus; and
- provisions on prospectus liability.

The Swiss Parliament adopted the FinSA and FinIA in the final votes on 15 June 2018. After the referendum period expired on 4 October 2018, the Federal Council initiated the consultation on the three ordinances containing the implementing provisions for the FinSA and the FinIA (ie, the Financial Services Ordinance, Financial Institutions Ordinance and the Supervisory Organisation Ordinance) on 24 October 2018. The deadline for submissions was 6 February 2019. The definitive ordinances are expected to be approved by the Federal Council in autumn 2019, and both laws are expected to enter into force together with the implementing ordinances at the earliest on 1 January 2020 (with certain provisions only coming into force thereafter). Specifically, there will be a transition period in relation to full compliance with the final legislation as set out therein.

New prospectus regime

To establish a level playing field with internationally comparative prospectus disclosure standards across all types of financial instruments, FinSA sets out, among other things, content and prior approval requirements for all public offering prospectuses (eg, primary as well as secondary offerings prospectuses). These requirements are substantially modelled on the EU prospectus regime, which has also been subject to revision, culminating with the enactment of the EU Prospectus Regulation on 14 June 2017, which comes into full effect across the EU from 21 July 2019. Under the current regime in Switzerland, only stock exchange listing prospectuses must be approved before the first day of trading, and only in respect of equity securities.

Pursuant to the new legislation, subject to certain exemptions (such as eligible debt offerings), all public offering prospectuses will need to be reviewed and approved by the approval authority or reviewing body with respect to completeness, coherence and comprehensibility before the publication of the offering or the admission to trading on a Swiss trading platform. The prospectus approval process is, thus, expected to be split into:

- an approval process (ie, by the reviewing body); and
- an admission to trading process (ie, by the exchange admission body, such as SIX Exchange Regulation).

It is expected that Swiss stock exchanges will also amend their listing rules so that these two processes can operate in parallel and be coordinated. According to the accompanying draft ordinance to FinSA, this review will largely focus on the prospectus requirements outlined in the legislation and the formal compliance with the content guidelines annexed to the ordinance, which are significantly based on the well-established schemes under the SIX Listing Rules. Additionally, first-time issuers will be required to submit their prospectus for approval at least 20 calendar days (all other issuers at least 10 calendar days) before the publication of the offering or the admission to trading on a Swiss trading platform. It is expected that SIX and BX will apply to be competent reviewing bodies pursuant to the FinSA. In addition, in the context of IPOs, the approved prospectus will also need to be published at least six business days before the end of the offering period, therefore implementing a new minimum statutory requirement for the duration of IPOs.

To the extent that the issuer is required to publish a supplement to the prospectus prior to the end of the offering period or prior to the start of trading on the relevant trading platform (ie, in the event that new facts arise or are established that could have a significant influence on the assessment of securities), a supplement to the prospectus must be prepared and published. Subject to the nature of the event, the supplement may also require the approval of the relevant reviewing body prior to its publication, with the approval to be provided within a maximum of seven calendar days. If such new facts occur or are established during a public offer, the offer period cannot end sooner than two days after publication of the supplement.

Codification of exemptions from the duty to publish a prospectus

There are currently no express safe harbours from the duty to publish a prospectus in public offerings under Swiss law. The FinSA, however, includes express exemptions from the duty to publish a prospectus, which are largely consistent with the exemptions under the current EU regulations and existing SIX regulations.

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The list of exempt transactions includes, among other things, offerings limited to investors classified as professional clients (eg, financial intermediaries under the meaning of the Banking Act, the FinIA and the Collective Investment Schemes Act), offerings addressed to fewer than 500 retail investors and offerings not exceeding a total value of 8 million francs over a period of 12 months. Regarding such offerings that do not require a prospectus, the FinSA further provides that offerers or issuers must treat investors equally when sharing essential information on an offer.

Prospectus liability

Under the FinSA, the existing prospectus liability regime will largely remain intact. In addition, with regard to information in summaries (required under FinSA), liability is limited to cases where such information is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus. Furthermore, with regard to false or misleading information on the issuer's prospects (also required under FinSA), liability is limited to cases where such information was provided or distributed against better knowledge or without reference to the uncertainty regarding future developments. The FinSA also introduces criminal liability in the event of intentional violation of the Swiss prospectus rules and regulations.

The FinSA will introduce a new era of securities regulation in Switzerland and a redesigned harmonised prospectus regime that aims to establish a level playing field with corresponding EU prospectus regulations. While parts of the new regulation will be manageable and consistent with well-established Swiss market practice (eg, content of prospectuses), other areas will require special attention from market participants and advisers.

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