# Equity capital markets in Switzerland: regulatory overview

**by *Dr Thomas U Reutter* and *Annette Weber*, *B#r & Karrer Ltd***

Country Q&A | Law stated as at 01-Jul-2018 | Switzerland

A Q&A guide to equity capital markets law in Switzerland.

The Q&A gives an overview of main equity markets/exchanges, regulators and legislation, listing requirements, offering structures, advisers, prospectus/offer document, marketing, bookbuilding, underwriting, timetables, stabilisation, tax, continuing obligations and de-listing.

To compare answers across multiple jurisdictions, visit the equity capital markets *Country Q&A tool*.

This Q&A is part of the global guide to equity capital markets law. For a full list of jurisdictional Q&As visit *www.practicallaw.com/equitycapitalmarkets-guide*.

## Main equity markets/exchanges

1. What are the main equity markets/exchanges in your jurisdiction? Outline the main market activity and deals in the past year.

**Main equity markets/exchanges**
The main equity exchange in Switzerland is the SIX (*www.six-swiss-exchange.com*). At 15 March 2018, 247 issuers were listed on the SIX Swiss Exchange Ltd. The total market capitalisation of all issuers domiciled in Switzerland and Lichtenstein amounted to CHF1.6 trillion at 31 December 2017.

The advantages of a listing on the SIX Swiss Exchange Ltd include:

- An attractive financial centre.
- A wide variety of listed companies.
- A stable and issuer-friendly Swiss legal and regulatory regime.
- A liquid market with an automated and fully integrated clearing and settlement.
- State-of-the-art trading conditions with cutting-edge technology.

© 2018 Thomson Reuters. All rights reserved. 

The regional exchange, BX Swiss Ltd (formerly BX Berne eXchange) (*www.bxswiss.com*) focuses on Swiss issuers. Due to the limited importance of BX Swiss, this article will focus on the requirements of the SIX.

**Market activity and deals**

Although the majority of the issuers are Swiss companies, we have also seen foreign companies applying for a listing on the SIX Swiss Exchange Ltd in recent years. Some of the most significant transactions of the last year include:

- Investis Holding AG (IPO): CHF148 million.
- Landis+Gyr (IPO): CHF2.3 billion.
- Zur Rose Group (IPO): CHF252 million.
- Galenica (IPO): CHF1.9 billion.
- Credit Suisse (rights offering): CHF4 billion.
- Lonza (rights offering): CHF2.23 billion.
- Valora (rights offering): CHF166 million.

2. What are the main regulators and legislation that applies to the equity markets/exchanges in your jurisdiction?

**Regulatory bodies**

The Swiss Financial Market Supervisory Authority FINMA (FINMA) (*www.finma.ch*) is an independent regulatory body in Switzerland in charge of the overall supervision of the securities exchanges and the financial market as a whole.

The SIX and other securities exchanges in Switzerland have the power to adapt their own regulations based on the principle of self-regulation. FINMA supervises the SIX and approves its rules. SIX has established the following bodies within its organisation:

- Regulatory Board, the rule-making body within the SIX.
- SIX Exchange Regulation, which enforces the rules of the SIX.
- Three judicial bodies.
- Disclosure Office, responsible for the supervision and oversight of compliance primarily with the disclosure requirements of major shareholdings.

The Swiss Takeover Board (*www.takeover.ch*) enacts rules on public takeovers and share buybacks and supervises compliance with those rules.

**Legislative framework**

© 2018 Thomson Reuters. All rights reserved. 

The main legal sources in connection with equity offerings in Switzerland are provided by both Swiss law and the rules of the SIX.

Under Swiss law, the main legal sources are as follows:

- The Swiss Code of Obligations (unofficial English translation: *www.admin.ch/opc/en/classified-compilation/19110009/index.html*) provides rules on the requirements for issuing prospectuses and certain requirements for listed companies with regards to the publication of annual reports.
- The Ordinance against Excessive Compensation is an ordinance which was adopted on an interim basis after the vote of the Swiss people on "say on pay" rules and mainly includes the "say on pay" rules (in German only: *www.admin.ch/opc/de/classified-compilation/20132519/index.html*). The final version of the provisions will be included in the Swiss Code of Obligations in the future (the exact timeline is not yet known).
- The Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (FMIA) (unofficial English translation: *www.admin.ch/opc/en/classified-compilation/20141779/index.html*) governs the organisation and the conduct of the financial market.
- The Ordinance on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (FMIO) (unofficial English translation: *www.admin.ch/opc/en/classified-compilation/20152105/index.html*) and the Ordinance of the Swiss Financial Market Supervisory Authority on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (unofficial English translation: *www.admin.ch/opc/en/classified-compilation/20151784/index.html*) implement the provisions of the FMIA.
- The Federal Act on the Swiss Financial Market Supervisory Authority (unofficial English translation: *www.admin.ch/opc/en/classified-compilation/20052624/index.html*) includes the rules regarding supervision by FINMA.

The existing regime is currently being overhauled: see *Question 26* for more information.

Under the rules of the SIX, the main legal sources are as follows:

- The Listing Rules (*www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/listing-rules/03_01-LR_en.pdf*) lay down the main principles for the listing and maintaining of a listing on the SIX Swiss Exchange Ltd.
- The Directive on the Procedures for Equity Securities (*www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/directives/06_08-DPES_en.pdf*) governs the listing procedure of equity securities.
- Scheme A (*www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/schemes/04_03-SCHA_en.pdf*) sets out the disclosure requirements of a listing prospectus (specific schemes apply to investment companies (scheme B), real estate companies (scheme C) and depositary receipts (scheme D)).
- The Directive on Regular Reporting Obligations for Issuers of Equity Securities, Bonds, Conversion Rights, Derivatives and Collective Investment Schemes (*https://www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/directives/06_20-DRRO_en.pdf*) provides the ongoing listing obligations on the SIX Swiss Exchange Ltd for issuers.

© 2018 Thomson Reuters. All rights reserved. 

## Equity offerings

3. What are the main requirements for a primary listing on the main markets/exchanges?

**Main requirements**
The SIX knows different segments, called standards. The vast majority of issuers have listed their equity securities on the SIX Swiss Exchange Ltd in accordance with the International Reporting Standard. The SIX offers other standards, such as:

- Swiss Reporting Standard (for issuers choosing the Swiss Accounting and Reporting Recommendations (Swiss GAAP FER) as the accounting standard or that are subject to the standard under the Swiss Banking Act).
- Standard for Investment Companies.
- Standard for Real Estate Companies.
- Standard for Depositary Receipts.
- Standard for Collective Instrument Schemes.

This article focuses on the requirements according to the International Reporting Standard due to the limited importance of the other standards.

**Issuer.** For a primary listing on the SIX Swiss Exchange Ltd, an issuer must comply with the following main requirements:

**Track record.** See below, *Trading record and accounts*.

**Financial record.** The issuer must have produced annual financial statements in compliance with the applicable accounting standard for the last three years (see below, *Trading record and accounts*) and interim financial statements if the balance sheet date of the last annual financial statements dates back more than nine months.

**Recognised accounting standards.** See below, *Trading record and accounts*.

**Auditors.** The auditors appointed by the issuer must fulfil the requirements of Articles 7 and 8 of the Federal Act on the Admission and Oversight of Auditors regarding the oversight of auditors.

**Audit reports.** The issuer's auditors must confirm the compliance of the financial statements with the applied accounting standard.

**Minimum equity capital requirement.** The reported equity capital of the issuer must be at least CHF2.5 million as at the first day of trading. For more details, see below, *Minimum size requirements*.

© 2018 Thomson Reuters. All rights reserved. 

**Equity securities.** For a listing of equity securities on the SIX Swiss Exchange Ltd, the securities must comply with the following requirements:

- **Legal validity and listing by class.** The securities and their form must be issued in accordance with applicable law. The listing of equity securities must include all issued securities of the same class.
- **Free float.** See below, *Minimum shares in public hands*.
- **Tradability.** The securities must be tradable on the SIX Swiss Exchange Ltd and the issuer must establish rules on the legal ownership for the securities.
- **Denomination.** The denomination must enable an exchange transaction in the amount of one round lot.
- **Clearing and settlement.** The clearing and settlement must be enrolled by systems permitted by the SIX. The issuer must ensure that the relevant securities may be cleared and settled in the settlement systems recognised by the SIX.
- **Paying agent.** The issuer must ensure that services related to interest and capital, as well as all other corporate actions, are provided in Switzerland. The paying agent may appoint a third party that has such capabilities in Switzerland (the Swiss National Bank or a bank, securities dealer or other institution supervised by the Swiss Financial Market Supervisory Authority FINMA).

**Minimum size requirements**

The equity capital, which the issuer reports under its applicable accounting standard, must amount to at least CHF2.5 million as at the first day of trading. Where the issuer is a parent company, the requirement applies to the consolidated equity capital. Regarding the capitalisation of the free float, see below, *Minimum shares in public hands*.

**Trading record and accounts**

The issuer must have existed as a corporation for at least three years. Exemptions (either for young companies or as a result of mergers, spin-offs or similar transactions) may be granted if such an exemption appears desirable in the interest of the issuer or of investors, and there is a guarantee that investors will receive the information required to make a well-founded assessment of the issuer and the securities to be listed. The Regulatory Board may require additional information to be included in the prospectus and additional duties for an issuer in such cases. More details may be found in the Directive on Exemptions regarding Duration and Existence of the Issuer (Track Record) (*www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/directives/06_02-DTR_en.pdf*).

Further, the SIX requires that the issuer produces financial statements according to a recognised accounting standard for the last three financial years. Similar to the requirement of existence, companies may apply for exemptions (for details, see the Directive on Presentation of a Complex Financial History in the Listing Prospectus, available at: *www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/directives/06_15-DCFH_en.pdf*).

The SIX recognises IFRS, US GAAP and, for companies that do not have their registered office in Switzerland, EU-IFRS as accounting standards for the International Reporting Standard. Swiss GAAP FER and the standard under the Swiss Banking Act are only permitted under the Swiss Reporting Standard.

© 2018 Thomson Reuters. All rights reserved. 

**Minimum shares in public hands (free float)**
The SIX requires that at least 20% of the equity securities of the same class in the issuer are in public ownership as at the first day of trading. Furthermore, an issuer must demonstrate that the capitalisation of the free float is CHF25 million as at the first day of trading. The free float requirements do not apply for a mere capital increase of equity securities that are already listed on the SIX.

To calculate the free float, the following equity securities must not be considered:

- Equity securities held by the issuer or its subsidiaries.
- Equity securities (excluding derivatives) of shareholders or shareholder groups holding more than 5% of the equity securities according to the rules on disclosure of major shareholdings (*Articles 120 et seq, Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading*).
- Equity securities that serve as underlying of convertible rights and options.
- Equity securities not tradable due to lock-up undertakings.
- Equity securities whose placement is subject to certain conditions, in particular equity securities issued in connection with over-allotment options (greenshoe options).

For detailed information, please see to the Directive on the Distribution of Equity Securities (*www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/directives/06_03-DDES_en.pdf*).

**Documentation requirements**
The main disclosure requirement for a listing of equity securities is a listing prospectus. For details and exemptions, see *Question 10* to *Question 13*.

A recognised representative files the listing application together with the listing prospectus and other documentation evidencing the fulfilment of the listing requirements 20 trading days prior to bookbuilding, if applicable, or otherwise 20 trading days prior to the first day of trading of the relevant equity securities.

4. What are the main requirements for a secondary listing on the main markets/exchanges?

**Main requirements**
As a general rule, the SIX sets the same requirements for a secondary listing of foreign issuers as for a primary listing. However, the following provisions differ from a primary listing:

- The requirements that apply to the issuer are deemed to be fulfilled if the equity securities to be listed on the SIX Swiss Exchange Ltd are listed on an exchange recognised by the Regulatory Board as an exchange with equivalent listing provisions. The SIX regularly recognises exchanges of the Federation of European Securities Exchanges and the Word Federation of Exchanges.
- Regarding the free float requirement, see below, *Minimum shares in public hands*.

© 2018 Thomson Reuters. All rights reserved. 

- Listing prospectus:
  - if the issuer submits the application for the secondary listing within six months after the listing on its primary exchange, the Regulatory Board will recognise the listing prospectus for the listing on the primary exchange if some technical information (security number, paying agent, settlement agent and trading currency) is added;
  - if the issuer submits the application for the secondary listing after six months after the listing on the primary exchange and produced a prospectus in connection with the listing on the primary exchange, the issuer may submit an abridged prospectus (the detailed disclosure points are described in the Directive on the Listing of Foreign Companies (*www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/directives/06_05-DFC_en.pdf*).

- The equity securities for which a secondary listing on the SIX Swiss Exchange Ltd is requested must already be listed, or at least a listing application must have been filed for the primary listing on the other exchange.

**Minimum size requirements**
The same minimum size requirements apply as are provided for issuers with a primary listing on the SIX (*see Question 3, Minimum size requirements*).

**Trading record and accounts**
The same requirements apply as for a primary listing (*see Question 3, Trading record and accounts*).

**Minimum shares in public hands (free float)**
The free float is considered as adequate if the capitalisation of the equity securities traded in Switzerland amounts to at least CHF10 million, or if it can be demonstrated that there is a genuine market for the relevant equity securities. To calculate the free float, see *Question 3, Minimum shares in public hands*.

5. What are the main ways of structuring an IPO?

An IPO may be structured in different ways. The choice of structure depends mainly on the purpose of the transaction:

- **Primary versus secondary offering.** The choice between these options depends on the size of the company and the expected investor demand:
  - primary offering: offering and issuance of newly created equity securities by way of a capital increase;
  - secondary offering: offering of existing equity securities; and
  - primary and secondary offering: combination of primary and secondary offering.

© 2018 Thomson Reuters. All rights reserved. 

- **Process-wise.** The most common way to offer and place the equity securities is by way of a bookbuilding. Other options include fixed-price offering or a Dutch auction (although we have not seen this in recent years in connection with an IPO in Switzerland). The advantage of a bookbuilding process is the consideration of the investor demand by setting a price range.
- **Targeted investor base.** For example, institutional investors only, or all types of investors (retail and institutional).

6. What are the main ways of structuring a subsequent equity offering?

A subsequent equity offering may be structured in the following ways:

- Primary versus secondary offering: see *Question 5* (primary versus secondary offering). A primary offering is conducted by the issuer, a secondary offering usually by a major shareholder.
- Public offering versus private placement/private investment in public entity (PIPE):
  - Public offering: the equity securities are offered to the public, at least in Switzerland. Typically, the securities are only offered to institutional investors outside of Switzerland to avoid any registration duties under foreign jurisdictions.
  - Private placement/PIPE: the offered equity securities are only sold to pre-selected investors. Where a private company invests in a public entity, the transaction is also called a PIPE.
- Rights offering versus accelerated bookbuilding (ABB):
  - Rights offering: a company offers newly issued equity securities to its existing shareholders by way of capital increase. Pre-emptive rights are granted. Pre-emptive rights may be tradable or not. If the pre-emptive rights are tradable, the holders of such rights may sell their rights and receive compensation, whereas a holder of non-tradable rights may only purchase the equity securities offered or allow them to lapse without receiving any compensation. Newly issued equity securities may be offered below the current market price of the existing equity securities (discounted rights offering) or near current market price of the existing equity securities (at market rights offering).
  - ABB: a company conducts a bookbuilding within some hours/days, typically only to pre-selected investors. Pre-emptive rights are excluded for this type of transaction.

In the case of a primary offering, a Swiss issuer may choose between the following capital increases:

- Ordinary capital increase: the shareholders' meeting instructs the board of directors to conduct a capital increase and to file an application at the latest three months after the shareholders' resolution.
- Authorised capital increase: the shareholders' meeting authorises the board of directors to conduct a capital increase (typically within two years corresponding to the maximum time permitted for the delegation to conduct authorised capital increases). The shareholders' meeting may resolve an authorised capital up to a maximum amount of one half of the share capital registered in the commercial register at the time of the

© 2018 Thomson Reuters. All rights reserved. 

resolution (a limit which is not applicable to an ordinary capital increase). As a result, an ordinary capital increase will typically only be conducted if a company does not have (sufficient) authorised share capital, or if the amount to be created exceeds one half of the share capital.

Swiss law also provides for a conditional share capital. However, as the conditional share capital is designed for convertible instruments, it is not suitable for a typical pure equity offering. Swiss banks organised as a corporation have, in addition, the possibility to issue shares out of reserve capital and conversion capital in cases of financial deterioration.

### 7. What are the advantages and disadvantages of rights issues/other types of follow on equity offerings?

The structure of an equity offering is mainly driven by:

- The targeted investor basis (for example, new investors versus existing shareholders or pre-selected investors versus not selected investors).
- The size of the offering (an issuer aiming to raise several billions usually conducts a rights offering because it is difficult to find a handful of investors that will invest such an amount).

An issuer's board of directors conducting a rights offering may grant pre-emptive rights to its existing shareholders. The exclusion of pre-emptive rights is permitted under Swiss law, but subject to certain conditions including the equal treatment of shareholders. The board of directors is therefore more exposed in the case of a private placement. As a result, many equity offerings of a Swiss listed issuer are conducted as a rights offering. The major advantage of a private placement is to have a significantly leaner documentation (for example, no listing prospectus is required: for exemptions from producing a listing prospectus, see *Question 10*). This allows the issuer to raise equity in a quicker and more cost-effective manner.

An "at markets" rights offering is preferable from an issuer's perspective because the offered equity securities are offered near the current market price (and not at a discount as is the case with a discounted rights offering). An at markets rights offering is often conducted if one or more investors have committed to purchase, in advance, a certain number of the offered equity securities which, as a result, will not be purchased by the holders of pre-emptive rights, as the take-up in an at markets rights offering is significantly lower than in the case of a discounted rights offering. The certainty of proceeds in an at markets rights offering is therefore lower than what would be expected in a discounted rights offering.

### 8. What are the main steps for a company applying for a primary listing of its shares? Is the procedure different for a foreign company and is a foreign company likely to seek a listing for shares or depositary receipts?

© 2018 Thomson Reuters. All rights reserved. 

**Procedure for a primary listing**
Prior to seeking a primary listing on the SIX Swiss Exchange Ltd, the issuer, together with the underwriter and the other advisers, must prepare all the relevant documents, such as the prospectus (also called the offering memorandum in this context), the underwriting agreement, the roadshow presentation, lock-up undertakings, the share lending agreement and so on. The listing application and the enclosures, such as a draft of the prospectus, must be filed with the SIX 20 trading days prior to either:

- The start of the bookbuilding period.
- The first day of trading of the relevant equity securities (if no bookbuilding is conducted).

**Procedure for a foreign company**
Foreign companies are companies whose registered office is located in a country other than Switzerland. As a general rule, foreign companies must follow the same rules as Swiss issuers. The Directive on the Listing of Foreign Companies of the SIX (*www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/directives/06_05-DFC_en.pdf*) provides certain additional and/or different rules for non-Swiss issuers and distinguishes between a primary and secondary listing:

- **Primary listing.** In order to demonstrate that it did not refrain from listing in its home jurisdiction due to investor protection regulations, a foreign issuer must provide a legal opinion from an independent law firm, or an extract from a decision issued by the competent authority in the home jurisdiction of that issuer, stating that the issuer has not refrained from listing in its own jurisdiction as a result of a failure to comply with the relevant investor protection regulations. In addition, the issuer must declare that it recognises the Swiss courts as competent courts in connection with the listing.
- **Secondary listing.** This is only permitted if either:
  - the issuer is already listed on another exchange recognised by the SIX (recognised exchanges are exchanges of members of the Federation of European Securities Exchanges and the World Federation of Exchanges); or
  - the issuer will list the equity securities at the same time as listing them on the SIX Swiss Exchange Ltd (dual listing).

Foreign companies usually seek a primary or secondary listing on the SIX Swiss Exchange Ltd rather than a listing of depositary receipts.

## Advisers: equity offering

9. Outline the role of advisers used and main documents produced in an equity offering. Does it differ for an IPO?

© 2018 Thomson Reuters. All rights reserved. 

**Advisers**
In a Swiss equity offering, the following advisers are usually involved:

- **Managers.** One, or more often several, investment banks support the issuer in marketing and placing the equity securities. Usually, they are also acting as underwriters. The overall lead in the banking syndicate has one or more global co-ordinator(s) that are responsible for the structuring and the timing of the transaction. The global co-ordinators together with any joint bookrunner(s) are in charge of placing the new equity securities. The role of co-(lead) managers are assigned to junior banks which act as underwriters as well, but do not have the lead within the syndicate.
- **Legal advisers.** The underwriters and the issuer each appoint their own legal advisers. Typically, each of them appoints a Swiss legal counsel and a US legal counsel. The latter is responsible for ensuring compliance with US selling restrictions. Legal advisers conduct legal due diligence and issue disclosure letters and technical legal opinions to give comfort to the underwriters.
- **Auditors.** The issuer's auditors ensure that all financial data, once audited by the auditors, is correctly reflected. Typically, they issue comfort letters confirming the accuracy of the financial figures in the prospectus.
- **Investor relations (IR)/public relations (PR) advisers.** Specialised IR/PR advisers provide drafts and/or review documents from a marketing perspective and aim to ensure optimal performance for the issuer. Whereas IR/PR advisers are seen in almost all IPOs, they are appointed only occasionally in other equity offerings.

In smaller offerings, there are often fewer advisers involved.

**Documents**
The following documents are usually included in an equity offering.

**Agreements.** These include:

- **Underwriting agreement/placement agreement.** In the underwriting agreement, the managers commit to offer, place and sell the equity securities subject to certain conditions. The agreement provides representations and warranties as well as an indemnity by the issuer to the managers. In an IPO including a secondary offering (that is, an offering of existing shares), the selling shareholder(s) is/are often also a party to the agreement. Where the managers do not underwrite but only place the equity securities, the agreement between the issuer and the manager is usually called a placement agreement (see also *Question 17* for the distinction between different types of underwritings).
- **Agreement among managers.** The agreement among managers governs the rights and duties of each manager within the syndicate. In addition, the co-(lead) managers authorise the joint global co-ordinators to act on their behalf.
- **Lock-up undertakings.** An issuer commits not to issue equity securities or equity-linked securities within a certain period to avoid the possibility of new investors having their investment diluted within a short time after making their investment in the issuer. Such an undertaking is regularly included in the underwriting agreement. Where members of the board of directors of the management, or a major investor, commit to a lock-up, they undertake in a separate undertaking not to sell their equity securities for a certain period of

© 2018 Thomson Reuters. All rights reserved. 

time. In this case, the lock-up undertaking signals to the market that the respective person believes in the issuer and will avoid an excessive supply to the market, which would effectively reduce the share price. The duration of the lock-up period can vary, although it is usually from six months to one year.

- **Securities lending agreement.** Managers regularly conclude a securities lending agreement with a major shareholder to source the over-allotments needed to stabilise the market price of the equity securities after the first day of trading in an IPO.
- **Further agreements.** This may include, for example, a commitment letter in which an investor undertakes to purchase a certain number of equity securities. Such a letter reduces the underwriting risk for the managers. Another option to reduce the underwriting risk is the appointment of a sub-underwriter, which commits, in a sub-underwriting agreement with the managers, to subscribe for a certain number of offered equity securities.

**Disclosure documentation.** This includes:

- **Prospectus.** The most important disclosure document is the prospectus that includes all the relevant information about the offering and the issuer.
- **Documentation in connection with research.** In connection with an IPO, the issuer presents itself and the offering to analysts in an analyst presentation, who will write a research report about the issuer. All parties involved are bound by the research guidelines which set out the rules for:
  - the drafting of the research report; and
  - the review of, and the comments on, the research report.

  This ensures the independence of the analysts.
- **Roadshow presentation.** The issuer makes a roadshow presentation to selected investors. The roadshow presentation summarises the most important information about the offering and the issuer.
- **Media releases.** Media releases report on the most important milestones of an equity offering. Media releases and all other documents published in connection with the offering are subject to the publicity guidelines. Similar to the research guidelines, the publicity guidelines provide rules on the distribution of information to ensure that the information disclosed in connection with the offering is coherent and in line with all applicable selling restrictions.

**Further documentation.** This can include legal opinions of the legal advisers, auditors' comfort letters or tax rulings.

## Equity prospectus/main offering document

10. When is a prospectus (or other main offering document) required? What are the main publication, regulatory filing or delivery requirements?

© 2018 Thomson Reuters. All rights reserved. 

**Prospectus (or other main offering document) required**

Under Swiss law, an issue prospectus (*Emissionsprospekt*) is required in the case of a public offering of newly issued shares. Swiss law defines the term "public offering" as an offering which is not addressed to a limited number of persons. The main doctrine is of the view that an offering to up to 100 persons qualifies as a private offering. However, this is subject to the condition that the offering is not made to an indefinite group of people (for example, by way of an advertisement in a newspaper), but to pre-selected investors only. Certain commentators take the view that an offering made to only qualified investors will also qualify as a private placement irrespective of the number of investors involved. Article 652a of the Swiss Code of Obligations requires very limited information to be included in the prospectus, far below the market standard.

In addition, the SIX requires a listing prospectus (*Kotierungsprospekt*), the content of which is specified in various schemes. For equity securities, schemes A to D are applicable (scheme B for investment companies, scheme C for real estate companies, scheme D for depositary receipts and scheme A for equity securities of companies other than those which fall under scheme B, C or D). See *Question 11* for the exemptions from the requirement to publish a listing prospectus.

Private placements without a listing do not require the publication of a prospectus. Nevertheless, issuers often publish a prospectus in line with established market practice.

**Main publication, regulatory filing or delivery requirements**

Swiss law does not have any rules on the publication of an issue prospectus. A listing prospectus for the listing of equity securities on the SIX Swiss Exchange Ltd must be filed, together with the listing application, with the SIX. The SIX only verifies that the prospectus meets all the formal requirements according to the Listing Rules and the applicable scheme. Under the Listing Rules of the SIX, a listing prospectus must be made available and delivered free of charge either:

- In the form of a printed booklet at the issuer's registered office and at those financial institutions that are placing the securities.
- In an electronic form on the issuer's website (and possibly also on the websites of those financial institutions that are placing the securities).

In practice, issuers publish one prospectus which meets the requirements of both an issue prospectus and a listing prospectus. The current regime under Swiss law is in the process of being overhauled, and the new regime will impose further restrictions, including the approval of prospectuses in line with international standards (see *Question 26* for more information).

11. What are the main exemptions from the requirements for publication or delivery of a prospectus (or other main offering document)?

© 2018 Thomson Reuters. All rights reserved. 

Swiss law does not provide for any exemptions from the requirement to produce an issue prospectus other than in the case of a private placement (*see Question 10*). The SIX Listing Rules provide for an exemption from the requirement to produce a prospectus for the listing of securities that:

- Account for less than 10% of the securities of the same class that have already been listed (calculated over a 12-month period).
- Are issued in exchange for securities of the same class that are already listed on the SIX Swiss Exchange Ltd.
- Are issued in connection with the conversion or exchange of other securities, or as a result of the exercise of rights associated with other securities, provided the securities in question are of the same class as the securities that are already listed.
- Are offered in connection with a takeover by means of an exchange offer, provided that a document containing information which is regarded by the Regulatory Board as being equivalent to that of a listing prospectus is available.
- Are offered, allotted, or are to be allotted, in connection with a merger, provided that a document containing information which is regarded by the Regulatory Board as being equivalent to that of a prospectus is available.
- Are offered, allotted, or are to be allotted, free of charge to existing holders of such securities, as well as dividends paid out in the form of securities of the same class as the securities in respect of which such dividends are paid, provided that the securities are of the same class as those that are already listed, and that a document containing information on the number and type of securities, and the reasons for and details of the offer, is made available.
- Are offered, allotted, or are to be allotted, by the issuer or an affiliated company to current or former members of the board of directors or executive board, or to employees, provided that the securities are of the same class as those that are already listed, and that a document containing information on the number and type of securities, and the reasons for and details of the offer, is made available.

In addition to the exemptions provided above, certain disclosure requirements in a listing prospectus may be omitted if securities are already listed and the new securities of the same issuer are offered to holders on the basis of a preferential or advanced subscription rights offer (either against payment or free of charge).

As a general rule, foreign issuers are subject to the same duties as Swiss issuers. However, in connection with the publication of a prospectus, the SIX provides certain exemptions for foreign issuers applying for a secondary listing (*see Question 4*).

12.What are the main content or disclosure requirements for a prospectus (or other main offering document)? What main categories of information are included?

© 2018 Thomson Reuters. All rights reserved. 

Under Article 652a of the Swiss Code of Obligations an issue prospectus must contain the following information:

- Content of the entry of the commercial register regarding the issuer (for example, members of the board of directors).
- Share capital.
- Provisions of the articles of association regarding the authorised and conditional share capital (if any).
- Number and associated rights relating to participation certificates (if any).
- Latest annual report (consolidated, if applicable, and statutory) and audit report. Where the latest annual financial statements to be published in the prospectus are older than six months, Swiss law requires an interim report in addition to the annual report. The main doctrine if of the view that this six-month requirement should be extended to nine months. However, this dispute is not of major relevance in practice for capital markets transactions because Swiss issuers often adhere to the 135 Day Rule of US accountants' comfort letter practices, according to which the financial statements to be published in the prospectus should not be older than 135 days. Furthermore, underwriters strongly prefer to have published recent financial statements (that is, not older than six months) for marketing purposes.
- Dividends paid during the last five years.
- Resolution of the board of directors approving the issuance of the securities.

A listing prospectus includes the following information:

- Risk factors.
- Use of proceeds.
- Information about dividends and dividend policy.
- Information about the issuer's capitalisation and indebtedness.
- Issuer's business.
- Certain information about the issuer's major shareholders (if applicable).
- Description of the issuer's shares and share capital, and information relating to certain Swiss law provisions concerning the issuer's shares and share capital.
- Summary of the members of the board of directors and executive management.
- Information about the offering.
- Selling restrictions.
- General information about the issuer.
- Statement regarding the responsibility of the issuer for the content of the listing prospectus.
- Financial statements of the last three financial years (for details on accepted accounted standards, see *Question 3*).

© 2018 Thomson Reuters. All rights reserved. 

The SIX does not require a market overview section or a management's discussion and analysis of the financial condition and the results of operations of the issuer. However, it is market practice to also present these sections in a listing prospectus.

13. How is the prospectus (or other main offering document) prepared? Who is responsible and/or may be liable for its contents?

Typically, the issuer's counsel leads the drafting of the prospectus. In co-operation with the issuer and the underwriters, they draft in particular the business, management discussion and analysis, and risk factors section and the section about the issuer. The parties discuss the prospectus in various prospectus drafting sessions and calls.

Article 752 of the Swiss Code of Obligations outlines the liability for the prospectus under Swiss law: "If any untrue or misleading statements, or statements not in compliance with the statutory requirements, have been made or disseminated in a prospectus or in similar communications in connection with the incorporation or issuance of shares, bonds or other securities of a corporation, anyone who has wilfully or negligently participated therein shall be liable to the purchasers of such securities for damages caused thereby."

It is important to note that all persons materially involved in the prospectus drafting are potentially liable and that the liability is not only limited to the prospectus itself, but also to all other documents similar to a prospectus (for example, a roadshow presentation). As a result, the advisers and the managers may also be sued in addition to the board of directors and other people connected to the issuer.

In order to incur liability for a prospectus, the following conditions must be cumulatively present:

- False, misleading or incomplete statements in the prospectus or similar document.
- Damage to investors.
- Causality (that is, the damage was caused by the false, misleading or incomplete statements).
- Fault (intentionally or negligently).

All initial subscribers can potentially be claimants. Subsequent subscribers may only claim damages if they can prove that they suffered damage as a result of a violation of the disclosure requirements. It is therefore advisable that issuers, as well as their advisers, conduct due diligence to ensure that the Swiss law requirements are properly disclosed.

The current overhaul of the Swiss financial market regime also envisages increased liability and provides a criminal sanction for the wilful failure to comply with the Swiss law prospectus requirements (see *Question 26* for more details).

© 2018 Thomson Reuters. All rights reserved. 

## Marketing equity offerings

14. How are offered equity securities marketed?

The following marketing instruments are mainly used in connection with an offering of equity securities:

- Prospectus.
- Media releases.
- Conferences with media or analysts.
- One-to-one meetings with strategic investors.
- Pilot fishing.
- Roadshows.
- Analyst presentations.
- Research reports.
- Annual and interim financial reports.
- Issuer's website.

15. Outline any potential liability for publishing research reports by participating brokers/dealers and ways used to avoid such liability.

The same liability regime applies for analysts publishing research reports as for the prospectus itself (*see Question 13*). To minimise liability, analysts should, among other things, clearly label their research report as such and include a risk section and other customary precautionary measures (for example, stating the source, labelling forward-looking statements, and so on).

© 2018 Thomson Reuters. All rights reserved. 

## Bookbuilding

16. Is the bookbuilding procedure used and in what circumstances? How is any related retail offer dealt with? How are orders confirmed?

The bookbuilding procedure is typically used in:

- IPOs.
- At market rights offerings.
- Accelerated bookbuildings.

Bookbuildings are therefore common for equity securities. A major exception is a discounted rights offering, where the offer price is fixed in advance.

The bookbuilding procedure allows an issuer to launch an offering with a price range and to set the final offer price only after the receipt of orders by investors (that is, after the bookbuilding period, typically in the evening prior to the first day of trading of the relevant equity securities). This process enables the issuer to determine the offer price according to demand. The issuer may allocate offered equity securities to institutional investors that have submitted indications of interest during the bookbuilding period, provided that the relevant institutional investors confirm their orders. Private investors are already bound by their offer at the time of submission of the order.

The bookbuilding process is run by the underwriters which collect the orders. The joint bookrunners submit a proposal of the orders to the issuer after the close of the book and discuss the allocation with the issuer.

## Underwriting: equity offering

17. How is the underwriting for an equity offering typically structured? What are the key terms of the underwriting agreement and what is a typical underwriting fee and/or commission?

**Structure**
There are generally three different ways to structure an underwriting:

© 2018 Thomson Reuters. All rights reserved. 

- **Hard underwriting.** The underwriting banks commit to purchase a certain number of shares at a certain price. A softer form, known as a volume underwriting, can also be used, in which case the underwriters initially commit to purchase a high number of shares at a low price subject to a step up.
- **Soft underwriting.** The underwriters commit to purchase the offered shares at the offer price which will be determined only after a bookbuilding process. The risks of the underwriters are much lower than in the case of a hard underwriting because the underwriters commit to purchase the shares only after the bookbuilding.
- **Best efforts.** This option is not an "underwriting" in the technical sense as the underwriters do not commit to purchase the equity securities offered, but to place them on a best efforts basis with investors only. As a result, the banking syndicate only purchases those securities which are already placed with investors.

**Key terms**
Although there are different types of underwriting, an underwriting agreement mainly includes provisions on:

- Sale and offer of offered shares and listing (obligation of the issuer/selling shareholder and role of involved banks).
- Modalities and conditions to closing.
- Representations and warranties (primarily of the issuer).
- Covenants (primarily of the issuer).
- Indemnification by the issuer.
- Termination.
- Applicable law and jurisdiction.

**Underwriting fee and/or commission**
The amount and the structure of an underwriting fee vary from transaction to transaction and depend on various factors, such as the underwriting structure and any preferences of the issuer. Nevertheless, an underwriting fee is regularly split into a base fee and a discretionary fee (also called an incentive fee), which the issuer may pay at its full discretion based on the performance of the underwriters in the transaction. The base fee and the discretionary fee are typically expressed as a percentage of the offering, depending on the offer size.

## Timetable: equity offerings

18. What is the timetable for a typical equity offering? Does it differ for an IPO?

There are various types of equity offerings and all of them are structured differently. However, the following main phases can be identified.

© 2018 Thomson Reuters. All rights reserved. 

**Phase I.** Preparation (one to six months prior to the first day of trading in the case of an IPO, and one to three months in the case of a subsequent equity offering):

- Selection of advisers.
- Structuring.
- Discussion on corporate governance topics (for an IPO).
- Drafting and negotiation of documentation (prospectus, underwriting agreement, agreement among managers, and so on).
- Submission of listing application to the SIX either 20 trading days prior to:
    - the bookbuilding period; or
    - the first day of trading (if no bookbuilding is conducted).
- Approval of shareholders' meeting if necessary and required approvals of the board of directors regarding the contemplated transaction.

**Phase II.** Announcement of the transaction and marketing (approximately two weeks):

- Execution of underwriting agreement.
- Publication of prospectus.
- Issuer's key people go on the roadshow and market the issuer and the transaction.
- Bookbuilding (if applicable).
- Subscription period (in the case of a rights offering).

In the case of an accelerated bookbuilding, the issuer does not conduct a roadshow and the bookbuilding lasts only several hours.

**Phase III.** Allocation of equity securities (one trading day prior to the first day of trading) and first day of trading:

- After the bookbuilding process, the joint bookrunners together with the issuer allocate the offered equity securities prior to the first day of trading.
- In the case of a primary offering, a capital increase is conducted one trading day prior to the first day of trading.

**Phase IV.** This includes:

- Settlement (typically two trading days after the first day of trading).
- Aftermarket and stabilisation, and the exercise of the over-allotment option (if applicable) (during the first 30 days after the first day of trading).

© 2018 Thomson Reuters. All rights reserved. 

## Stabilisation

19. Are there rules on price stabilisation and market manipulation in connection with an equity offering?

Swiss law provides safe harbours for stabilisation activities in the case of a public placement of equity securities on an exchange, provided that:

- The stabilisation activities are carried out within 30 days after the first day of trading of the placed equity securities.
- Such transactions are executed at a price not higher than the market price.
- The maximum period for stabilisation, and the name of the stabilisation manager, are published prior to the first day of trading.
- The stabilisation activities are reported to the exchange at the latest on the fifth trading day after the execution and published by the issuer at the latest five trading days after the expiration of the stabilisation period.
- The issuer informs the public at the latest on the fifth trading day following the exercise of the over-allotment option of both the day on which the option was exercised, and the number of equity securities connected with that option.

## Tax: equity issues

20. What are the main tax issues when issuing and listing equity securities?

Under current Swiss tax law, a 1% stamp duty (*Emissionsabgabe*) is levied on share issuances of Swiss corporations for cash and non-cash consideration as well as other capital contributions by direct shareholders. However, there is an exemption from the stamp duty on the first CHF1 million involved in the transaction, irrespective of whether this amount is contributed (or paid in) upon the establishment of a Swiss corporation or upon a subsequent share capital increase. In addition, capital contributions received by a Swiss corporation in the context of qualifying corporate reorganisations (such as mergers, demergers and similar transactions) are exempt from the stamp duty.

© 2018 Thomson Reuters. All rights reserved. 

The transfer of securities (including shares) against consideration is in principle subject to Swiss transfer stamp duty (*Umsatzabgabe*) of 0.15% for domestic shares or 0.3% for foreign shares if a Swiss securities dealer (as defined in the Swiss Federal Stamp Duty Act) is involved either as a party or as an intermediary to the transaction. Certain exemptions may apply and can reduce the Swiss transfer stamp duty by either 50% or 100%.

## Continuing obligations

21. What are the main areas of continuing obligations applicable to listed companies and the legislation that applies?

**Ad hoc publicity**
Under Article 53 of the Listing Rules of the SIX and the Directive on Ad hoc Publicity, the issuer must report price-sensitive facts that have arisen in its sphere of activity to the market. Price-sensitive facts are facts which are capable of triggering a significant change in market prices. Such facts include mergers, major changes in business operations and changes in capital, or changes to the issuer's board of directors or management.

The issuer must notify the market as soon as it knows the main elements of the price-sensitive fact. To the extent possible, the notification should be made outside of trading hours (between 5.30pm and 7.30am Central European Time, 90 minutes before the start of trading). If a notification is made during trading hours (or made less than 90 minutes before the start of trading), the issuer must liaise with SIX Exchange Regulation 90 minutes before the planned publication of the notification to obtain pre-clearance.

An issuer may postpone the disclosure of a price-sensitive fact where the fact is based on a plan or a decision of the issuer, and the disclosure of the fact might prejudice the legitimate interests of the issuer. In such a case, the issuer must ensure that the relevant facts remain confidential for the period of the postponement. In the event of a leak, the issuer must inform the market immediately.

**Publication of annual reports and recognised reporting standards of the SIX**
The issuer of equity securities listed on the SIX Swiss Exchange Ltd must publish an annual report within four months after the closure of the financial year and an interim report (semi-annually) within three months after the end of the accounting period, in each case in accordance with a recognised reporting standard of the SIX. It is not required to produce quarterly reports. If an issuer decides to publish quarterly reports, it is obliged to disclose those reports in line with the same requirements as the annual and interim reports. The annual report only has to include a report of the issuer's auditors. For details on recognised reporting standards, see *Question 3*.

**Reporting of management transactions**
An issuer with a primary listing of equity securities on the SIX Swiss Exchange Ltd must ensure that the members of its board of directors and executive management report transactions related to the issuer's equity securities or financial instruments to the issuer. Related parties of members of the board of directors or executive management are also subject to this obligation where they exercise significant influence over a member of the board or the

© 2018 Thomson Reuters. All rights reserved. 

executive management. The issuer must publish the notification on the SIX's website. The name of the respective member will not be disclosed.

**Publication of corporate calendar**
An issuer must publish, at the beginning of each financial year, a corporate calendar for the current financial year and keep the corporate calendar up to date. The corporate calendar must include events that are of importance for investors (for example, the publication of the annual or interim results or the date of the annual general meeting of shareholders).

**Notification of changes in the rights attached to equity securities**
Any change in the rights attached to the equity securities must be announced by the issuer in due time prior to the relevant change.

**Regular reporting obligations**
Regular reporting obligations include, among other things, a change of the issuer's name or registered office, a change of auditors and a change of dividend payments. Furthermore, under the Listing Rules of the SIX an issuer must prepare and keep up to date an insider list in order to comply with the provisions concerning insider dealing.

Certain other obligations also apply which an issuer must fulfil for the listing to continue (for example, the requirements regarding the auditors, tradability, denomination, clearing and settlement: see *Question 3*). In addition, an issuer must notify the SIX of any notices regarding the disclosure of major shareholdings under Article 120 of the Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading.

22. Do the continuing obligations apply to listed foreign companies and to issuers of depositary receipts?

Listed foreign companies are subject to the same continuing obligations as Swiss issuers (*see Question 21*). An exemption is made for issuers with a secondary listing on the SIX Swiss Exchange Ltd which are subject to the ad hoc publicity requirements of its primary listing venue only (regarding publication of the ad hoc media release in Switzerland, see the Directive on the Listing of Foreign Companies (*www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/directives/06_05-DFC_en.pdf*)).

As a general rule, the continuing obligations also apply to issuers of depositary receipts. However, issuers of depositary receipts are not subject to the provisions concerning management transactions, the publication of interim results and the duties related to the disclosure requirements in the annual report regarding corporate governance.

© 2018 Thomson Reuters. All rights reserved. 

23. What are the penalties for breaching the continuing obligations?

The SIX Listing Rules (*Article 61*) provide that the following sanctions can be (cumulatively) imposed on the issuer:

- Reprimand.
- Fine of up to CHF1 million (in cases of negligence) or CHF10 million (in cases of wrongful intent).
- Suspension of trading.
- De-listing or reallocation to a different regulatory standard.
- Exclusion from further listings.

The Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (FMIA) also provides for a fine of up of CHF100,000 (in cases of negligence) and up to CHF10 million (in cases of wrongful intent) for the failure to disclose major shareholdings in accordance with Articles 120 and 121 of the FMIA.

## Market abuse and insider dealing

24. What are the restrictions on market abuse and insider dealing?

**Restrictions on market abuse/insider dealing**
**Insider dealing.** The Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (FMIA) provides both a criminal insider dealing offence and an administrative insider dealing offence. Both provisions penalise:

- The misuse of insider information through the purchase or sale of shares of an issuer whose shares are publicly traded on a Swiss stock exchange, or the use of financial instruments derived from such shares.
- The communication of insider information.
- The recommendation to another person to purchase or sell such shares, or financial instruments derived from such shares, based on insider information.

To fulfil the criminal offence, the offender must both exhibit wilful intent and realise a pecuniary advantage. For the administrative offence, it is only necessary to prove that the offender either knew, or should have known, that the offence was being committed.

**Market abuse.** Similar to the insider dealing offence, the FMIA distinguishes between a criminal and an administrative market abuse offence. Both provisions aim to penalise the manipulation of the share price by either:

© 2018 Thomson Reuters. All rights reserved. 

- Spreading false or misleading information.
- Executing fictitious transactions.

The main difference between these provisions is the intention of the offender. Whereas the criminal provision requires that the act is committed against better knowledge, and that the offender intends to significantly influence the price of the share and aims to gain profit for himself/herself or someone else, the administrative provision is limited to proving that the offender either knew, or ought to have known, that the offence was being committed.

The Ordinance on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading provides certain exemptions (safe harbours) for:

- Repurchases of the issuer's own shares.
- Stabilisation after the public placement of shares.
- Situations where a party requires the information for the fulfilment of its legal or contractual obligations.
- Situations where the insider information is necessary to sign an agreement, provided that the insider notifies the recipient that the confidential information must not be exploited and records that notification.

**Penalties for market abuse/insider dealing**
**Insider dealing.** The criminal provision provides for a range of penalties including a maximum custodial sentence not exceeding five years or a maximum monetary penalty. The amount of the monetary penalty depends, among other things, on the personal and economic circumstances of the offender and is limited to a maximum of CHF540,000. The administrative provision provides for a declaratory ruling or the publication of the supervisory ruling. Both the criminal and administrative provisions also allow for the confiscation of profit.

**Market abuse.** The criminal provision provides, among other things, a maximum sentence of five years' imprisonment or a maximum monetary penalty (for more details regarding the monetary penalty, see above, *Penalties for market abuse/insider dealing: Insider dealing*). The penalties for the administrative offence are the same as for the insider dealing provisions. The confiscation of any profit is also allowed for both the criminal and administrative provisions.

## De-listing

25. When can a company be de-listed?

**De-listing**
There are two ways to de-list, either initiated by the issuer or by the SIX:

© 2018 Thomson Reuters. All rights reserved. 

- An issuer with equity securities listed on the SIX Swiss Exchange Ltd may de-list them upon a de-listing application which it must file at least 20 trading days prior to the announcement of the de-listing. The de-listing application must explain the reason for a de-listing in consideration of the interests of the investors and the issuer. The Regulatory Board is entitled to determine the last trading day. The period between the announcement and the last trading day will last between three and 12 months, depending on the free float and other factors which the Regulatory Board determines to be relevant. It may shorten this period under specific circumstances (for example, in the case of a merger or liquidation). No shareholder meeting is required to resolve on a de-listing.
- The Regulatory Board may de-list equity securities where:
  - the solvency of an issuer is seriously called into question, or an insolvency or similar proceeding is already initiated;
  - the free float is no longer sufficient in the Regulatory Board's opinion;
  - equity securities are suspended for three months and the reason for the suspension is not discontinued; or
  - the requirements for listing are no longer fulfilled (*see Question 21*).

As a general rule, only a few issuers request a pure de-listing of their equity securities (eight issuers in 2017).

The Directive on Delisting of Equity Securities, Derivatives and Exchange Traded Products governs the procedure of a de-listing (*https://www.six-exchange-regulation.com/dam/downloads/regulation/admission-manual/directives/06_12-DD_en.pdf*).

**Suspensions**
The SIX Exchange Regulation may suspend the trading of securities temporarily upon the request of an issuer, or if it deems it appropriate in extraordinary cases (for example, for the failure to comply with important information duties).

## Reform

26. Are there any proposals for reform of equity capital markets/exchanges? Are these proposals likely to come into force and, if so, when?

A comprehensive reform which is currently taking place will fundamentally change the Swiss financial market regulatory framework. It aims to ensure the access of Swiss financial institutions to the European market by fulfilling the equivalence requirements under Directive 2014/65/EU on markets in financial instruments (MiFID II) and by harmonising the Swiss regulations with existing and new EU regulations, such as Regulation 648/2012 on OTC derivative transactions, central counterparties and trade repositories (European Market Infrastructure Regulation)

© 2018 Thomson Reuters. All rights reserved. 

(EMIR), *Directive 2003/71/EC* on the prospectus to be published when securities are offered to the public or admitted to trading, MiFID II and Regulation 600/2014 on markets in financial instruments (MiFIR).

As the old framework was primarily structured around the institutions, the new framework takes a layered approach and consists mainly of four legislative texts and their implementing provisions. The Financial Market Supervision Act (FINMASA) came into force in 2008 and includes provisions for the supervision of the financial markets. In 2016 the Financial Markets Infrastructure Act (FMIA) entered into force, which contains rules on the financial market infrastructure and trading venues, disclosure of major shareholdings, insider trading and market manipulation as well as public takeovers.

The proposed Financial Institutions Act (FinIA) will regulate financial institutions, and the proposed Financial Services Act (FinSA) will define the conduct of financial services. In the context of offering of equity securities, the FinSA is of importance as it proposes a new prospectus regime. The current draft of the FinSA provides certain requirements concerning both the content of the prospectus and, more importantly, the prior approval for all public offering prospectuses, which does not currently exist. This results in a major change for the preparation and publication of prospectus under the new regime in Switzerland. The review and approval process will be conducted by an approval authority (*Prüfstelle*) with regard to the completeness, coherence and comprehensibility of the prospectus prior to publication, or the admission to trading on a Swiss trading platform. In general, the new prospectus regime will also apply to equity securities. Private offerings (which will be differently defined under the FinSA than as currently defined) and certain specific forms of public offerings will still not require a prospectus. Furthermore, the FinSA will introduce an obligation to produce and publish a basic information sheet for securities publicly offered to retail investors.

Another major change includes the prospectus liability regime. The FinSA provides, among other things, for a fine of up to CHF500,000 for:

- The wilful omission of information, or the wilful provision of false information, in the prospectus or the basic information sheet.
- The wilful omission of the publication of the prospectus or the basic information sheet at the beginning of the public offering.

In addition to these obligations, the FinSA contains organisational and point of sale duties (such as client segmentation and the obligation to perform appropriateness checks), registration obligations for client advisers and a tighter regulation of cross-border activities into Switzerland. The FinSA will apply to financial services providers, client advisers, securities providers and issuers of financial instruments.

## Online resources

**Federal Council (*Der Bundesrat*)**
**W** *www.admin.ch/gov/en/start.html*

**Description.** This website is the official website of the Swiss government and offers a wide range of information. Federal law and a classified compilation of the laws of Switzerland can be found (with some English translations).

© 2018 Thomson Reuters. All rights reserved. 

**Swiss Financial Market Supervisory Authority FINMA**
**W** *www.finma.ch/en/*

**Description.** Official website of the Swiss Financial Market Supervisory Authority FINMA. It contains the applicable regulatory framework, guidelines and other useful information.

**SIX**
**W***www.six-exchange-regulation.com/en/home.html*

**Description.** Official website of the SIX Exchange Regulation containing the rules of the SIX and helpful information on the listing and the maintaining of listing of securities listed on the SIX.

**W** *www.six-swiss-exchange.com/*

**Description.** Official website of the SIX Swiss Exchange Ltd containing useful information about the SIX.

**BX Swiss**
**W** *www.bxswiss.com*

**Description.** Official website of the BX Swiss, a regional exchange focussing on Swiss issuers.

**Swiss Takeover Board**
**W** *www.takeover.ch/lang/en*

**Description.** Official website of the Swiss Takeover Board.

## Contributor profiles

**Thomas U Reutter, Partner**

**Bär & Karrer Ltd**

**T** +41 58 261 52 84
**F** +41 58 263 52 84
**E** *thomas.reutter@baerkarrer.ch*

© 2018 Thomson Reuters. All rights reserved. 

**W** *www.baerkarrer.ch*

**Professional qualifications.** Admitted to all Swiss courts since 1997.

**Areas of practice.** Capital markets; mergers and acquisitions; listed companies; corporate governance; corporate and commercial; life sciences; Fintech.

**Recent transactions:**

- Advised Novartis on the placement of EUR2.25 billion guaranteed notes.
- Advised Swiss Prime Site on the placement of CHF300 million 0.325% convertible bonds.
- Advised Credit Suisse on Meyer Burger technology's voluntary incentive offer.
- Advised Valora on its rights offering.
- Advised the banking syndicate in the IPO of Landis+Gyr with a volume of approximately CHF2.3 billion.
- Advised Lonza on the rights offering raising gross proceeds of approximately CHF2.25 billion, which will be used to partially finance the acquisition of Capsugel.
- Advised the banking syndicate in the IPO of Galenica with a volume of CHF1.9 billion.
- Advised the joint bookrunners on the placement of convertible bonds by Santhera Pharmaceuticals Holding.
- Advised the banks on the recapitalisation programme of Meyer Burger Technology.

**Languages.** German, English, French

**Professional associations/memberships:**

- Zurich Bar Association (ZAV).
- Swiss Bar Association (SAV/FSA).
- Member of the Bankenrechtsgruppe of the Zurich Bar Association.
- Co-Editor of CapLaw (Swiss Capital Markets Law).
- Member of the Managing Board of Bär & Karrer.

**Publications:**

- *Reutter, Thomas U, "Initial coin offering", IFLR Magazine November 2017.*
- *Reutter, Thomas U and Reiter, Matthew, "The Securities Litigation Review – Switzerland", The Securities Litigation Review, 2017, pp252-267.*
- *Reutter, Thomas U, "Regulierung und Haftung von Proxy Advisern, Kapitalmarktrecht – Recht und Transaktionen XI, Europa Institut an der Universität Zürich.*
- *Reutter, Thomas U and Weber, Annette, "Kurze Einführung in die Unternehmensfinanzierung", Schulthess Manager Handbuch 2017, pp93-100.*

© 2018 Thomson Reuters. All rights reserved. 

- *Reutter, Thomas U, "Regulierung und Haftung von Proxy Advisors", Kapitalmarkt – Recht und Transaktionen XI, 2017, pp229-271.*
- *Reutter, Thomas U and Mancosu, Frédéric, "EU Shareholder Rights Directive: Action required for Switzerland", CapLaw 5/2016.*

**Annette Weber, Associate**

**Bär & Karrer Ltd**

**T** +41 58 261 50 00
**F** +41 58 263 50 01
**E** *annette.weber@baerkarrer.ch*
**W** *www.baerkarrer.ch*

**Professional qualifications.** Admitted to all Swiss courts since 2013.

**Areas of practice.** Capital markets; mergers and acquisitions; listed companies; corporate governance; corporate and commercial; life sciences.

**Recent transactions:**

- Advised the banking syndicate in the IPO of Landis+Gyr with a volume of approximately CHF2.3 billion.
- Advised Lonza on the rights offering raising gross proceeds of approximately CHF2.25 billion, which will be used to partially finance the acquisition of Capsugel.
- Advised the banking syndicate in the IPO of Galenica with a volume of CHF1.9 billion.
- Advised the joint bookrunners on the placement of convertible bonds by Santhera Pharmaceuticals Holding.
- Advised the banks on the recapitalisation programme of Meyer Burger Technology.
- Advised Novartis on the placement of EUR1.75 billion guaranteed notes.
- Advised Teva in the issuance of CHF1 billion guaranteed notes.

**Languages.** German, English, French

**Professional associations/memberships:**

- Zurich Bar Association (ZAV).
- Swiss Bar Association (SAV/FSA).

**Publications:**

© 2018 Thomson Reuters. All rights reserved. 

- *Reutter, Thomas U and Weber, Annette, "Kurze Einführung in die Unternehmensfinanzierung", Schulthess Manager Handbuch 2017, pp93-100.*
- *Reutter Thomas U and Weber, Annette, "Capital 'On Demand': Equity Lines/Shares Subscription Facilities for Swiss Listed Companies", CapLaw 2/2016, pp2-7.*


**END OF DOCUMENT**

© 2018 Thomson Reuters. All rights reserved. 