

Initial Public Offerings 2024

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Introduction

Going public may serve several goals: it may help a company gain access to a broader investor base, raise the capital it needs in order to activate its growth potential and strengthen its market position, or turn its shares into a more liquid and fungible “currency” that may facilitate acquisitions. It may also enable effective employee incentivisation and allow a flexible exit by existing shareholders over time.

Switzerland as a trading venue offers attractive conditions due to its strong financial centre and the stable, issuer-friendly Swiss legal and regulatory regime. On Switzerland’s main stock exchange, SIX Swiss Exchange, around 250 shares across all industries are traded, including some of the largest companies in Switzerland and Europe. It offers a liquid market with state-of-the-art trading conditions. Given its importance, and unless indicated otherwise, references in this chapter to listing requirements and reporting obligations refer to the standard rules set by SIX Swiss Exchange. Switzerland’s second stock exchange, BX Swiss, is more focused on small and mid-sized domestic issuers. As an alternative to traditional listings, SIX Group (which owns SIX Swiss Exchange) launched SIX Digital Exchange, a fully regulated digital exchange and central securities depository. SIX Digital Exchange offers the listing and trading of tokenised equities and bonds, similar to traditional stock exchanges but in tokenised form based on distributed ledger technology.

With its listing on a stock exchange, a public company becomes subject to additional and more comprehensive regulatory requirements, stricter supervision by regulatory authorities and increased scrutiny by the public. An IPO candidate, its shareholders, board of directors and executive management are thus well advised to prepare such a step carefully and familiarise themselves with such additional regulatory requirements, as early and holistic preparation is key in this process.

Switzerland has generally seen strong IPO activity over the past few years, particularly prior to the COVID-19 pandemic and the Russia-Ukraine conflict. In 2023 and 2022, the following companies listed equity securities on SIX Swiss Exchange with an initial market capitalisation of more than CHF 100 million:

- R&S Group Holding AG (CHF 295 million, 2023);
- Sandoz Group AG (CHF 10.5 billion, 2023);
- Accelleron Industries AG (CHF 1.7 billion, 2022);
- EPIC Suisse AG (CHF 681 million, 2022);
- Talenhouse AG (CHF 599 million, 2022); and
- Xlife Sciences AG (CHF 270 million, 2022).

Despite the downturn in 2022 due to the COVID-19 pandemic, international economic trends (such as rising interest rate concerns and volatility in the capital markets) and, in

particular, the Russia-Ukraine conflict, the overall issue volume reached over CHF 3.3 billion that year, more than half of which was due to the spin-off of Accelleron Industries from ABB. This was significantly exceeded in 2023 with an overall issue volume of approximately CHF 10.8 billion, which was predominantly driven by the spin-off of Sandoz from Novartis, while the only other listing was a result of a de-SPAC transaction (R&S Group, see below). Putting these transactions aside, the volume of traditional IPOs in 2023 and 2022 was significantly lower than in 2021, which had been considered a peak year.

Nevertheless, SIX Swiss Exchange was one of the most active exchanges in Europe in 2022 and 2023 due to the new “China-Switzerland Stock Connect” programme that was launched in 2022, enabling Chinese companies to access the Swiss capital markets through a secondary listing (and *vice versa*). Under this programme, eight (2023), respectively nine (2022), Chinese issuers listed global depository receipts (“**GDRs**”) with a total transaction size of approximately USD 2.4 billion (2023) and USD 3.2 billion (2022) on SIX Swiss Exchange, the largest to date being Jiangsu Eastern Shenghong Co., Ltd. (transaction size of USD 718.3 million, 2022).

Furthermore, since November 2021, the listing of special purpose acquisition companies (“**SPACs**”) is permitted at SIX Swiss Exchange, providing an alternative to an IPO in Switzerland. Internationally, the market for SPACs reached its climax in 2021 and has since declined; the listing of SPACs in Switzerland follows the same trend. VT5 Acquisition Company AG was listed as the first (and only) SPAC on SIX Swiss Exchange in December 2021 and conducted a de-SPAC transaction with R&S Group in December 2023.

Further, since October 2021, a company may be listed on SIX Swiss Exchange in the “Sparks” segment specifically designed for small and mid-sized companies. This segment facilitates the listing and trading of such companies, giving them the opportunity to improve their financing options and to access a broader investor base. Since its introduction, one company (Xlife Sciences AG, 2022) has been listed in this segment.

The IPO process: Steps, timing, parties and market practice

The IPO process is largely driven by the characteristics of the IPO candidate itself and by the envisaged IPO structure (primary vs secondary offering, particularities such as a complex financial history). In general, four key phases can be distinguished:

- **Phase I: Preparation** (approximately four to six months prior to the first day of trading)
The shareholders and the issuer, together with their advisors, set up the structure, make strategic decisions for the offering, and implement the IPO-readiness of the issuer:
 - *Selection of advisors:* The issuer chooses its advisors, including, in particular, the underwriting banks, the legal advisors to the issuer and the underwriters, the auditors, and often a pre-IPO advisor. In larger IPOs offered internationally, the issuer and the underwriters are each advised not only by Swiss counsel but also by international counsel advising as to U.S. securities laws to enable resales into the U.S. market under a Rule 144A offering in particular. Depending on the IPO structure, a selling shareholder might also engage separate counsel. Often, the issuer appoints further advisors, such as a specialised PR firm.
 - *Structuring:* The underwriting banks and legal advisors advise the issuer and its current shareholders on the structuring and, in particular, whether it should be structured as a primary offering (sale of newly created shares) or secondary offering (sale of existing shares only), or a combination of both. They also advise on the listing venue and the review body to be chosen. In case of a foreign

issuer, the structuring involves the decision as to whether the issuer should list its shares on SIX Swiss Exchange as a foreign issuer or whether it should migrate to Switzerland for the IPO. This decision is typically driven by marketing and/or tax considerations. Structuring may also include the reorganisation of a group, e.g., the establishment of a holding company.

- *Development of equity story:* Together with the issuer, the underwriters develop an equity story to market the shares. A key element is the confidential meetings between the issuer and potential investors to test the waters (so-called “pilot fishing” or “early-look meetings”). In case the issuer has publicly traded debt outstanding (in particular, high-yield bonds), these meetings must comply with the relevant requirements regarding disclosure of price-relevant information; in particular, under the European Market Abuse Regulation (“**MAR**”), if the bonds are traded at an EU venue. The development of the equity story leads to the issuer presenting itself to the underwriters’ analysts, following which the analysts prepare and publish research reports for the investors to attract their attention. These reports are key elements of the marketing strategy.
- *Corporate governance:* One of the main tasks of the issuer’s Swiss legal counsel is advising the issuer on its corporate governance set-up and preparing the necessary corporate documentation. If the issuer has issued several classes of shares, any preferred share classes will typically be converted into common shares prior to listing, as different share classes may adversely impact the liquidity of the listed shares and be viewed negatively under good corporate governance standards. Other corporate governance measures include the adoption of mandatory Swiss “say-on-pay” rules (“**SOP Rules**”) (see below) and amending the constitutional documents to ensure compliance with applicable Swiss law, as well as best practice for public companies. Existing shareholders often appoint new members to the board of directors as of the first day of trading. It is advisable to give due consideration to the recent guidelines published by the prominent proxy advisors and the Swiss standards for corporate governance, which recommend a sufficient number of independent board members. Under certain circumstances, issuers may also consider increasing the threshold for mandatory takeover bids from 33⅓% to 49% (opting up), or completely opting out of the mandatory takeover regime, which, however, is typically perceived negatively by investors.
- *Financial statements:* The issuer works closely with the auditors for the preparation and audit of its financial statements. Generally, a listing on SIX Swiss Exchange requires a three-year track record evidenced by audited financial statements drawn up in accordance with one of the eligible accounting standards (see below), unless an exemption is granted. In certain situations, the preparation of *pro forma* financial statements becomes necessary and, in this case, the preparation of the financial statements should be initiated as early in the process as possible.
- *Due diligence and prospectus:* The underwriters, legal advisors and auditors conduct a detailed due diligence (business, legal and audit, respectively) about the issuer. Based on the outcome of this due diligence and the equity story, the issuer’s legal counsel drafts the prospectus. The disclosure must comply with the requirements set forth in the Swiss Financial Services Act (“**FinSA**”) and its implementing ordinance (the Swiss Financial Services Ordinance (“**FinSO**”)), which are similar to EU standards. A Swiss prospectus should mainly include a summary, a description of the risk factors, information on the use of proceeds, about

dividends/dividend policy, the issuer (such as members of the board of directors and executive management, the issuer's material business activities and prospects, investments and share capital, as well as capitalisation and indebtedness), the securities and the issuer's major shareholders, as well as information about the offering and the financial statements. Even though neither SIX Swiss Exchange nor the FinSA/FinSO require a management discussion and analysis ("MD&A") section, it is standard to include such section in an equity prospectus.

- *Underwriting agreement:* The Swiss underwriters' counsel drafts the underwriting agreement. The agreement contains the main duties and rights of the underwriters and the issuer. It is market practice that the underwriters commit to a "soft underwriting", i.e., they only commit to purchasing the shares upon pricing. The Swiss underwriters' counsel prepares ancillary agreements and documents, such as a share lending agreement for the over-allotment option (see below), the agreement among managers, and the lock-up undertakings. Major shareholders as well as directors and managers of the issuer typically sign lock-up undertakings confirming they will not sell their shares in the first months following the IPO.
- *Review of prospectus:* The IPO prospectus must be filed with and reviewed by a review body for completeness, consistency and comprehensibility. Pursuant to the FinSA, the filing must be made at least 20 calendar days prior to publication. However, the IPO timetable should allow for sufficient time to implement comments received from the review body and to refile the prospectus.
- *Listing formalities:* The issuer is obliged to appoint a listing agent, which, in general, must be a bank within the meaning set out in the Swiss Banking Act or a securities firm within the meaning set out in the Swiss Financial Institutions Act, or have a corresponding authorisation in accordance with the law of the jurisdiction of its registered office. The listing agent is responsible for submitting the listing application, which must be filed with SIX Exchange Regulation 10 trading days prior to the start of the bookbuilding.
- **Phase II: ITF and marketing (approximately four weeks)**
 - *Intention to float:* This phase is initiated by the issuer publishing an intention to float ("ITF"). The issuer's executive team and the underwriters market the issuer. The ITF does not yet contain detailed information about the IPO but is meant to draw the attention of the market to, and create momentum for, the upcoming IPO. Research reports prepared by analysts are distributed shortly after publication of the ITF.
 - *Roadshow and bookbuilding:* If the IPO gains sufficient momentum, the issuer ultimately signs the underwriting agreement with the banking syndicate and publishes the prospectus. This marks the formal "launch" of the IPO and is followed by a bookbuilding phase, during which the issuer's executive management markets the issuer on a roadshow with the support of the underwriters. This leads to investors placing orders for the shares within the price range indicated in the prospectus. At the end of the roadshow, i.e., the end of the bookbuilding period, the underwriters evaluate at what price the shares may be placed with the investors.
- **Phase III: Execution**
 - *Allocation:* After the roadshow/bookbuilding, the underwriters calculate at what price all offered shares may be sold and, together with the issuer, allocate them to investors in accordance with their bids. The issuer and the underwriters execute a supplement to the underwriting agreement, which sets out the final offer price of the shares and obliges the underwriters to purchase these shares and sell them to the investors. In addition, the issuer publishes a pricing supplement to the prospectus,

informing the market about the final issue price and volume of the offered shares. The pricing supplement does not need to be filed with the review body.

- *Capital increase*: In case of a primary offering, the issuer conducts a capital increase (typically immediately prior to the first day of trading).
- *First day of trading*: The start of the trading is the test for the issuer and the underwriters, as they see for the first time how the issuer's shares are traded.
- *Settlement*: The closing of the IPO occurs a few trading days after the first day of trading.
- **Phase IV: Stabilisation (the first 30 days after the listing)**
After the first day of trading, one of the underwriters acts as a stabilisation agent. When placing shares in the bookbuilding, the underwriters typically sell more shares to investors than they purchase from the issuer and/or the selling shareholder (typically 15% of the base size) so that these shares can be used to stabilise the market price during the first days of trading. Initially, the additional shares are not purchased from the issuer or a selling shareholder, but are lent under a share lending arrangement. Whether or not the over-allotment option ("greenshoe") is exercised depends on the development of the share price:
 - If the share price is not doing well, the stabilisation agent purchases shares in the market to stabilise the price. These shares are then returned to the lending shareholder(s).
 - If the stock is trading well, the stabilisation agent does not interfere in the market activity and ultimately either purchases the shares from the lending shareholder(s) or from the issuer (which are created in (another) capital increase) and returns these to the respective share lenders.

Regulatory architecture: Overview of the regulators and key regulations

It is noteworthy that several elements of the Swiss regulatory architecture are based on self-regulation by stock exchanges. In particular, the listing authority is a body of the relevant stock exchanges, which are privately organised and held entities that enact the listing rules and have considerable discretion and flexibility to address particularities of individual cases. The Swiss Financial Market Supervisory Authority ("FINMA") has admitted two review bodies, one of SIX Swiss Exchange and one of BX Swiss, which can be freely chosen to approve a prospectus regardless of the listing venue. This creates a certain level of regulatory competition.

Main regulators

- *FINMA*: FINMA is the independent regulatory body in charge of the overall supervision of the securities exchanges and the financial market as a whole.
- *Stock exchanges*: Swiss stock exchanges adapt their own regulations based on the principle of self-regulation. FINMA supervises the stock exchanges and approves their rules. Within SIX Swiss Exchange, the Regulatory Board is the rule-making body and SIX Exchange Regulation monitors compliance with and enforces the SIX rules.
- *Review bodies*: The so-called "review bodies" have the responsibility of reviewing prospectuses for completeness, consistency and comprehensibility. Both SIX Swiss Exchange and BX Swiss have been licensed by FINMA as review bodies under the FinSA. The Prospectus Office of SIX Exchange Regulation is the review body of SIX Swiss Exchange.
- *The Swiss Takeover Board ("TOB")*: The TOB enacts rules on public takeovers and share buybacks and supervises compliance with these rules.

Key regulations

- The FinSA and the FinSO are the key regulations for IPOs in Switzerland containing, *inter alia*, rules regarding the requirement to publish a prospectus when securities are offered to the public or admitted to trading at a trading venue in Switzerland, as well as its content and review. The FinSA further contains rules on prospectus liability (see below) and on the recognition of foreign prospectuses.
- *The listing rules of SIX Swiss Exchange* set forth the main requirements for companies to list their shares on SIX Swiss Exchange and to maintain the listing.
- *The Financial Market Infrastructure Act (“FMIA”)* governs the organisation and conduct of the Swiss financial market. Among other things, it prohibits insider trading and market manipulation and requires shareholders that hold 3% or more of an issuer’s share capital or voting rights to disclose their shareholding (see below). It also contains the main provisions for public takeovers.
- *The Swiss Code of Obligations (“CO”)* sets out the legal framework for stock corporations (*Aktiengesellschaften*) and includes rules for listed companies with regard to the publication of their annual reports and reports on non-financial matters. The CO also contains SOP Rules (see below), which were adopted on an interim basis in the *Ordinance against Excessive Compensation (“OaEC”)* after the respective popular vote in 2014. As part of the Swiss corporate law reform that entered into force on 1 January 2023, the rules contained in the OaEC have been incorporated into the CO, and the OaEC has been repealed.

Public company responsibilities

Public companies in Switzerland are subject to several additional obligations. These include the Swiss SOP Rules, reporting obligations relating to price-sensitive information, management transactions, financial statements and non-financial matters.

In addition, shareholders of a Swiss public company are obliged to report shareholdings of 3% or more to the stock exchange and the issuer, which subsequently arrange for the publication of these shareholdings on the stock exchange’s website. The disclosures must be made by (and must identify) the beneficial owner of the shares, i.e., the person controlling the voting rights and bearing the associated economic risk. This identification can be particularly complicated in complex private equity structures. Shareholders who act in concert must aggregate their respective shareholdings and report the aggregate as a group. Furthermore, shareholders of Swiss public companies are obliged to launch a mandatory bid for all listed shares in case they acquire (alone or acting in concert) more than 33⅓% of the issuer’s voting rights – unless the articles of association of the issuer include an increased threshold (opting up) or have waived this obligation (opting out).

Say on pay

Switzerland has SOP Rules and related executive compensation regulations for listed companies that are applicable to Swiss stock corporations if their shares are listed on a stock exchange in Switzerland or abroad.

The key element of the SOP Rules is the mandatory annual shareholder approval of the (i) total compensation of the members of the board of directors, and (ii) total compensation of the members of executive management. Details of the vote are to be included in the articles of association. The total compensation may be approved prospectively as a “budget” for the next year, which is the most common approach, but it is also possible to approve compensation retrospectively for the past year or as a combination of prospective and

retrospective votes for different elements of compensation. In case of a prospective vote on variable compensation, the board of directors has to submit the remuneration report (see below) to shareholders for non-binding approval. Pursuant to the SOP Rules, the main principles for performance-based compensation, including any incentive plans, must be set out in the company's articles of association. Hence, changes to these principles also require shareholder approval, but it is permissible to phrase such principles flexibly.

The SOP Rules also impose limitations on severance payments, post-employment non-compete compensation, "golden handshakes", pre-paid compensation and takeover bonuses. They further limit notice periods (or, if applicable, a fixed term) of employment agreements with the members of the executive management to a maximum of one year. In addition, the articles of association must contain limitations on mandates that members of the board of directors and executive management hold in other companies with an economic purpose, which is aimed at preventing "overboarding". These substantive requirements are supplemented by the obligation to publish an annual remuneration report that provides disclosure on quantitative elements of the remuneration paid as well as the mandates held by each board and management member in other companies with an economic purpose. This information is also typically included in the annual report.

Furthermore, all board members, the chairperson, all members of the mandatory remuneration committee and an independent proxy must be elected by the shareholders on an annual basis.

Ad hoc publicity

The rules on *ad hoc* publicity are not statutory obligations in Switzerland, but are regulated in the listing rules of the stock exchanges and are largely comparable to the EU regime set out in the MAR.

SIX Swiss Exchange requires an issuer to inform the market of any facts that are capable of triggering a significant change in the market price of its shares and which have arisen in its sphere of activity. Typical examples include, *inter alia*, financial figures, personnel changes on the board of directors or management, mergers, takeovers, spin-offs, restructuring operations, changes of capital, takeover offers, significant changes in profits, profit collapses, profit warnings and financial restructurings.

In principle, the issuer must inform the market immediately, but such publication can be postponed if the price-sensitive fact is based on a plan or if the decision of the issuer and its dissemination could prejudice its legitimate interests. The issuer in this case must ensure that the respective fact remains confidential. Immediate notification of the stock exchange and *ad hoc* announcement via the usual channels (including media outlets) is required in case of a leak. If the issuer postpones the publication of a price-relevant fact, it is important to constantly monitor whether the prerequisites for the postponement are still met, and to implement a contingency plan in case of a leak.

Disclosure of management transactions

The rules on the disclosure of management transactions (directors' dealings) are also set out in the listing rules of the stock exchanges. These rules require issuers to ensure that the members of the board of directors and executive management report transactions in the issuer's (listed and non-listed) equity securities, or in related financial instruments that have a direct or indirect effect on such person's assets. Related financial instruments comprise, in particular, derivatives or rights that provide for or permit the actual delivery of shares or cash settlement (e.g., subscription rights). The reporting obligation includes transactions carried out by related parties under the significant influence of the director or manager.

The issuer itself must then report the management transactions to the respective stock exchange, which publishes the notification on its website without disclosing the name of the respective director or manager.

Financial reporting

Swiss stock exchanges require issuers to publish and file annual and semi-annual financial reports, which must be drawn up in accordance with one of the eligible accounting standards (currently, IFRS, U.S. GAAP, Swiss GAAP FER and, for banks, Banking Act accounting standards). Quarterly reporting is generally not mandatory, but many public companies voluntarily publish quarterly results or figures, in line with international standards. In some cases, however, issuers are required to report quarterly under the SIX listing for a certain period of time, e.g., if an exception to the three-year track record requirement for the listing is granted.

Corporate governance and sustainability reporting

The Swiss Code of Best Practice for Corporate Governance issued by *economiesuisse*, the largest umbrella organisation representing Swiss businesses, contains the main guidelines regarding corporate governance matters. It is non-binding and follows a comply-or-explain approach, allowing companies to deviate from the Swiss Code's provisions if they provide a suitable explanation. Nevertheless, its provisions are widely observed by listed companies.

SIX-listed companies are also subject to the Directive on Information relating to Corporate Governance requiring disclosure on, e.g., group structure, major shareholders, changes of control, defence measures and compensation, in a separate section of the annual report on a comply-or-explain basis.

Since 2024 (i.e., covering the business year 2023), Swiss issuers have to publish a report on non-financial matters if they exceed a certain size. SIX already permits issuers to voluntarily inform SIX that they have prepared a sustainability report in accordance with an internationally recognised standard (opting in), which then obliges the issuer to publish a sustainability report in accordance with the chosen standard. Certain issuers that meet applicable criteria are also obliged to prepare a report on child labour, conflict minerals/metals, or a report of raw material companies on payments to state bodies.

In recent years, the recommendations of the prominent proxy advisors (e.g., ISS and Glass Lewis) have also acquired increased importance for an issuer's corporate governance set-up and are taken into account by a growing number of companies.

Potential risks, liabilities and pitfalls

Prospectus liability

Article 69 FinSA regulates prospectus liability. A primary condition for such liability is not having acted with due care. Liability without fault and concepts such as "fraud on the market" do not lead to liability under Swiss law. There is also no possibility of class actions.

According to the FinSA, anyone making statements in a prospectus (including key information or a similar document) that are incorrect, misleading or non-compliant with the law is liable to the acquirers of the securities for any damage caused thereby. Similar documents may include "mini-prospectuses" (e.g., shareholder information brochures), official notices and marketing presentations such as roadshow and early-look presentations, invitations to shareholders' meetings and advertisements. Therefore, every communication made in connection with or to promote an offering should be carefully tested against state-of-the-art "publicity guidelines" created specifically for the relevant offer.

Advertisements made in connection with an IPO must be clearly identifiable as advertisements and must include a reference to and be in line with the prospectus. Prospectus liability does not apply to persons solely distributing the prospectus; rather, an involvement in the drafting of the prospectus is required.

A liability claim may be brought not only by the original buyers in the initial offering but also by the later buyers on the secondary market to the extent they can show that the prospectus or any other relevant document adequately caused the purchase decision of such buyer (at the relevant price).

Liability for the summary of the prospectus arises only if the summary is misleading, incorrect or contradictory when read together with other parts of the prospectus. Further, similar to U.S. securities laws, forward-looking statements only result in liability if they are made against better knowledge or without a disclaimer pointing the investor towards the uncertainty of future developments. The FinSA also imposes criminal liability on anyone intentionally violating the Swiss prospectus rules and regulations.

Customary due diligence (including due diligence calls and comfort letters) serves to defend against liability claims by providing evidence to the persons involved in drafting the prospectus and similar documents that they have acted diligently when preparing these documents. In the absence of Swiss law statutory guidelines regarding the level of due diligence to be made, recognised market practice should be followed. In case of U.S. Regulation S offerings, the legal due diligence is usually led by a Swiss law firm, which also issues a disclosure letter. In case of offerings including elements of U.S. Rule 144A, the lead on the due diligence is typically taken by a U.S. law firm.

Insider trading

The Swiss rules regarding prohibition of insider dealings are set out in the FMIA, which provides for both criminal liability and administrative sanctions for insider trading.

The main difference between a criminal and an administrative offence is that a criminal offence requires the realisation of a pecuniary advantage and wilful intent, whereas an administrative offence only requires that the offender “knew” or “should have known” that a fact was insider information, and does not require that a pecuniary advantage was realised. Criminal liability may lead to a prison sentence of up to five years or a monetary penalty. The potential administrative sanctions are a declaratory decision of FINMA and the publication of FINMA’s decision. Both criminal liability and administrative sanctions also allow the confiscation of profit.

The Financial Market Infrastructure Ordinance (“**FMIO**”) contains safe harbours from the prohibition to disclose insider information. In particular, it is permissible to disclose insider information to a person if the disclosure is required with regard to the conclusion of a contract, and if the information holder: (i) makes it clear to the information recipient that the insider information must not be exploited; and (ii) documents the disclosure of the insider information and such clarification.

Issuers should generally adopt an insider dealing policy outlining the sanctions resulting from insider trading, and stipulate instances in which certain individuals are banned from trading in shares of the issuer (so-called “blocking periods”).

Market manipulation

Similar to insider trading, the FMIA provides for criminal liability and administrative sanctions for market abuse. Market abuse means the manipulation of the price of securities admitted to a Swiss trading venue, either by (i) publicly disseminating information that

gives false or misleading signals, or (ii) executing transactions that give false or misleading signals to the market. A criminal offence requires wilful behaviour by the offender and the intention of gaining a pecuniary advantage, whereas an administrative offence merely requires that the offender “knew” or “should have known” that their acts gave false or misleading signals regarding the supply, demand or price of the securities in question. Criminal liability may lead to a maximum prison sentence of five years. The administrative sanctions are, as a general rule, the same as for the insider dealing provisions. Both criminal liability and administrative sanctions also allow the confiscation of profit.

The FMIO also contains certain safe harbour rules from conduct that would otherwise be qualified as market manipulation, namely for public buyback programmes of an issuer’s own securities as well as for price stabilisation following a public placement of securities. Under these rules, it is permissible, *inter alia*, to use shares placed as part of an over-allotment option (“greenshoe”) to stabilise the price following an IPO if certain conditions are met. These include that the price stabilisation is carried out within 30 days and may not be executed at a price that is higher than the issue price.

Sanctions by the stock exchanges

In addition to statutory obligations, the stock exchanges may impose sanctions on issuers in case of violations of their obligations under the listing rules (e.g., of *ad hoc* disclosure obligations or rules regarding disclosure of management transactions). These can include fines and the suspension of trading, as well as, ultimately, a delisting.



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Lukas Roesler advises issuers, borrowers, arrangers, investors and lenders on all aspects of capital markets, corporate finance and acquisition finance transactions. Further, he advises in restructuring and insolvency matters. Current work highlights include the spin-off of Sandoz from Novartis (2023), the EUR 7 billion sustainability-linked syndicated credit facility for Swiss energy provider Axpo (2024) and the placement of AT1 bonds for a major Swiss private banking group (2023).



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