Swiss Exchange welcomes growth companies

In June the Swiss Exchange opened the SWX New Market, a new segment for young growth companies. Urs Schenker of Baker & McKenzie, Zurich, reviews the listing requirements for companies intending to list

The Swiss Exchange has set up a growth segment to compete with Easdaq and the Neuer Markt. Companies listing on the SWX New Market avoid the listing requirements of the main segment regarding market capitalization and equity capital and may list just one year after their formation. However, they must comply with stricter transparency requirements than those of the main segment.

In the first years of their development companies often rely on private equity to finance their growth. After this initial stage successful companies usually then require more capital to finance further growth, but first stage venture capitalists are already expecting an opportunity to realize the gain achieved so far. At this point, growth companies will normally tap the capital market in an IPO to obtain further capital and to give their initial shareholders the opportunity to sell some of their shares in a secondary placement. Such an IPO can normally only be launched successfully if the shares of the growth company can be listed. Young companies, however, are often not able to meet the listing requirements of the main segment of the Swiss Exchange. In this regard, the Swiss Exchange requires that a company to be listed on the main segment present historical financial data for at least three years and, furthermore, relatively high minimal standards for market liquidity and equity capital are set.

To make a listing accessible to young companies, the Swiss Exchange has created the New Market, a new segment specifically designed for young companies. The special listing regulations relax some of the requirements which have otherwise hindered the listing of young companies. The Swiss Exchange has, however, tried to strike a balance between the interests of young companies with flexible listing requirements — and the protection of the public — with the imposition of strict reporting requirements, enabling investors to have the necessary data to assess the risks associated with securities listed on the New Market.

Listing requirements in the New Market

In general, a company that intends to list its shares on the New Market must comply with the normal listing regulations of the Swiss Exchange. The special listing regulations for the New Market deviate from the general listing regulations on several points the company must:

- be in business for one year as opposed to three on the main segment;
- have a minimum equity of Swfr2.5 million ($1.65 million) compared to Swfr25 million on the main segment;
- place 20% of its shares with the public (compared to 25% on the main segment);
- have a market capitalization of Swfr8 million rather than Swfr25 million.

The special listing regulations for the New Market, however, impose certain obligations on the issuers which are not required for a listing on the main segment. The purpose of these obligations is to provide clear and complete information to the investors and to maintain minimum liquidity. These special requirements include:

Capital increase

A company may only be listed on the New Market if an IPO is conducted prior to the listing. In this regard, 50% of the offered shares must stem directly from a capital increase and must be paid-in in cash. The listing regulations thus require that 50% of the IPO's proceeds flow to the company so as to effectively finance its

operation. This requirement was introduced not only to provide for a wider distribution of shares among the public, but also to ensure that companies actually use the listing on the New Market to finance their future growth and not just as an opportunity for initial investors to liquidate their investment.

Lock-up for initial investors

The company must ensure that shareholders who, before the IPO, individually hold more than 2% of the issued capital refrain from selling shares for at least six months after the listing. Like the 50% limit for secondary placement, this requirement is also designed to ensure that the listing is not primarily used as an occasion for the original investors to liquidate their holdings. This requirement also prevents market distortions which can be caused by rapid sales of large blocks of shares by the initial investors after the relevant listing becomes effective.

Market making

As a further requirement for listing on the New Market, a member of the Swiss Exchange must guarantee market making, ie has to provide bid and ask prices for a certain period to ensure minimum liquidity for trading.

Accounting standards

A company to be listed on the New Market must apply either International Accounting Standards (IAS) or US Generally Accepted Accounting Principles (US GAAP) to ensure a true and accurate picture of the company's financial statements. The Swiss accounting standard (FER), which may be used by companies listed on the main segment is not sufficient for listing on the New Market unless the company provides a reconciliation to IAS or US GAAP and switches within two years to one of these accounting standards. This requirement to use an internationally recognized accounting standard has been introduced to better enable investors to assess the risk they incur by investing in young companies listed on the New Market. This requirement may, however, also foreshadow a change in the requirements for companies listed on the main segment as investors and banks clearly prefer IAS and US GAAP to the Swiss FER standard.

Quarterly reporting

A company listed on the New Market is required to issue quarterly reports within two months of the expiration of the calendar quarter concerned. The quarterly report which coincides with the annual report may, however, be published within three months of the close of the business year. All reports, quarterly and annual, must be issued in English. Whereas the annual report must contain audited financial statements, the quarterly financial statements contained in the quarterly reports need not be audited. The Swiss Exchange has imposed a quarterly reporting obligation on companies listed on the New Market as such companies are expected to show a dynamic development. In addition, the normal semi-annual reporting cycle imposed on companies listed on the main segmant may not otherwise be sufficient to allow investors to assess the development of the companies and the risk associated with their securities. This move to quarterly reports may also foreshadow a quarterly reporting requirement for companies listed on the main segment.

Prospectus

Similar to a listing on the main segment, the listing on the New Market requires the publication of a listing prospectus, which must be published in English and contain the necessary information required by normal listing regulations. These include detailed information on:

- the securities to be listed;
- the company's organization; and
- the company's activities.

The special listing regulations for the New Market, however, deviate in the following points from the prospectus requirements of the main board:

Lock-up

The prospectus must disclose the lock-up obligation incurred by the existing shareholders and publish the names of such shareholders.

Quarterly reports

If the financial statement published in the prospectus is older than five, eight or 11 months, the prospectus must contain a quarterly report for the last quarter.

Risk disclosure

A risk disclosure statement must be prominently displayed in the prospectus and must adequately inform investors of the risks associated with the company. The statement must, in particular, cover the following issues:

- extraordinary competition situations (as, for example, the entry of a large competitor into the company's market);
- the expiration of patents and licences;
- whether the company's profitability depends on the development on specific markets, on price fluctuation of raw materials, on currency fluctuations and/or on business cycles; and
- whether the company's business depends on certain major shareholders who are important customers or suppliers; or on the knowledge or activity of certain persons (as, for example, the star software developer in a software company).

The drafting of the risk disclosure statement in a prospectus is one of the most critical tasks. An incomplete risk disclosure statement might easily lead to law suits by disappointed investors in the case of a negative development of the newly issued shares (according to Swiss law not only the issuer may be liable to the investors for a deficient prospectus but all persons who have participated in the drafting process, such as in particular the investment banks). With a carefully drafted and complete disclosure statement it is, on the other hand, possible to minimize the liability risk which can be created by statements on the company's business perspectives which in retrospect might appear to have been exaggerated if a company's business takes a negative turn after the IPO.

Research studies

The bank which sponsors the listing must issue research reports on the company at least twice a year. With this requirement, the Swiss exchange intends to ensure that investors regularly receive information on the shares listed on the new market from a source outside the company. It is, however, questionable whether the bank which sponsors a listing and an IPO is actually in a position to issue an objective and critical research report; this requirement may, in any event, place undue burden on the bank if the company's development should not live up to expectations outlined in the prospectus.

With the New Market the Swiss Exchange has created an attractive opportunity to list Swiss and foreign companies on a regulated exchange. The New Market will, however, be in close competition with other markets specializing in new companies such as, in particular, the German Neuer Markt, Easdaq and Nasdaq. One advantage of the New Market will be the placement power of the Swiss banks, which can often ensure a successful IPO. Furthermore, the reporting and prospectus requirements of the New Market are relatively straightforward and easy to comply with and should accordingly lead to moderate transaction costs. ▮

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