THE SECURITISATION & STRUCTURED FINANCE HANDBOOK
2019

9th Edition

Recent developments in the Swiss securitisation market in 2017/18

by Lukas Wyss, Walder Wyss Ltd.

In 2017 and 2018 the public Swiss ABS market has seen a number of transactions by constant ABS issuers, such as AMAG Leasing AG, Multilease AG and Swisscard AECS GmbH. In addition, Valiant Bank has issued its inaugural tranche of CHF250m covered bonds and a second tranche of CHF500m covered bonds. There appears to be a lot of activity around RMBS and covered bonds transactions and it is expected that a number of transactions might come to market within the next 18 months, even though there are different attractive refinancing opportunities for mortgage lenders. Such alternative refinancing opportunities are mainly driven by the low interest environment and the high liquidity in the market. Also, market lending platforms continue to grow and are eagerly looking at refinancing opportunities, including ABS or ABS like structures.

The Swiss securitisation market 2017/18 – overview

In July 2017, BMW (Schweiz) AG closed a new public Swiss auto lease ABS transaction. The transaction features the issuance of 325m Class A Floating Rate Notes via BMW's Luxembourg platform Bavarian Sky Europe S.A. (acting in respect of its Compartment Swiss Auto Leases 2). This was one of the first Swiss public ABS transactions issued in euros. As euro issuances normally attract more international investors, it was important that the transaction was structured so that no Swiss withholding tax is incurred on interest payments under the notes.

In November 2017, Valiant Bank AG has successfully placed a CHF250m covered bond with a 10-year term and carrying a coupon of 0.375%. The transaction was the first public covered bond issuance entirely structured under Swiss law with a Swiss guarantor. A second tranche of CHF500m covered bonds with a six-year term and carrying a coupon of 0.125% was placed in April 2018.

Lukas Wyss
Walder Wyss Ltd.
tel: +41 58 658 56 01
email: lukas.wyss@walderwyss.com

On November 28, 2017, Multilease AG closed its second public Swiss auto lease ABS transaction involving the issuance by First Swiss Mobility 2017-2 AG of CHF267.3m 0% Class A Notes, CHF16.5m 1.00% Class B Notes and CHF14.8m 2.00% Class C Notes, due in 2027.

On April 18, 2018, AMAG Leasing AG closed its fourth public Swiss auto lease ABS transaction involving the issuance by Swiss Car ABS 2018-1 AG of CHF275m Notes with a coupon of 0.120%, due in 2028. The proceeds of the transaction were primarily used to refinance AMAG Leasing AG's 2016-1 transaction.

Finally, on June 15, 2018, Swisscard AECS GmbH closed its sixth public Swiss credit card ABS transaction involving the issuance by Swiss Credit Card Issuance 2018-1 AG of CHF190.4m 0.10% Class A Notes, CHF6.6m 0.875% Class B Notes and CHF3m 1.875% Class C Notes (all due 2023).

A number of private ABS transactions (i.e. transactions that are refinanced through ABCP platforms or through direct investors or banks) have been extended and renewed. Also, the number of trade receivable securitisation transactions involving Swiss receivables and/or Swiss sellers has increased.

Recently, a fair number of market lending platforms have been looking at refinancing their portfolios. As most of the portfolios are still very small, most of the (potential) transactions involve the refinancing of the portfolios via single investor structures. Most notably, Cembra Money Bank AG (Cembra) refinanced a Swiss SPV that acquired a lending platform originated consumer loan portfolio from eny Finance AG. The transaction is structured as a revolving transaction so that eny Finance AG's growth will be financed over the next years.

In addition, Cembra signed a long-term agreement with Lendico Schweiz AG (Lendico), a 100% subsidiary of PostFinance AG, to finance small business loans sourced via the Lendico online platform. Lendico is an SME loan marketplace active in Switzerland since the end of 2016, based in Zurich. Under the agreement, Cembra will be a preferred partner for financing of SME loans sourced by Lendico and consolidate them on the Cembra balance sheet. Lendico will continue to service the portfolio once the loans have been financed. It can be expected, that a number of similar transactions will follow and might be taken out by public or private ABS transactions at some point.

Finally, there appears to be a lot of dynamic in the residential mortgage loan space. Various players in the market seek at refinancing their mortgage loan portfolios. Structures that have been implemented include one-to-one refinancing transactions, fund structures, pension funds structures and others. Also, originators are looking at covered bond and RMBS transactions and it can be expected that a number of transactions will come to market during the next 18 months.

Trends and hot topics

No securitisation specific legislation

Jurisdictions across the globe as well as the European Union have enacted legislation that specifically deals with ABS and securitisations more generally. Legislation addresses disclosure requirements, distribution, "skin in the game rules", investor suitability and many other topics.

In Switzerland, there is no ABS or securitisation specific legislation and securitisation transactions are structured within the general legal framework. Whilst structures have been developed that are compliant with regulatory requirements and meet the criteria set up by rating agencies, it would nevertheless facilitate the structuring and execution process in case certain topics would be addressed by specific legislation. The following topics are of interest:

- Formation of compartments: Under Swiss corporate law, the segregation of assets within the same legal entity is challenging. Accordingly, most often, new legal entities are formed for each single transaction so to avoid any uncertainties in this respect.
- Validity of limited recourse, non-petition and subordination clauses: Whilst limited recourse, non-petition and subordination clauses are generally

legal, valid and binding under Swiss law, Swiss legal opinions remain reasoned in this respect. Even though this has proven to be acceptable to rating agencies and investors, explicit legislation would simply eliminate any remaining uncertainty.

- Regulatory framework: In Swiss transactions, securitisation SPVs are subject to the general regulatory legal framework. There is some uncertainty around the regulatory treatment of securitisation structures and, accordingly, it became standard that the regulatory treatment is pre-discussed and preapproved with the competent regulator, namely the Swiss Financial Market Supervisory Authority (FINMA) and the consumer lending regulators. Explicit legislation would facilitate the process.
- VAT on servicing: Swiss tax authorities have requested in the past that VAT is paid on a servicing fee, regardless as to whether or not a servicing fee is effectively paid. Given that some of the securitisation SPVs are not registered for VAT purposes, this might be a real cost item. It remains to be seen whether the position of the tax authorities will be upheld. However, as in other jurisdictions, it would be much clearer if services rendered to securitisation SPV issuers would simply be exempt from VAT. It would be desirable if a pragmatic approach could be taken.

New prospectus requirements under the FinMIA

In a general attempt to bring the Swiss regulatory framework more in line with international regulations, such as MiFID II and the EU Prospectus Directive, the Financial Market Infrastructure Act (FinMIA), the Federal Financial Services Act (FinSA) and the Financial Institutions Act (FinIA) will replace major portions of the existing regulations. The FMIA has entered into force and the FinSA and the FinIA have just been passed by parliament in June 2018 and are expected to enter into force on January 1, 2020.

For the first time in Switzerland, the FinSA introduces a comprehensive prospectus regime that covers and harmonises disclosure requirement for different types of financial instruments. This also affects the issuance of instruments to the capital markets in securitisation transactions.

According to the FinSA, "any person offering securities for sale or subscription in a public offering in Switzerland or any person seeking the admission of securities for trading in a trading venue as defined in the FinMIA must first publish a prospectus".

The most important novelties introduced by the FinSA in relation to the prospectus requirements are the following:

- a prospectus must be published also in secondary offerings;
- a prospectus must be published in the event of any admission for trading of securities on a trading platform (not only in case of a listing);
- a prospectus must be pre-approved prior to publication by a new regulatory body licensed as such by FINMA;
- there are now codified exemptions from prospectus requirements.

Exemptions are based either on the type of offering, the type of securities offered or, in the case of the admission to trading only, related to the admission.

- Type of offering: No prospectus is required if securities are offered (i) to professional clients, insurance companies or companies with a professional treasury; (ii) to not more than 500 investors; (iii) with minimum investments or minimum denominations of CHF100,000; and (iv) with an aggregate volume of not more than CHF8m.
- Type of securities: No prospectus is required in particular in the case of exchange of equity securities, offerings in the context of a merger, spin-off, conversion or asset transfer transaction (to the extent equivalent information is available) or in case of offerings to executives or employees.

Finally, certain exemptions apply for admissions to trading.

The FinSA introduces a new comprehensive prospectus regime establishing a level playing field with the EU Prospectus Directive. Given the existing listing rules and other regulations of SIX Swiss Exchange and other stock exchanges, it would appear that the new regulation would not fundamentally change current market practice. Nevertheless, certain areas will require specific attention and it is important, that new elements (such as the prospectus pre-approval requirement) will be implemented in a pragmatic, business oriented and efficient manner.

Negative interest rates

Background

Swiss markets continue to be driven by the negative interest environment. Since January 2015, the Swiss National Bank (SNB) charges negative interests on bank deposits at currently minus 75bps. Even though interest rates increased in the US market, it cannot be expected that interest will raise in Switzerland in the near future, given the dependency from the euro markets. The three-months LIBOR CHF target range declared by the SNB remains between -125bps and -25 bps. In the last couple of months, three-months LIBOR CHF fluctuated between -70 bps and -80bps.

ABS not eligible for SNB repos Switzerland

A substantial number of Swiss franc bonds are trading at negative yields in secondary markets, but only a limited number of issuers were able to issue Swiss franc debt securities to primary markets at negative yields (i.e. the securities have been issued with a very low or a zero coupon, but above par). The group of such issuers includes the Swiss Confederation, certain Cantons, certain Swiss Cantonal Banks, the Swiss Mortgage Bank (*Pfandbriefbank schweizerischer Hypothekarinstitute*) and the Swiss Mortgage Centre (*Pfandbriefzentrale der schweizerischen Kantonalbanken AG*).

However, ABS issuers have not been able to issue AAA tranches to primary markets at negative yields in the Swiss franc market so far, even though some corporate and ABS issuers have been able to do so in the euro market. Investment bankers close to the industry are of the opinion that the main reason is the fact, that ABS are not included in the list of eligible collateral for repo transactions with the SNB. There is still a hope that the SNB will accept ABS as eligible collateral at some point and follow the position of the European Central Bank (ECB) and other Central Banks. This would broaden the investor base substantially.

Structural challenges as a consequence of negative interest rates and mitigants

Structurally, rating agencies became more and more concerned about negative interest rates being charged on transaction accounts. Negative interest rates exert downward pressure on cash amounts or eligible investments held within a deal structure. However, rating agencies generally consider this impact to be negligible because cash amounts tend to be small compared to the notes' amount. However, for deal structures with higher cash amounts standing to the credit of reserve accounts, deposit accounts or similar accounts, rating agencies kept a close eye on the account bank arrangements. Account banks normally refuse to agree to a floor on the interest rates, given the exposure they have themselves to fluctuation of interest charged by the SNB on bank deposits.

As a consequence, structural features have been developed to address negative interest rates. As an example, some originators structured the transaction to avoid high cash amounts by accepting lower advance rates on the asset pool which results in lower reserve amounts being required.

Also, account banks sometimes are willing to offer account products with more attractive interest rates. However, these accounts normally provide for longer notice periods for withdrawals. Therefore, the structuring process for the account mechanics are relatively challenging, as longer notice periods are normally of concern in light of liquidity requirements. Therefore, the reserve and deposit cash amounts that are permitted to stand to the credit of such special accounts are typically subject to rather complex calculation and monitoring mechanisms.

Marketplace lending platforms

Also in Switzerland, the direct lending market is growing rapidly, even though overall volumes are still considerably low.

Whilst marketplace lending platforms are generally aiming at financing the assets directly via lenders over the platform, some platforms have been looking for larger single investors in order to ensure full funding when needed.

Some of these structures were set up as direct transfers of the assets to the investor, but some other transactions were set up under "ABS like" structures. In particular, Cembra finance two transactions (as mentioned) under such structures.

Even though debut European marketplace originated loan securitisations have successfully come to market (namely the Funding Circle (SBOLT 2016-1) transaction and P2P Global Investments Plc and Zopa Ltd. (Marketplace Originated Consumer Assets 2016-1) transaction), we believe that it still takes time until the first Swiss ABS transaction will be launched involving assets originated by marketplace lending platforms. However, we expect this market to grow over the next 12 months and further refinancing transactions to a broader investor base to be set up. We trust that some of these portfolios will grow over time so that take out transactions by ABS would be feasible.

Contact us:

Walder Wyss Ltd.

Seefeldstrasse 123, P.O. Box 8034 Zurich

Switzerland

tel: +41 58 658 58 58

web: www.walderwyss.com