

NewsLetter

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New Regulations for the Listing of Bonds on the SWX Swiss Exchange

The Admission Board of the SWX Swiss Exchange ("AB") has issued new regulations governing the listing of bonds. The revision aims to create an attractive framework for the listing of bonds issued by domestic as well as foreign issuers. The new regulation will enter into force on 1 February 2005.

In order to ensure legal certainty, equal treatment and transparency both for investors and issuers, the current listing conditions and listing procedures generally remain in effect and are amended by the new Additional Rules for the Listing of Bonds ("AR") only to the extent necessary to create a competitive framework for the listing of bonds on the SWX Swiss Exchange ("SWX"). The following is a summary of the most significant changes introduced by the AB.



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Issuance Programmes

Today, the listing of bonds takes place either on the basis of a listing prospectus for a single bond issue or in connection with a so-called MTN programme. Under the AR, a bond issuer will be permitted to submit domestic issuance programme for approval by the AB.

Such programme must contain information on the issuer, the general terms and conditions of bonds and provide other basic information. Once a domestic issuance programme is approved, for a period of 12 months the listing of a bond issue under the programme requires only the submission of a term sheet with the specific terms of the relevant bond ("pricing supplement").

Issuers cannot have their issuance programmes that are registered with a foreign securities exchange approved as programmes for the listing of bonds on the SWX. They can, however, use the programme within the framework of a listing procedure on the SWX. They must submit with the listing application

the entire issuance programme as well as the relevant term sheet for the bond that is to be listed. The AB's approval will apply only to the listing of the specific bond issue.

Incorporations by Reference

The AR will permit the incorporation of certain information in the listing prospectus for bonds by reference to other publicly available documents. This is only permitted, however, if (i) the reference documents are accessible under the same conditions as the listing prospectus (supplied at no cost from a central location and accessible on the issuer's website); (ii) investors can obtain the reference documents in a timely and unhindered manner and without having to justify their requests; (iii) references are only made to interim financial reports, auditors and annual reports, as well as approved (domestic and foreign) issuance programmes; and (iv) the listing prospectus indicates in a prominent place that certain information is incorporated by reference.

Applicable Law and Place of Jurisdiction

Under the revised and renamed Directive on Applicable Law and Place of Jurisdiction for Debt Securities ("DALPJ"), debt securities with terms and conditions that are subject to a recognised foreign legal system can be listed on the SWX. The laws of OECD member states are deemed to be recognised foreign legal systems. The issuer, except for some public sector issuers, must designate a place of jurisdiction in the country whose laws are applicable to the terms and conditions of the specific security. There is no obligation to designate an alternative place of jurisdiction in Switzerland.

Special disclosure obligations apply with respect to debt securities which are not subject to Swiss law and the jurisdiction of Swiss courts: (i) the listing prospectus must indicate in a prominent place that the terms and conditions of the debt securities are

subject to foreign law and to the jurisdiction of foreign courts; and (ii), if such foreign law and jurisdiction exposes the investors to legal implications which vary from the ones to which investors would be commonly exposed in Switzerland, this must be clearly disclosed in the prospectus.

The DALPJ is applicable to all debt securities that are eligible for listing on the SWX including bonds, convertible and warrant bonds, as well as derivatives. Furthermore, the revised Directive on Guarantee Commitments states that the DALBJ applies analogously to guarantee commitments as well.

Bonds Listed on a Foreign Stock Exchange

According to Article 25 AR, the AB may issue different rules for bonds which already are listed on a foreign stock exchange recognised by the SWX. Based on this provision, the AB has issued Circular No. 10, which will enter into force on 1 February 2005. In a nutshell, Circular No. 10 permits the submission of a simplified prospectus in accordance with Article 39 of the Listing Rules (Abridgement of the Listing Prospectus); references to a previous prospectus or its incorporation by reference are not permitted.

Bonds Denominated in Foreign Currencies

Bonds denominated in one of the following foreign currencies can be listed on the SWX: EUR, USD, GBP, AUD, CAD, NOK, NZD, SEK, ZAR, JPY and DKK, but the following conditions must be met: (i) the issuer (or the lead manager) must assume responsibility for ensuring compliance with the regulations of the relevant monetary authorities; (ii) the listing prospectus and the listing notice must specifically explain any unusual tax consequences for investors; (iii) the issuer must agree to make any required technical clearing arrangement needed to ensure the smooth execution and clearing of transactions on the SWX.

Abrogation of Previous Communiqués of the AB

When the new regulations become effective, the following Communiqués of the AB will be repealed: (i) Communiqué No. 1/1999, Listing of "Debut Tranches" Issued under EMTN Programmes on the SWX; (ii) Communiqué No. 2/1999, Confirmation of Practice Regarding the Listing of Securities Subject to Foreign Law; (iii) Communiqué No. 3/2000, Listing of Bonds Denominated in US Dollars or Euros; (iv) Communiqué No. 4/2000, Listing of Derivatives Subject to Foreign Law (Issue Programme); (v) Communiqué No. 8/2000, Change in Practice Pertaining to Listing of Issues

Governed by Foreign Law; (vi) Communiqué No. 6/2002, Specification of practice pertaining to guarantee commitments, Alternative place of jurisdiction for bonds within the framework of an issuance programme subject to foreign law; and (vii) Communiqué No. 7/2003, Directive on Debt Securities Subject to Foreign Law, Broadening of exemption parameters.

NewsLetter

The ww&p NewsLetter provides comments on new developments and significant issues of Swiss law. These comments are not intended to provide legal advice. Before taking action or relying on the comments and the information given, addressees of this NewsLetter should seek specific advice on the matters which concern them.

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