

Newsletter No.

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Listing of SMEs in Switzerland – SIX Swiss Exchange launches new trading segment:

SIX Swiss Exchange has announced the launch of SPARKS, a new equity segment for Small & Medium Enterprises (SMEs) which typically have a lower capitalization. At the same time, the minimum equity capital for the main market segment will be raised. The new segment is subject to approval by the Swiss Financial Market Supervisory Authority FINMA. SMEs will find a well-developed ecosystem of exchanges, banks, investors and legal advisors in Switzerland, backed by a recently modernized, relatively liberal legal environment and solution-oriented authorities. The new segment may prove to be a catalyst for SMEs, even more so when the new flexibility of the capital structure under the revised Swiss corporate law will enter into force (expected in 2023). Enabling SMEs, the backbone of the economy, to tap into the public equity capital market is key in view of economic, technological and environmental disruptions and the growing need for innovative solutions. This Newsletter outlines the requirements and steps of a listing of an SME in Switzerland as well as the regulatory impact of being public.



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New opportunities

SIX Swiss Exchange (**SIX**) has announced the launch of SPARKS, a new equity segment for Small & Medium Enterprises (**SME**). The trading model is specifically designed for companies with a lower capitalization. The new segment is subject to approval by the Swiss Financial Market Supervisory Authority FINMA (**FINMA**).

While SIX hosts some of the largest companies of the world in various sectors, the new trading segment for SMEs bridges **a gap** in the otherwise leading Swiss equity capital market. The new segment complements the small cap market of the BX Swiss (**BX**) which is limited to local companies with mostly local shareholders or operations and is focused on real estate companies and structured products. **SMEs will find a well-developed ecosystem** of exchanges, banks, investors and legal advisors in Switzerland, backed by a recently modernized, relatively liberal legal environment and solution-oriented authorities and will benefit from customized procedures. In addition, there will be new ways of financing for SMEs through the yet to be launched SIX Digital Exchange (**SDX**) which will make it possible to trade and settle digital assets (excluding tokenized shares, at least in the initial phase).

The new segment may enable SMEs to (i) raise capital more easily, (ii) reach an optimal, diversified and resilient financing structure, (iii) enhance visibility, strengthen its branding and signal trustworthiness as well as (iv) provide investors with liquidity. The quality mark of being listed instead of simply being admitted to trading on a trading facility make SMEs eligible for investments by a broader range of institutional investors. The new market segment promises to be a catalyst for SMEs, even more so when the **revised Swiss corporate law** will enter into force (expected in 2023), bringing along new flexibility to the capital structure.

SMEs are the backbone of the economy. Even in times of low interest rates and liquidity glut, capital markets appear to be increasingly decoupled from the real

economy, capital often does not find its way to where it can be used most productively, and SMEs encounter difficulties in raising substantial funds through capital increases. Therefore, enabling SMEs to tap into the equity market opens **new perspectives and opportunities for SMEs, investors and the economy** – a necessity in view of upcoming economic, technological and environmental challenges and the growing need for innovative solutions.

Prospective listing requirements and trading model for SMEs

SIX has announced the following **requirements** for a listing in the new segment:

- a market capitalization of less than CHF 500 million upon listing;
- a track record of at least two years (instead of three years in the main segment of SIX, and one year at BX);
- a shareholder base of at least 50 investors;
- a minimum equity capital of CHF 12 million; and
- a capital increase of at least CHF 8 million. Therefore, there will only be Initial Public Offerings (**IPOs**) and no “direct listings” without an offering (unless an issuer’s equity capital exceeds CHF 25 million).

At the same time, SIX intends to **raise the minimum equity capital for the main market segment** from CHF 2.5 million to CHF 25 million.

The new segment is subject to approval of FINMA. The timeline, final listing requirements and applicable regulations of the new segment are yet to be revealed.

In general, a public offering and/or a listing of shares in Switzerland requires the **filing of a prospectus** with a recognized prospectus review body such as the prospectus office of SIX or BX, unless a statutory exemption applies. Furthermore, a **listing request** to the listing office of the stock exchange is required.

After some time, a company listed on SPARKS may request a **transfer to the main market segment**. A unicorn, i.e. an issuer whose average market capitalization exceeds CHF 1 billion over a period of twelve months, must transfer to the SIX's main market.

As to the **trading model**, the new segment applies condensed trading windows to optimize price determination: opening auction at 3.00 p.m, continuous trading until 5.20 p.m, closing auction and Trading at Last (TAL) until 5.40 p.m. Achieving a minimum trading volume will be key for the success of the new segment.

Step plan

IPO readiness

When considering going public, an SME should first review its **corporate structure**. This may involve reorganizing, spinning off certain divisions or building a holding company. Tax implications should be assessed.

One further aspect is the organization of the **financial reporting** in view of the IPO, particularly in the case of a company that is less than three years in existence or has undergone material changes. Further issues to be reviewed are a possible change in the **reporting standard** or segment reporting.

An important prerequisite for a successful IPO is the creation of an efficient **capital structure**, considering repayment of debt positions or a debt-equity swap, and a share split or preliminary capital increase to achieve a reasonable denomination and per unit price of the shares. The company enhances financing flexibility if, ahead of or simultaneously with the IPO, it creates sufficient authorized capital as well as conditional capital for future at-market capital increases or the creation of new shares upon exercise of conversion rights or employee options.

The upcoming entry into force of the revised Swiss corporate law will offer additionally flexibility in the capital struc-

ture, opening new opportunities for SMEs, particularly when listed. The new law is expected to enter into force in 2023 at the earliest.

A further item on each IPO checklist must be the **governance structure**. The board of directors, its committees and the management board should be established, the members should be appointed, and respective regulations should be adopted. The structure may and should be adjusted to the specific needs of the SME and its size. The new Swiss corporate law includes rules on gender representation in the board of directors (to be implemented within 5 years) and the management board (to be implemented within 10 years).

A listing candidate incorporated in Switzerland must comply with the **Swiss statutory compensation regime** which mainly requires the establishment of a compensation committee, mandatory say-on pay of the shareholders and a prohibition of certain forms of compensation such as golden handshakes or parachutes. The **articles of association** and contracts with directors and officers must be amended accordingly.

In view of the listing, the articles of association require a general overhaul. They should provide for an exclusion of preemptive rights in view of the IPO, and an opting-out or -up clause regarding mandatory takeover bids by shareholders holding at least 33 ⅓ % may be adopted. Further mandatory requirements for the articles of association of listed companies apply.

Preparation

In a **first phase**, the SME will draw up an investment case, choose a lead bank and professional advisors, fix the structuring of the listing and offering and arrange a kick-off meeting with the stock exchange. The **due diligence review** by the banks and lawyers as well as the **drafting of the prospectus** start. Publicity and research guidelines are to be established. Eventually the issuer's counsel file the prospectus and the listing request with the stock

exchange authorities.

The **prospectus must contain the minimum statutory items** such as a description of the business, the risks of the business and the securities, governance, financials, capital structure, shares and shareholders and annual and interim financial statements. In the case of structural changes, additional pro forma financial information may be required. The required financial information as well as possible exemptions, e.g. from the track-record requirement, may be discussed with the stock exchange in the customary kick-off meeting.

Under the new Swiss prospectus regime (mandatorily applicable since December 2020), SMEs may benefit from **(a few) exemptions regarding the content of the prospectus**.

Launch

Next steps are the announcement to go public (Intention to Float) and the **marketing phase** including investor education and analyst roadshows. Following the **prospectus approval, the admission to trading and the determination of the share-price range**, the management and the lead banks start the roadshow. During this phase, the lead banks collect offers in the order book and the offer price is fixed (**bookbuilding**).

On the corporate side, a **capital increase** for the offering along with the **corporate documents** (articles of associations and regulations) must be implemented by the general shareholders' meeting and the board of directors of the company.

Finally, bookrunners **allocate the shares** in accordance with the Allocation Directives for the New Issues Market Directive on the Distribution of Equity Securities of the Swiss Bankers Association, and trading starts.

Post-listing obligations

Being public is a quality mark as well as a commitment. The **shift from discreetness to the spotlight of the public** often implies

a paradigm shift in the corporate culture of the company, even more so in the case of an SME. The SME's communication becomes a key resource and is subject to a detailed regulatory regime.

Once listed, the SME will publish **audited annual and unaudited semi-annual financial statements** based on a recognized accounting standard, as well as an annual **corporate governance report** under the SIX regulations.

Furthermore, the SME will be subject to the obligation to immediately publish materially price-sensitive information in prescribed form (**ad hoc publicity**). Under certain conditions, ad hoc publication may be postponed. Selective information to certain investors, employees or media representatives is not permitted.

All transactions of directors or officers and related parties in shares of the company or related financial instruments must be disclosed (**disclosure of management transaction/directors' dealings**). Further **regular reporting obligations** regarding important, but not necessarily price-sensitive information on the organization and the shares apply.

Investors individually or jointly reaching or crossing a certain threshold, or third parties exercising voting rights at their own discretion, must submit disclosure notifications to the SIX Disclosure Office and the company within four trading days, and the company must enter the notification into the SIX reporting platform within two further trading days (**disclosure of significant shareholdings**). The applicable thresholds are 3, 5, 10, 15, 20, 25, 33 ⅓, 50 and 66⅔ % of the outstanding voting rights. Transactions among the parties of a group of shareholders bound by a shareholder agreement are exempt from the disclosure obligation, which may be a relief for SMEs.

When listed, the SME and its investors benefit from the protection of the **Swiss takeover law**. Public tender offers are specifically regulated, generally require a tender offer prospectus to be approved

by the Swiss Takeover Board and trigger certain obligations on the part of the company. Shareholders individually or jointly holding more than 33 ⅓ % are required to publish a tender offer to all other shareholders at a minimum price, unless the articles of association of the company provides for an opting-out or opting up.

Finally, if the shares of an SME are listed on a Swiss stock exchange, the **Swiss law on insider trading and market manipulation** applies. Material price-sensitive information must not be abused for trading in shares of the company or related financial instruments nor transferred to third parties. It is forbidden to spread information or execute transactions that may "send incorrect or misleading signals" regarding the supply, demand or stock price of the shares. Market abuse is prosecuted by FINMA and the Federal Criminal Prosecutor.

The newly listed SME should implement **internal regulations and procedures** on ad hoc publication, the handling of material price sensitive information (confidentiality, black-out/quiet periods, insider trading and market manipulation) and the reporting of management transactions.

Thanks to the new financial possibilities and proper organization, the SME is ready to take off.

For the Walder Wyss Start-up Desk see:
www.startuplaw.ch

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