The Initial Public Offerings Law Review

Fifth Edition

Editor
Marco Georg Carbonare

The Law Reviews

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THE

Initial Public Offerings Law Review

Fifth Edition

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This article was first published in September 2021
For further information please contact Nick.Barette@thelawreviews.co.uk

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Marco Georg Carbonare

THE LAWREVIEWS

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Published in the United Kingdom
by Law Business Research Ltd, London
Meridian House, 34–35 Farringdon Street, London, EC4A 4HL, UK
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www.TheLawReviews.co.uk

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Enquiries concerning editorial content should be directed
to the Publisher – clare.bolton@lbresearch.com

ISBN 978-1-83862-785-0

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

ALLEN & GLEDHILL LLP

ALLEN & OVERY

ALLFUNDS

BAE, KIM & LEE LLC

BOWMANS

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PREFACE

The onset of the covid-19 pandemic in March 2020 led to a significant slowdown of IPO activity globally in the first half of 2020, in particular in the United States and Europe. While IPO activity remained subdued in Europe in the second half of 2020, the United States witnessed a significant increase, making 2020 one of its strongest IPO years in a decade, despite the challenges related to the pandemic.

IPOs of special-purpose acquisition companies (SPACs) and 'de-SPAC' transactions continued to be one of the main drivers of IPO activity in the United States. There was, however, also a significant increase in traditional IPOs, especially from companies in the technology sector. IPO activity in the United States has remained strong since the beginning of 2021.

Towards the end of 2020, there was a noticeable shift in sentiment in favour of IPOs across the globe, in particular in Europe, driven mainly by beneficial equity capital markets conditions and outlook. This has resulted in a significant increase in IPO activity since the beginning of 2021, both in terms of volume and size, driven mainly by a significant increase in IPOs of companies in the technology and life sciences sectors. The pipeline for IPOs in key markets globally for the remainder of 2021 and 2022 is exceptionally strong.

Potential near-term headwinds to the IPO market include the increasing regulatory scrutiny relating to, and a slowdown in, investor appetite for SPAC IPOs, potential changes to monetary policies and new waves of the covid-19 pandemic.

There has also been a noticeable increase in cross-border listings, where IPO candidates decide to pursue a listing outside their home market, resulting in increased competition among stock exchanges. This trend is driven by a number of factors, including considerations regarding valuation, sector-related considerations and the large number of US-listed SPACs looking for targets abroad. It is, therefore, increasingly necessary to consider the listing and regulatory requirements of different stock exchanges, as well as IPO market practices in different jurisdictions.

This publication provides an overview of the main rules and regulations applying to IPOs in 16 different jurisdictions across the globe and offers great insights into local market practices.

I would like to thank each author for their contribution to the fifth edition of *The Initial Public Offerings Law Review*.

Marco Georg Carbonare
Linklaters LLP
Frankfurt
August 2021

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Chapter 15

SWITZERLAND

Theodor Härtsch and Daniel Dedeyan[1]

I INTRODUCTION

Switzerland's market environment is characterised by a liquid equity market, a long-standing reputation as a financial centre, a stable and issuer-friendly regulatory environment and a state-of-the-art financial market infrastructure.

SIX Swiss Exchange (SIX) is currently among the four largest European stock markets, being home to some of the most valuable listed companies of the world, such as Nestlé and Novartis, as well as many small and medium-sized enterprises (SMEs). SIX hosts domestic issuers as well as a considerable number of foreign companies. The other Swiss exchange, BX Swiss (BX), is focused on local SMEs and structured products.

In the first half of 2021, two initial public offerings (IPOs) have been launched, and several are being prepared. There were two IPOs in the year 2020, which was affected by the covid-19 pandemic, five in 2019 and seven in 2018 on SIX, with a total offering volume of about 4.2 billion Swiss francs, 700 million Swiss francs, 3.1 billion Swiss francs and 3.8 billion Swiss francs respectively, as well as several direct listings.

While EU legislation does not apply to Switzerland, the Swiss regulatory landscape has been gradually adapted to European regulations, lately by the implementation of the new Financial Services Act (FinSA), which entered into force on 1 January 2020. The FinSA has introduced a uniform prospectus regime similar to the European model, including a statutory prospectus review.

At the same time, Swiss legislation has preserved a liberal approach and its traditional reliance on self-regulation, as evidenced by the fact that ad hoc publicity and the disclosure of management transactions, as well as their enforcement, continue to be based on self-regulation by the stock exchanges. The main regulatory body governing the listing process is SIX Exchange Regulation, the autonomous regulatory body of SIX. SIX Exchange Regulation is in charge of assessing and approving listing applications of the issuers. BX is the regulatory body for listings on BX.

For political reasons, the European Union suspended its recognition of equivalence of Swiss stock exchange regulation in 2019. Following a legislative response from the Swiss Federal Council, a situation has arisen whereby shares of companies incorporated in Switzerland and traded on a Swiss stock exchange may only be traded on Swiss and not on EU trading venues. Trading volumes on SIX have risen since then.

This situation does not have a direct impact on companies listed in Switzerland.

1 Theodor Härtsch is a partner and Daniel Dedeyan is counsel at Walder Wyss Ltd.

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II GOVERNING RULES

i Main stock exchanges

The two regulated stock exchanges in Switzerland are SIX and BX. Both are domiciled in Zurich and supervised by the Swiss Financial Market Supervisory Authority (FINMA).

SIX is home to over 250 domestic and international large companies, as well as small and medium caps. They are active in a wide range of industries, notably the financial, industrial, retail, pharmaceutical and biotech industries. The other Swiss exchange, BX, is the exchange of choice for domestic small and medium caps.

SIX provides for various segments (standards). Most issuers list their shares under the International Reporting Standard, which is the most common standard. Other standards are the Swiss Reporting Standard, the Standard for Investment Companies, the Standard for Real Estate Companies, the Standard for Depository Receipts and the Standard for Collective Investment Schemes.

SIX offers various stock indices as well as a variety of strategy indices. For every index, the rules and requirements are defined in the regulations for the index. The blue chip index the Swiss Market Index (SMI), is the most important stock market index in Switzerland and comprises the 20 largest stocks. The SMI covers approximately 80 per cent of the total market capitalisation of the Swiss equity market. It is free-float-adjusted, which means that only the freely tradable portion of the shares is reflected in the index.

Less than 10 per cent of the companies listed on SIX, large international companies in particular, maintain a secondary listing. Some Swiss small and medium caps have pursued a listing on a foreign exchange in the European Union and the United States to benefit from a higher liquidity.

ii Overview of listing requirements

The issuer must have existed at least three years prior to the listing; however, SIX may grant exemptions from this track record requirement. BX only requires one year of existence of the issuer.

The issuer must present audited annual financial statements for the last three financial years to be eligible for a listing. SIX may (and routinely does) grant exemptions from this requirement. BX requires only one full financial year.

Apart from the requirement to be in existence for at least three years prior to the listing, additional accounting and disclosure requirements apply in the case of material structural changes, such as significant acquisitions. In that case, the issuer will be required to publish historical pro forma financial statements.

SIX's listing rules require a minimum market value of the shares held in public of 25 million Swiss francs. A minimum percentage of 20 per cent of the listed shares must be in public hands (free float). The issuer's reported equity capital must be no less than 2.5 million Swiss francs as of the first day of trading.

Swiss stock exchange regulations do not set specific corporate requirements; however, SIX requires that for a listing on SIX, the foundation and the articles of association must comply with the laws of the jurisdiction applicable to the issuer. The same holds true for BX, which additionally requires a close relation to Switzerland (e.g., principal activities in Switzerland or administration in Switzerland or near Switzerland). The non-binding Swiss Code of Best Practice for Corporate Governance issued by Économiesuisse, a Swiss corporate union, recommends internationally recognised corporate governance standards.

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Listed companies incorporated in Switzerland are subject to the Ordinance Against Excessive Compensation in Listed Companies (OAeC), which requires certain disclosures and proceedings regarding compensation of directors and officers and prohibits certain forms of compensation (in particular sign-on bonuses and 'golden parachutes'). The regime under the OAeC will be revised in connection with the entering into force of the new Swiss corporate law, which is expected in 2023.

There are special listing rules for real estate companies, investment companies and collective investment schemes (investment funds). Furthermore, there are particular requirements for certain financial instruments, such as global depositary receipts, bonds, derivatives and exchange-traded funds.

For secondary listings, the SIX listing rules somewhat differ. Foreign issuers may undertake a secondary listing on SIX if they are listed on another exchange, the listing rules of which are recognised by SIX as being equivalent. Exchanges of the Federation of European Securities Exchanges and the World Federation of Exchanges are usually recognised by SIX.

For a secondary listing, the issuer must provide evidence of a free float of at least 10 million Swiss francs or alternative evidence that the securities can be traded. In addition, for a secondary listing, the listing rules of SIX and Swiss statutory law require that the issuer be audited by professional auditors approved by a Swiss or recognised foreign government authority.

Unlike some foreign listing regimes, Switzerland has no specific sponsor regime or other requirements for underwriters or brokers; however, the listing application must be submitted by a representative specifically recognised by SIX.

iii Overview of law and regulations

Key legislation and regulatory instruments governing IPOs are:

a the FinSA and its implementing ordinance on prospectus requirements and prospectus review;
b the Swiss Financial Market Infrastructure Act and its implementing ordinances on disclosure and market abuse (in particular price stabilisation);
c the OaEC for companies incorporated in Switzerland;
d the listing rules of SIX and BX that set the listing requirements; and
e the Allocation Directives for the New Issues Market by the Swiss Bankers' Association.

In general, a prospectus is required for a public offering of securities or a listing on a Swiss trading venue. In line with international standards, the law requires specific minimal information on the offering, the securities and the issuer, which varies for different kinds of issuers and securities.

For the offering to private (non-professional) investors of financial instruments other than equity securities and certain debt instruments, the law further requires the provision of a key information document.

An offering is defined as any invitation to acquire financial instruments that provides sufficient information about the terms and conditions of the offering and the financial instrument itself. Under the new regime, issuers and financial service providers should carefully ensure that their general market communication does not lead to a public offering. An offering is qualified as public if it does not target specific recipients that are clearly defined from the outset.

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Unlike the European Union, Switzerland has chosen the more liberal approach to subject the advertising of financial instruments to only the minimal requirements regarding recognition as advertising. Furthermore, any advertisement and other investor information must not contradict the prospectus or key information document, and reference to such document must be made. In general, there is no further supervisory control over the advertising activity.

There is a broad range of exemptions from the obligation to publish a prospectus. Some exemptions concern certain types of offerings (e.g., offers directed to professional investors only or to fewer than 500 investors or offers not exceeding a total value of 8 million Swiss francs over a 12-month period). Other exemptions apply to certain types of securities.

Exemptions from the prospectus requirement apply to, among other things, listings of equity securities that over a period of 12 months account for less than 20 per cent of the number of equity securities of the same category already admitted to trading on the same trading venue; or securities admitted to trading on a foreign trading venue, the regulation, supervision and transparency of which are acknowledged by the domestic trading venue as being appropriate or whose transparency for investors is ensured in another manner. To be exempt from publishing a prospectus, the listing as well as the offering must each benefit from an exemption.

In principle, the prospectus must be submitted for review by a review body at least 20 calendar days prior to the offering or the first day of trading. To allow for a short time to market and flexible pricing of securities, the prospectus of certain types of securities, such as certain debt instruments and structured products, can be approved following its publication. To date, SIX and BX have been recognised as review bodies by FINMA.

The review body performs a formal assessment of the completeness in terms of the minimal content requirements of the applicable scheme as well as the consistency and comprehensibility of the prospectus. It may approve the prospectus or require amendments.

With regard to the listing, the exchange may approve the listing application or set certain conditions. Those conditions can be determined by the respective exchange independently from the prospectus requirements.

In addition, anybody who causes damage by making incorrect, misleading or incomplete statements in a prospectus is subject to civil liability. This prospectus liability extends to any other communication concerning the offering or the listing of securities, including marketing material and research reports.

The new legislation has introduced a criminal prospectus liability for incorrect statements, omissions of material facts or delayed publication, if committed with direct or conditional intent. Any such breach is sanctioned with a fine of up to 500,000 Swiss francs.

With regard to research reports in particular, the involved parties used to take several customary precautionary measures to reduce their liability risks, as set forth in the research guidelines.

Stabilisation activities following an IPO fall under a special safe harbour rule if they are carried out within 30 days of the public offering at a price no higher than the market price. It is further required that the prospectus set out the maximum period and the responsible securities firm and that the trades be reported to the stock exchange following their execution and published by the issuer after the expiry of the 30-day period. If an over-allotment option (a 'greenshoe') has been granted to the underwriters, the issuer must inform the public about the exercise of the option within five trading days. Outside the safe harbour rule, such trades are subject to market abuse regulations.

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III THE OFFERING PROCESS

i General overview of the IPO process

The FinSA has introduced a mandatory formal approval of any listing and offering prospectus by new review bodies to be recognised by FINMA. SIX and BX have been recognised as such. Apart from the prospectus review, SIX and BX are in charge of assessing and approving the listing application of the issuer. They may simply approve the listing application or set certain conditions.

The main steps for an issuer considering a primary listing of its shares on a Swiss exchange are to:

a prepare the prospectus and the required financial statements;
b obtain the required audit reports;
c adapt its corporate governance structure to the applicable standards for listed companies (i.e., articles of associations, by-laws, directives for board committees, internal regulations and guidelines);
d adjust its capital structure;
e file the prospectus with the exchange;
f publish the prospectus;
g determine the offering price, usually in a book-building;
h file a prospectus supplement indicating the final offer price; and
i settle the offering.

These procedures are essentially the same for Swiss and foreign companies; however, companies incorporated in a foreign jurisdiction are not subject to the OaEC, which relieves them from adapting their internal regulations to these special rules regarding compensation of directors and officers. Nevertheless, for foreign listed companies, it is regarded as good practice to implement internal regulations on compensation and to appoint a compensation committee.

An offering may relate to existing shares (secondary offering) or new shares (primary offering), sometimes combined with an offer of existing shares by a selling shareholder. Usually, the offer price is determined by way of a book-building; however, the issuer may also determine a fixed price. An offer may target retail and institutional investors or institutional investors only. For foreign issuers seeking a listing in Switzerland, it is not usual to list depositary receipts.

In the case of primary offerings, existing shareholders have pre-emptive rights that must be observed. They may be waived for important reasons, such an expansion of the shareholder base in certain capital markets or if shares are used as consideration in an M&A transaction.

In contrast to other jurisdictions (e.g., 10 per cent under German securities law), there is no safe harbour threshold generally allowing a withdrawal of pre-emptive rights. In smaller at-market offerings, pre-emptive rights are usually withdrawn by the board of directors of the issuer.

If granted, pre-emptive rights may or may not be tradable, as determined by the board of directors. If the pre-emptive rights are tradable, its holders may sell those rights. Non-tradable pre-emptive rights can be exercised and otherwise lapse without further compensation. In public rights offerings, a prospectus is required as well.

The issuer and the lead manager each engage legal counsel. The issuer's counsel essentially assists the issuer in preparing the prospectus and the listing request, performing legal due diligence and negotiating relevant agreements (underwriting agreement, lock-up agreements, etc.). Furthermore, the issuer's counsel represents the issuer before the regulatory bodies of

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the exchange, advises on general compliance with Swiss laws and regulations, structures the issuance of new shares and issues legal opinions (disclosure letter relating to the prospectus, technical opinions on the issuer and the issued shares).

Auditors review the required financial statements, prepare interim and pro forma financial statements, if any, and provide comfort letters, as requested by the lead managers and syndicate banks.

The lead managers, among others, prepare the contacts with potential investors, evaluate the investment case and advise on valuing the company. Issuers usually engage a PR agency to support the communication process, including analyst and press conferences. In the case of an equity offering of an already listed company, an issuer would mainly engage an underwriter and legal counsel to assist in the offering.

In an IPO context, a book-building process is standard to determine the final offer price and offer size. In Swiss IPOs, underwriters usually do not commit to subscribe for and keep the shares if the offering cannot be accomplished or if part of the offer cannot be allocated.

New issuers (i.e., issuers accessing the Swiss equity market for the first time) must submit the prospectus to the review body 20 calendar days prior to the offering or the first day of trading. In the case of repeat issuers, this deadline is shortened to 10 calendar days.

Following receipt of a prospectus, the review body checks the prospectus for completeness and may ask for supplemental information. Upon receipt of the (improved) prospectus, the term for formal approval starts to run.

In the case of material developments (i.e., developments that could impact the investment decision by investors), issuers will be required to publish an addendum to the prospectus. This addendum must be filed with and approved by the review body.

Review bodies publish a list of facts or events that are deemed to be automatically approved. In particular, this is the case with facts disclosed in accordance with the rules on ad hoc publicity.

In the case of public offerings of equity securities, the prospectus must be available at least six business days prior to the end of the offering period. By requiring this, the legislature has defined a minimum offering period. In the case of all other securities, the prospectus must be published prior to the start of the public offering or the first day of trading.

Once approved, a prospectus remains valid for 12 months. The prospectus, including any documents incorporated by reference and any supplements, must be deposited with the review body.

Timetables may have different key milestones, depending on the IPO structure. A typical timetable for an IPO would include the following key phases and tasks.

a Preparation (up to three to six months prior to the first trading day): review of 'IPO-readiness' and investment case, selection of advisers, review or change of accounting standard, preparation and distribution of (internal) IPO-related guidelines (publicity and research guidelines), due diligence review, determination of offer structure, adjustments to corporate governance, drafting of key documents (prospectus, underwriting agreement, agreement among managers, pilot fishing, road show and analyst presentation, press releases, etc.), pilot fishing, preparation of IPO research reports, coordination with stock exchange and commercial register, submission of prospectus for review at least 20 calendar days (or 10, respectively) prior to the offering, listing application and general corporate approvals (shareholders' meeting or board of directors).

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b Announcement, marketing and allocation (within four weeks prior to the first trading day): distribution of the intention-to-float press release (four weeks prior to the first trading day), investor education, price range setting, finalisation of prospectus, execution of underwriting agreement and agreement among managers, start of roadshow and book-building, adoption of corporate resolutions for capital increase and filing with commercial register (in the case of primary offering), determination of the final offer price and allocation (usually one trading day prior to first trading day).

c First day of trading.

d Post-IPO: settlement (usually two trading days after the first day of trading), stabilisation and exercise of over-allotment option (greenshoe) within 30 trading days. The blackout period (40 days after the closing of the IPO) begins, during which the analysts are restricted from publishing any further research reports.

ii Pitfalls and considerations

In the case of Swiss-incorporated companies, one work stream relates to the accompanying capital increase: pre-approval by the competent commercial register, board resolutions on the IPO and new committees and regulations, resolutions of the shareholders' meeting on the capital increase, approval of compensation schemes and any other amendments to the articles of association. This work stream requires careful planning and coordination with the overall IPO process.

Another focus of attention should be on preparing the various mandatory disclosures under the applicable laws and regulations related to significant shareholdings, the underwriting of shares, any greenshoe arrangement, lock-up agreements, stabilisation activities, 'official messages' to be uploaded on SIX's website (on the intention to float, the offer, the pricing supplement and any updates) and all the press releases.

It is standard to have strict marketing or publicity rules in place to ensure that all involved parties comply with applicable (Swiss and foreign) laws and regulations. Most importantly, any written or oral communication by the issuer and its advisers in the context of a contemplated public offering is considered to be a prospectus-like document or information subject to civil prospectus liability.

Offering-related communications may result in registration obligations in certain jurisdictions. It is the aim of the publicity guidelines to avoid any prospectus liability claims, as well as any registration obligations of foreign jurisdictions. Specific standards apply to research analysts within the syndicate and analysts from other institutions.

Swiss and foreign taxes are a further element to be considered. In particular, a one-time issuance stamp tax of 1 per cent is levied on the value received by a Swiss issuer for any newly issued shares or other contributions exceeding 1 million Swiss francs. The Swiss parliament has resolved on the abolition of the stamp tax, and a national referendum is to be expected.

A securities transfer tax of 0.15 per cent for Swiss securities and 0.3 per cent for foreign securities based on the purchase price is imposed on any transfer of securities involving a Swiss securities dealer unless an exemption applies. A withholding tax of 35 per cent is raised on dividends and similar cash or in-kind distributions made by a Swiss company, which is refundable to Swiss tax residents and, subject to an applicable double tax treaty, also to foreign shareholders. Distributions paid on the shares from reductions of the company's share capital and from capital contribution reserves (i.e., additional paid-in capital) are exempt from taxes to the extent an equal amount is paid out as a taxable dividend.

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iii Considerations for foreign issuers

On SIX, listed foreign issuers benefit from a flexible regulatory environment and approachable regulatory bodies. The Swiss legislature has gradually adapted Swiss legislation to the European regulatory environment while preserving a liberal approach and its traditional reliance on self-regulation.

So far, the discussions on the recognition of the Swiss stock exchange regulation by the European Union have not directly impaired the attractiveness of the Swiss exchanges; however, further development should be carefully observed.

Foreign issuers listed in Switzerland should be aware that they and their shareholders are, among other things, subject to Swiss disclosure obligations for significant shareholdings, market abuse law and takeover law and regulations.

IV POST-IPO REQUIREMENTS

Listed companies are required to submit to SIX and publish annual and semi-annual financial statements. SIX performs a formal review of the compliance of the financial statements with the applicable reporting standard.

There is no general requirement for listed companies to publish quarterly reports; however, if the company chooses to publish quarterly reports, the reports must be prepared applying the same reporting standards as the annual and semi-annual reports.

Listed companies incorporated in Switzerland must publish an annual report on the compensation of directors and officers, based on the OaEC, which further requires the annual approval of compensation schemes by the shareholders ('say on pay'). A similar annual compensation report is required for foreign listed companies by the listing rules of the SIX.

A listed company is required to publish material price-sensitive information as soon as it has knowledge of the essential aspects of the relevant facts. These 'ad hoc publications' have to be released in the form and through specific information channels as prescribed by the listing rules.

Unlike under EU law, ad hoc publicity and the disclosure of management transactions are based on self-regulation of the stock exchanges and are enforced by the stock exchanges. SIX has published a Directive on Ad hoc Publicity, as well as an extensive commentary summarising its practice in this regard.

Listed companies must publish other information that is not necessarily price-sensitive, such as changes of address of the company, contact information of the responsible persons or certain links on the company website, shareholder meetings, dividends and changes in share capital (i.e., regular reporting obligations). Most of this information must also be furnished to the relevant stock exchange.

Companies listed on SIX must issue a corporate governance report as part of their annual financial report. Corporate governance reports must comply with the minimal standards, as laid down in the SIX Corporate Governance Directive, and the related SIX practice, as outlined in the SIX Commentary on the SIX Corporate Governance Directive. Following the principle of 'comply and explain', a listed company may deviate from the disclosure obligations of the SIX Corporate Governance Directive if it provides a material explanation for the deviation.

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SIX has introduced a voluntary opting-in into sustainability reporting following a recognised sustainability reporting standard. If a listed company has declared to opt in, its sustainability report is subject to a formal review by SIX in view of the applied recognised standard.

Listed companies are required to publicly disclose management transactions (i.e., transactions of members of the board of directors and senior management in shares of the company) within three trading days of the receipt of a notification of the transaction. The listed company is responsible for ensuring that members of the board of directors and senior management report to the company any such transaction within two trading days of the conclusion of the transaction.

Penalties imposed by SIX for non-compliance with continuing obligations based on SIX's listing rules (e.g., regarding ad hoc publication or financial reporting) are, among other things, a reprimand, fines of up to 1 million Swiss francs (in cases of negligence) or 10 million Swiss francs (in cases of wrongful intent), suspension of trading, delisting or the reallocation to a different regulatory standard.

Moreover, shareholders of a foreign or Swiss company listed in Switzerland must submit a disclosure notification to the exchange and the company within four trading days if they attain, exceed or fall below one of the following thresholds related to the voting rights of the company: 3, 5, 10, 15, 20, 25, 33.3, 50 and 66.6 per cent. Within a further two trading days, the company is then required to publish the disclosure notification through the electronic disclosure platform of the exchange.

The shareholdings of shareholders acting in concert are aggregated and are subject to the disclosure notification as a group. Shareholders are considered to be acting in concert and thereby constituting a group if they agree to acquire or sell shares jointly or if they coordinate the exercise of their voting rights. The disclosure obligation refers to the acquisition or sale of shares as well as related derivatives (including cash settled derivatives). Purchase and sales positions must be disclosed separately, and it is not possible to set off purchase and sales positions against each other.

Breaches of the obligation of significant shareholders and the company to disclose significant shareholdings are prosecuted by FINMA and the Federal Finance Department (FFD). FINMA may release and publish a statement of breach of financial market laws, suspend voting rights, prohibit further acquisitions of shares or confiscate profits.

The responsible persons may be sanctioned by the FFD with fines of up to 10 million Swiss francs or, in cases of negligence, up to 100,000 Swiss francs. In less severe cases where the establishment of the facts and the personal responsibilities would appear disproportionate, and a fine of less than 50,000 Swiss francs is considered, the FFD may renounce to identify and prosecute the responsible persons and impose a fine on the acting legal entity.

Any transactions post-listing in shares of the listed company are subject to the rules against insider trading and market manipulation.

Public tender offers for the shares of Swiss or foreign companies listed in Switzerland are subject to the Swiss Financial Market Infrastructure Act and its implementing ordinances and regulations. These rules, which vaguely follow international standards, require the bidder to publish an offer prospectus and the target company to publish a statement of the board of directors regarding the tender offer. They also regulate the minimum offer price, permissible offer conditions and amendments to the offer.

The offer results must be published in accordance with the aforementioned laws. Shareholders who have not accepted the offer are granted the opportunity to tender their

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shares following the publication of the results of the offer, thereby granting the shareholders an additional exit option. Shareholders who, alone or acting in concert, hold more than 33.33 per cent of the voting rights of a listed company must make a mandatory public tender offer for all shares of the listed company. The Swiss Takeover Board enforces Swiss takeover laws and regulations, in particular by reviewing the offer prospectus.

The Swiss takeover rules apply to companies incorporated in Switzerland and listed in Switzerland. They apply equally to companies incorporated outside Switzerland, the shares of which have at least a partial listing in Switzerland. A breach of the obligation to submit a public tender offer may be sanctioned with a fine of up to 10 million Swiss francs.

V OUTLOOK AND CONCLUSION

The new Swiss prospectus regime, which entered into force on 1 January 2020 and has been mandatory since 1 December 2020, provides for a broad range of exemptions from the requirement to publish a prospectus and implements international standards.

On 1 February 2021, new provisions entered into force, which enable the introduction of ledger-based securities that are represented in a blockchain.

With regard to listed companies incorporated in Switzerland, further developments concern the ongoing revision of Swiss corporate law, which will introduce, among other things, enhanced flexibility in terms of capital increases and reductions, revised rules on compensation of directors and officers and a comply or explain gender quota for directors and officers (to be implemented within five years by boards of directors and 10 years by management boards). The new Swiss corporate law is expected to enter into force in 2023.

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Appendix 1

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Theodor Härtsch is a partner in the banking and finance team. He advises banks and corporate clients in financing matters (debt and equity financings). In addition, he counsels on capital markets law (IPOs and rights issues), public M&A matters, corporate, capital markets compliance and regulation of financial institutions and collective investment schemes.

Before joining Walder Wyss, Theodor was a partner in the Zurich office of a large international law firm. Prior to that, he worked in various functions in the banking sector.

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After his legal studies in Zurich and Rome and PhD studies in Zurich and Frankfurt, he graduated from Yale Law School, New Haven (CT). Following research fellowships in Germany and the United States, he concluded his postdoctoral degree at the University of Zurich (PD, Privatdozent) and published a book on corporate communication in corporate and financial markets law. Before joining Walder Wyss, he was working in the Zurich office of a large international law firm.

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ISBN 978-1-83862-785-0

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