

EVOLVING NEW SWISS FINANCIAL MARKETS REGULATION – Selected Impacts on Swiss Structured Products and Warrants Business

Our mission: We are closely monitoring the developments and evolving time lines/transition periods and have already started in-depth discussions with industry associations as well as the SIX Exchange Regulation to learn developments and identify trends and positions relevant for issuers and distributors as early as possible, in particular with a view to the drafting of the implementing ordinances but also the role of SIX Exchange Regulation in the future.

WHAT WE KNOW:

- The Swiss National Council (“SNC”) has concluded the debate of the drafts of the **Financial Services Act** (FinSA or FIDLEG) and **Financial Institutions Act** (FinIA) (together the “Acts”) on September 13, 2017.
- The proposed drafts of the Acts provided to the SNC by the Committee for Economic Affairs and Taxation of the Swiss National Council („CEAT-N“) contained a number of differences compared to the version adopted by the Swiss State Council (“SSC”) in December 2016. In addition during the debate of the SNC the possibility of several structural amendments was discussed. However, the version finally adopted by the SNC contains surprisingly few differences – in particular also from the view of foreign financial services providers - compared to the version adopted by the SSC.
- The **Acts are now expected to enter into force by mid 2019**, potentially with staggered entry into force and/or transition periods yet to be defined.

WHAT WE DO NOT KNOW:

- The parliamentary procedure for adjusting the above mentioned few differences will follow in a next session of the SSC and – if needed - the SNC, the outcome of which cannot be predicted.
- The practically relevant requirements such as - but not limited to - the form and content of prospectuses or basic information sheets under the new law will mostly be governed by yet to be drafted implementing ordinances.
- With the industry associations being involved from the beginning, the implementing ordinances are already in the course of being drafted. However, there are neither drafts nor details made public yet.

FOOD FOR THOUGHTS (BASED ON WHAT WE KNOW) – WHAT COMBINATIONS OF PUBLIC OFFERING OPTIONS WILL THE SWISS BUY-SIDE POTENTIALLY ASK ISSUERS TO PROVIDE FOR AND HOW WILL ISSUERS POTENTIALLY BE ABLE TO SATISFY THESE REQUESTS UNDER THE ACTS?

- **Exclusive Swiss Public Offering or Pan-European Public Offering including Switzerland with no Listing on SIX Swiss Exchange**
 - **Swiss Prospectus** and Swiss Prospectus approval requirement
 - Swiss Base Prospectus/Swiss Final Terms (indicative and final version) need to be produced
 - Swiss Base Prospectus is subject to review and *ex ante* approval by a yet to be FINMA authorised supervisory body (SIX Swiss Exchange seems to have plans to file an application to become such an authority)
 - Swiss Final Terms (final version only) need to be filed with such supervisory body on an issuance per issuance basis

- Swiss Prospectus does not (yet) enable Pan-European Public Offerings including Switzerland as the Swiss regime is not yet recognised as being equivalent by the EU
- **Foreign Prospectuses:** Deemed Approval of certain foreign prospectuses (by supervisory body)
 - Anticipated that EU PD compliant prospectuses will qualify, would enable
 - Swiss Public Offerings and Pan-European Public Offerings including Swiss Public Offering
 - Foreign Base Prospectus and Final Terms (final version only) need to be filed with Swiss supervisory body
 - Non-EU PD compliant Offering Circulars are not anticipated to qualify for deemed approval and need to be (newly) compliant with the Swiss Prospectus requirements in order to be used for Swiss public offerings
- **Basic Information Sheet** (indicative and final version) (“BIS”)
 - Swiss BIS (will the current Swiss Simplified Prospectus evolve to become the Swiss BIS?), or
 - Foreign BIS if equivalent to Swiss BIS (anticipated to be the PRIIP-KID)
- **Swiss Public Offering with a Listing on SIX Swiss Exchange**
 - Additional Listing Prospectus and additional Listing approval requirement
 - Listing Prospectus to be based on Swiss Base Prospectus or Foreign Base Prospectus, or Non-EU PD compliant EU Offering Circulars if compliant with the Swiss prospectus requirements
 - It will not be required to have SIX SIS Custody for listed products
 - SIX Swiss Exchange Listing triggers IBT requirements
- **Clearing/Settlement/Custody in SIX SIS or Clearing/Settlement/Custody in Euroclear, Clearstream**
 - Possibility to include SIX SIS Custody in foreign prospectuses to be deemed approved in Switzerland, or Non-EU PD compliant Offering Circulars newly meet the Swiss prospectus requirements
 - SIX SIS Custody generally triggers IBT requirements
- **Further Considerations**
 - Depending on the yet to be defined form and content of both Swiss Prospectus and Swiss BIS, a Termsheet might again be required for internal or external communication, e.g. to provide the product specific Swiss tax information, to draft the prospectus or to set-up the IBT.

RECOMMENDED PROCEDURES

As soon as the abovementioned Implementing Ordinances become public, existing programmes out of which products are currently issued and marketed by all desks to non-qualified investors in/into Switzerland, be it by way of the Swiss Simplified Prospectus, SIX Swiss Exchange Listing Prospectus or even Swiss bond issuance prospectus (e.g. securitisation or CLN programmes) should be assessed early in the light of the above considerations and define need for action.

For more information feel free to contact any of our derivative specialists (www.nastra.ch).

Note: None of the information contained herein is to be regarded as legal advice.