



GOING PUBLIC
on **SIX SWISS EXCHANGE**

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*by Johann N. Schneider-Ammann,
Federal Councillor,
Head of the Federal Department
of Economic Affairs*



Switzerland and its Financial Market

This publication is somehow emblematic of Switzerland. A number of businesses and organisations, all with different missions and goals, have joined forces to produce an extensive study on the Swiss financial sector, with a special emphasis on Initial Public Offerings (IPOs). Switzerland is a country with four national languages, where diverse cultures coexist. As a result, the Swiss have a long tradition of looking beyond borders, thinking outside the box, and seeking common ground. Unity in diversity – this is what Switzerland is all about.

Given the scarcity of natural resources and arable land, Switzerland has built its own success model. Optimal conditions and innovation in business were identified early on as the key to success. This focus on promoting optimal conditions has shaped Switzerland into a highly competitive economy. In several prominent studies, Switzerland leads the rankings as the most competitive economy in the world. This is a major achievement because this competitive edge permits greater independence and widens the field of operation. Competitive strength also generates prosperity and raises living standards.

Economic prosperity depends on innovative enterprises, which can generate a competitive advantage by successfully marketing new products and developing new processes. Innovation requires capital expenditure, which in turn must be funded. Here the capital market is the hub, making resources available for the best in-

vestment opportunities. In capitalist economies such as Switzerland, capital markets are left to perform this function. However, the global financial crisis has also highlighted the need for regulatory control to ensure optimal market functioning. Switzerland is in the process of optimising its regulatory framework, for example in the areas of tax and capital adequacy requirements for banks. A strong and effective capital market will help Switzerland retain its status as one of Europe's most innovative countries.

In summary, I am pleased to maintain that Switzerland is an attractive place to do business. Switzerland's appeal and strength as a financial location are down to a combination of mutually reinforcing factors. Easy access to authorities and the availability of a highly skilled workforce have a positive impact on the financial marketplace, while the wider commercial environment benefits from its global networks and a well-functioning capital market. Switzerland is now especially attractive to businesses looking to finance their growth and ensure long-term viability. The strengths and innovation of participants in the Swiss financial markets, combined with Switzerland's security and highly developed infrastructure, will help to ensure that Switzerland remains one of the most attractive locations for businesses as well as a leading international financial centre.

Bern, 2011

ConventionPoint

SIX GROUP



The Principle of Being Better Than Average

*by Robert E. Gubler,
Chairman of the Swiss Association
for Location Management (SVSM)*

Switzerland repeatedly features at the very top of the global league table when it comes to competitiveness, quality, innovation, productivity, and security. Why is that the case? What lies behind the better-than-average rating of this alpine nation, which lies at the very heart of Europe? Ranking lists tell us little about the secret of Switzerland's success. That's because the answer lies in a framework that has built up over many years and a financial policy shaped by Swiss citizens themselves through their system of direct democracy. The Swiss population's virtue of using resources on a sustainable, economic basis is carried over into business and made a reality across the Swiss economy – just as it is in the public sector.

The latest developments on the international financial markets as well as the high levels of debt in countries in Europe and the US have resulted in a shift in ratings and exchange rates in favour of the Swiss franc – in some cases massively. Although this represents a vote of confidence in Switzerland by the markets, it also results in additional costs. Just as Switzerland has repeatedly understood the need to adapt to changing circumstances in global competition, this challenge is being tackled as follows: rationalisation, on the one hand, and innovation, on the other, are compensating for the disadvantages of a highly valued currency.

Intellect and Finance as Location Factors

Switzerland is a small country, in which people speak four languages: German, French, Italian, and Romansch.

English is spoken and understood in all parts of the country. This attitude towards intercultural skills is another typical feature of Switzerland as a location. It involves being open to learning and using other international languages, and to communicating on an inclusive basis with foreign professionals and visitors to Switzerland. By way of example, the proportion of foreign students at Swiss universities is growing constantly. The fact is, the potential pool of skilled employees and the ability to promote their talents rank among the most important factors in the global competition between different locations.

A country without raw materials will focus primarily on education, research, and services. That requires considerable financial resources. In Switzerland, the average public-sector investment in universities and research is on a par with that of the country's neighbours. However, businesses and institutions also make a massive contribution – and that is what makes the difference. This helps to push Switzerland towards the top of the international league table in various disciplines such as nano-, bio-, medical- and clean-technology, as well as management. With its machine industry, precision engineering and watch industry, for example, Switzerland also occupies a significant global position as technology centre.

Proximity to the Swiss Federal Institute of Technology, universities and universities of applied sciences helps boost R&D competencies and speeds up the rate of innovation. New areas of the "new economy" are following this success trajectory and capturing additional business areas for Switzerland as a venue for production and innovation. Here too, things are looking good for Switzerland.

The lack of natural resources requires a greater effort in terms of service culture and the training of talented individuals, whether in management or specialist skills. The development of a strong Swiss financial sector is also attributable to this factor. The industrial and financial sectors are mutually beneficial.

“Combine the locational appeal of Switzerland, its competitive economy and the strong Swiss financial center and you get the perfect place to anchor a company’s public listing – namely on SIX Swiss Exchange.”

*Dr. Christian A. Katz,
CEO, SIX Swiss Exchange AG*

The success achieved by the banking industry over the decades constitutes a unique advantage for Switzerland as a centre for manufacturing and services: favourable financing, close links, and the deep commitment and expertise of the sectors – both nationally and internationally. These are important factors in retaining and attracting holding companies and other businesses.

The picture is rounded off by attractive tax rates for companies and private individuals, although this is hardly the number one factor. What really matters is a liberal attitude towards business and social welfare, lasting corporate success, and the quality of life for the population. This helps engender stability, security and visibility. It is upon these attributes that Switzerland’s above-average capacity to innovate and the location factors of intellect and finance have been based.

Security and Accessibility as Location Factors

Swiss civil liberties and the legal framework ensure legal security, security of ownership and reliability, thus providing an ideal platform for investors and companies.

A major emphasis is placed on the personal responsibility of the Swiss population and visitors. Switzerland is far from being a “Big Brother” society. When the interests of the country’s citizens are set to be affected by plans and changes, the population comes together to arrive at a democratic decision – whether nationally, regionally, or locally. This helps boost competition between different locations, which is the best guarantee of continuity and competitiveness in global terms and also ensures the country remains future-proof for businesses, organisations and individuals.

“SIX Swiss Exchange is a highly regarded listing venue by both domestic as well as international investors, allowing issuers to attract a broadly diversified shareholder base and research coverage.”

*Patrick Treuer,
Head Equity Capital Markets Switzerland,
Credit Suisse AG*

“The Swiss economy is one of the most liberal and competitive in the world. Sustained purchasing power stability, low inflation, low capital costs and a good investment climate ensure prosperity.”

*Daniel Küng,
CEO, OSEC*

“A Swiss presence enhances the corporate profile in Western Europe and significantly increases investor demand and visibility and consequently also trading volumes.”

*Thorsten Pauli,
Managing Director and Head Equity
Capital Markets Switzerland,
UBS AG*

With its three major airports – in particular Zurich – Switzerland is a global hub. This ensures businesses have above-average access to markets and partner firms throughout the world. The advantage of centrality is further enhanced by outstanding links with the Swiss and European rail and highway systems, along with state-of-the-art infrastructure. This creates time savings and guarantees various travel and communication options. This easy accessibility is important not least when seeking to attract international professionals to Switzerland.

Finally, it is also the basis for steadily increasing visitor numbers in Switzerland, which enjoys a high level of prestige and positive PR around the world with distinct brands like St Moritz and Zermatt, Lugano, Lucerne, Geneva, and Zurich – not just as a tourist destination, but also as a place to live and do business.

Consequently, accessibility and proximity are important arguments for many international firms when opting for Switzerland as a location. This includes proximity to innovative businesses and talent, but also to the research capabilities of Swiss universities across all parts of the country and linguistic regions. Switzerland is a country of close links – an attribute that is increasingly becoming a location factor and constitutes a key USP in relation to other economic centres around the world. Here, as in all areas, it's about the Swiss principle of being better than average.

Welcome to SIX Swiss Exchange

by Dr. Christian A. Katz,
CEO, SIX Swiss Exchange AG

As CEO of SIX Swiss Exchange, I am delighted to introduce our “Going Public Guide” which illustrates the whole process of going public, described by key financial players.

Finding the right exchange to list a company is very important. There are various criteria which may help you in choosing the “right” place for a successful floating. Let me tell you from my experience that the internationally oriented, solid and potent Swiss financial centre with its vibrant securities exchange – SIX Swiss Exchange – is the best place for companies to obtain long-term financing and ensure their prosperity. In the past an important factor for choosing an exchange was the location of the company’s headquarters. But as we progress towards globalisation, additional aspects – such as the location of the company’s business activities or facilities, as well as its medium to long-term strategic orientation – play an increasingly important role.

Now, let me explain to you why I truly believe that SIX Swiss Exchange is the perfect exchange for a company to go public.

Why list on SIX Swiss Exchange?

SIX Swiss Exchange is currently the largest mutual stock exchange group in Europe and amongst the largest by market capitalisation of its listed companies. Furthermore, SIX Swiss Exchange is an international stock exchange. But this is not the only reason why SIX Swiss Exchange is a compelling place to list a company’s shares.

List a Company in the Most Competitive Global Economy

Today, it is virtually common knowledge that Switzerland is a highly competitive and attractive location for companies. Each year, Switzerland takes top honours in terms of global competitiveness rankings. Among the decisive factors in this regard are the outstanding innovative power of the economy and Switzerland’s high-quality and reliable infrastructure.

Benefit from a Globally Leading Financial Centre

The locational appeal of Switzerland and the Swiss financial centre is the result of a virtuous cycle driven by many mutually supportive factors.

Key attributes such as easy access to authorities and the availability of highly skilled workers have driven the financial centre growth over the decades. Thanks to its solid reputation as an international capital market with global networking power, the financial centre has in turn enhanced Switzerland’s appeal as a location.

Combine this locational appeal with the economic strength of the most competitive economy in the world and you get the perfect place to anchor your company’s public listing. For both domestic and foreign companies seeking capital, the Swiss financial centre is unique: it is compact, closely networked, internationally oriented, and the local banks have strong financing and placing power.

High Level of Visibility Amongst Investors, Analysts and the Media Generates Liquidity

For Swiss and foreign companies, SIX Swiss Exchange is the gateway to the international and domestic capital markets. A public offering and listing of securities on SIX Swiss Exchange affords a company access to a highly experienced and financially potent circle of international investors. Each firm listed on SIX Swiss



Exchange benefits from a high degree of visibility and recognition amongst global investors, analysts and the media. Moreover, the domestic Swiss investors have many years of experience in cross-border, sector-specific investment strategies.

Companies listed on SIX Swiss Exchange benefit from a deep liquidity pool, enhanced through varied investment opportunities such as an active and fast growing Exchange Traded Funds (ETF) and Exchange Traded Products (ETP) segment. Furthermore, I would like to highlight SIX Swiss Exchange's large bond trading platform which is one of the largest in Europe, and Scoach – a highly attractive market for structured products and warrants.

Those who invest their capital in companies listed on SIX Swiss Exchange are usually active on an international scale. Some of the reasons for the great trust investors throughout the world place in the Swiss financial centre are its high degree of legal certainty, the country's political stability and comparatively liberal labour law, its competitive tax levels and market-consistent regulatory standards, as well as an outstanding educational system and longstanding, proven competence in private banking and asset management.

Indices That Are Closely Followed Throughout the World

Owing to the worldwide significance of Swiss-listed global leaders such as ABB, CS Group, Nestlé, Novartis, Roche, Syngenta, UBS and Zurich Financial Services, the indices that include those stocks have a high degree of recognition. SIX Swiss Exchange calculates various indices and sub-indices that satisfy differing investor needs and, by their focus on select segments, assure companies of a particularly high degree of visibility amongst their target groups. Moreover, with our joint venture STOXX expanding its index range by adding a consistent global index family for global regions and countries in 2011, we are proud to be able to provide investable and innovative index solutions worldwide.

Regulation: In Line with International Standards, Yet in Touch with the Market

Another factor that facilitates the raising of capital in Switzerland is the close-to-the-market nature of SIX Swiss Exchange's regulatory provisions. Under national securities exchange legislation, SIX Swiss Exchange is empowered with self-regulatory authority and therefore has

“SIX Swiss Exchange offers potential listing candidates an efficient admission process that takes no longer than four weeks to complete.”

optimal flexibility to combine a high level of investor protection with regulatory conditions that are highly attractive from an issuer’s point of view. Regulation and administration of securities trading is entrusted to SIX Exchange Regulation by delegation of regulatory competencies. Characteristic of the self-regulated listing regime in Switzerland is the efficient and smooth listing process. SIX Swiss Exchange offers its new issuers an efficient admission process that takes no longer than four weeks to complete. From the submission of the listing application straight through to the first trading day, all related decisions are taken by the competent internal governing bodies. As a result, candidates for listing on SIX Swiss Exchange benefit from the convenience of a listing out of one hand, which is characterised by short decision-making paths, flexibility and closeness to the market as well as to the customer. Furthermore, market participants are well represented in various committees and regulatory commissions and therefore have a direct impact on the continuous improvement of our regulation. We often get the feedback from our new issuers that they very much appreciated the direct, easy communication with us and the support we provided throughout the whole IPO process.

The Key Advantages of a Listing at SIX Swiss Exchange at a Glance

I am very proud to be the CEO of a stock exchange which is situated in the most internationally oriented financial marketplace of all major continental European exchanges. Switzerland’s leading position in cross-border private banking, the strong placing power of Switzerland-based banks and broad international investor base and particularly our equity-oriented institutional investor community help companies to get access to capital for their future development and growth. Every IPO and every listed company on SIX Swiss Exchange benefits from an outstanding visibility amongst the multilingual and multicultural investor base active in Switzerland, the numerous banks with established in-house research departments and the media. The self-regulated listing regime ensures an attractive, balanced regulatory environment for both companies and investors alike.

I am convinced that with an IPO on SIX Swiss Exchange a company will get the most out of its listing and I am looking forward to welcoming you on SIX Swiss Exchange in the near future.



*Why
Consider
an IPO?*



Why Firms Go Public

by Dr. Manuel Ammann,
Professor of Finance and Director
of the Swiss Institute of Banking
and Finance
& Dustin Schütte, Research Assistant
at the Swiss Institute of Banking
and Finance,
University of St.Gallen

Optimal financing of profitable new investment opportunities is a key issue for all firms. Stock markets are a very important source of equity funding. In the past decades, a large number of corporations chose to step into the market of publicly traded stock. Against the backdrop of the profound long-term consequences of this decision, a firm has to analyse its prospective costs and benefits as well as its potentially less obvious advantages when it considers going public.

Funding and Investor Base

The predominant motivation for a company to initiate a public offering is the direct and continuous access to the public capital market. In case of the issuance of primary shares, capital markets can supply the firm with fresh funding resources enabling the company to realise its growth potential. Moreover, further authorised capital provides the management with a high degree of flexibility in raising additional funds after an IPO and can strengthen the company's economic reactivity. The IPO also significantly increases the company's investor

base, providing the company with an international and more diversified shareholder structure.

Stock Liquidity and Cost of Capital

A public listing generally increases the liquidity of the stock. A liquid market for the stock of the firm allows investors to increase and decrease their holdings more easily. As investors require a premium for illiquidity risk, increased liquidity due to the listing can reduce the cost of capital for the firm. Furthermore, an IPO can also pave the way for an admission to an established market index, such as the SMI, SMIM, SPI, DAX, FTSE etc. For companies listed in Switzerland, admittance to the Swiss Market and Swiss Performance Index (SMI/SPI) family is not only fostering the name recognition of the company in domestic and foreign markets but can also have a positive effect on liquidity and cost of capital.

Alignment of Interests

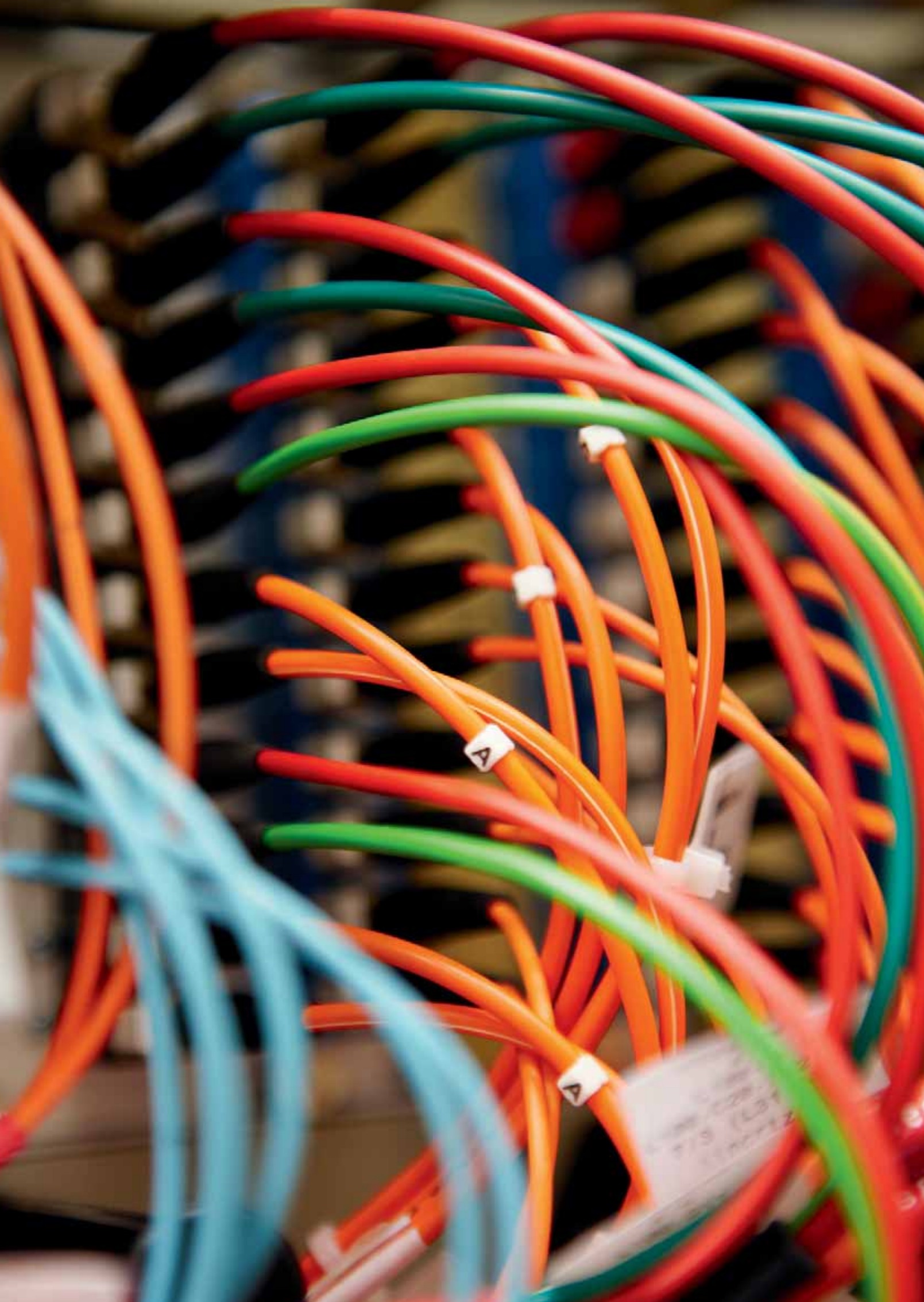
The opportunity to trade the firm's shares on a regulated market allows previous investors and owners to diversify their funds and provides them with more liquid assets. Simultaneously, owners can use stock to set-up incentivising compensation plans for the company's management and employees to increase motivation and align different interests. Further, an IPO can enable the company owners to reduce their monitoring efforts, as the management submits itself to diverse disciplining effects exercised

by the market. First, prices of publicly traded shares serve as an important source of information for the management as well as the owners. As the market continuously evaluates recently disclosed company information and factors them into the company's share price, the price level serves the owners as a market-based performance measure for the actions of the management. This can be an efficient form of market discipline to prevent the management from acting against the interests of the shareholders. Yet, it is important to note that the efficacy of the market monitoring can decrease with the amount of free float, as shareholders may mutually rely on each other to monitor the company. Naturally, large block-holders are likely to reduce this risk. Second, depending on the fraction of stock capital floated, an IPO can introduce the company to the market for corporate control. When the share price reaches a level that attracts other companies or large investors to buy the public firm, the management runs into the danger of replacement. In that way, the public market ensures that the creation of shareholder value is an important objective for the company.

Costs

The commercial and financial benefits of an IPO are numerous, but it also involves substantial initial and ongoing costs. First, the process of going public is complex and costly. The advising investment bank will charge a fee for preparing and supervising





the pre- and post-IPO process. Second, listed companies are confronted with higher costs for increased investor relations maintenance, e.g. for a continuous communication with their institutional investors and other major stockholders. These activities imply a direct expense for the firm. Moreover, a public company faces more detailed publication requirements. Although a more extensive and frequent disclosure policy can foster investor confidence and support the perception of a sound and transparent corporation, the information is also available to other firms, possibly giving way to a higher degree of competition. Each firm has to consider those costs against the benefits of going public based on its specific situation. Given the fixed nature of most of the costs, the attractiveness of a public listing tends to increase with the size of a company.

Timing, Size, and Signals

A crucial aspect of going public is deciding on its timing. Turbulent markets can make an IPO more difficult. They can lead to an initial underpricing, reducing the amount of funds raised by the firm, or to a downward correction of the stock price shortly after its trading debut. In contrast, a “hot” market may enable the firm to sell its shares at very favourable terms, but could result in longer-term stock return underperformance and investor disappointment. Apart from the timing, a firm must decide on the size of the IPO. The size impacts a number of important characteristics aside from the amount of capital collected, such as the trading liquidity of the shares, control of the firm, potential effects of underpricing, the amount of IPO costs per share issued, etc. Finally, the composition of the offer is highly relevant to the success of the IPO, as it can be an important signal to the market. An IPO that is solely composed of secondary shares does not generate additional funds for the company and might therefore be a negative signal. On the contrary, the issuance of primary shares and the set-up

of extensive lock-up periods for secondary shareholders can convey the image of a sound corporation with a high potential for further growth.

Market Developments

An IPO involves a number of complex and incisive decisions and is linked not only to strong financial and corporate benefits but also to a number of direct and indirect costs. Empirically, an increasing number of firms decide to go public, emphasising the advantages of a public listing for many firms. In the past five years, more than 12.600 companies stepped into public markets.¹ Around 15% of these listings were accomplished by foreign companies. Overall, the prospect of a diversified and international investor base, enhanced funding flexibility and the option to set clear market signals make an IPO one of the most attractive forms of financing.

¹ Source: World Federation of Exchanges, 2010.

“The prospect of a diversified and international investor base, enhanced funding flexibility and the option to set clear market signals make an IPO one of the most attractive forms of financing.”

A low-angle photograph of a modern building. The foreground is dominated by a large, light-colored concrete overhang or balcony structure that extends from the left side towards the center. The concrete has a textured, slightly weathered appearance. To the right, a tall, modern glass skyscraper rises vertically, its windows reflecting the sky. The sky is a pale, clear blue. The overall composition is dynamic, with strong geometric lines and a sense of height and scale. The text is overlaid on the concrete structure.

*Decision
to Go Public*



Prerequisites for a Successful IPO

by Dr. Philipp Hofstetter,
Partner, Corporate Finance,
PricewaterhouseCoopers AG

The prerequisites for a successful IPO include various issues and requirements. First of all, the question of whether an IPO makes sense for a certain company in its specific circumstances must be addressed – hence the motivation for the IPO is the focal point of attention. If, and only if, this assessment concludes positively, can the readiness of an IPO candidate be assessed and the firm's set-up be prepared for the IPO.

Why an IPO?

Reasons for an IPO are as varied as individual companies themselves, but the most common drivers behind the decision to go public are as follows:

- Access to Capital
The most common reason for an IPO is to meet capital requirements to ensure internal and external growth. The cost of capital for firms with direct access to the capital market is typically lower than for those without.
- Increased Visibility
An IPO provides an opportunity to enhance the profile of a company among investors, employees, suppliers and clients. Greater visibility helps to improve conditions on the procurement, sales, and labour markets.
- Broader Investor Base
An IPO enables a broadening of the investor base and a reduction of dependence on individual

shareholders. This is particularly beneficial once the company reaches a certain size at which risk and responsibility should be spread.

- Succession Planning
An IPO is suitable for succession planning, when shareholders wish to withdraw from the company or reduce their holdings. The increased liquidity and marketability of shares is also beneficial to all remaining shareholders.
- Participation Schemes
An IPO allows for attractive employee participation schemes, improving employee motivation and retention. Effective schemes also enhance the attractiveness of the company on the employment market, easing the search for staff.

The motivations presented do not define a conclusive list of valid reasons for an IPO, but they reflect the most common and, in the light of experience, most reasonable motivations. Given the positive assessment of a company's motivation to access the capital market, the preparatory work can begin for the IPO to be undertaken.

Prerequisites for Successful Execution

- Evaluation
A successful IPO depends on a convincing strategy and positioning of the company (investment case/story), a qualified management and reliance on transparent accounting and reporting procedures. Additional prerequisites are efficient organisational and legal

structures, good corporate governance and the willingness to "open up". An independent IPO advisor should have a critical look at these issues during the evaluation phase, identifying necessary measures in the areas of accounting, corporate governance or tax that will need to be considered in the preparatory phase.

- Preparation
In this phase, the measures previously identified will be implemented. The IPO advisor will conduct "beauty contests" for the selection of further parties required, such as a book runner (the bank responsible for placing the shares) or a communications consultant. An indicative stock market valuation is carried out and the planning and structuring of the transaction is brought forward.
- Execution
During execution, a due diligence (i.e. operational, financial, tax and legal) is carried out and the listing prospectus is drafted. Both, the transaction and the company are presented in a road show. Investors can register their interest (bookbuilding process), and accompanying communication activities begin before the pricing of the shares takes place and trading begins.
- Post-IPO
Stock exchange regulations must be complied with at all times, relationships with shareholders are to be maintained (investor relations) and funds received must be used for their proper purpose.



IPO Readiness Check

by Dr. Philipp Hofstetter,
Partner, Corporate Finance,
PricewaterhouseCoopers AG

Initial Public Offerings (IPOs) are complex to implement in practice and require thorough preparation to ensure a company's ability to effectively and efficiently access the capital markets. While public ownership offers significant advantages, like improved access to equity and debt capital markets and associated lower cost of capital, it also leads to heightened market scrutiny and greater management demands. Such aspects represent key factors that need to be assessed in order to be ready for an IPO.

An IPO readiness check carried out by an experienced and independent IPO advisor therefore looks at a range of factors which play a decisive role in an IPO. Besides the conditional requirement of having an attractive investment story, IPO readiness is crucially influenced by the company's management structure, its finance and accounting standards, corporate structure, corporate governance and the firm's willingness to open up to the public:

Investment Case

The first step towards a successful IPO is to develop a compelling strategic plan defining what the funds raised are going to be used for. A business plan should provide a clear road map for the company's future, defining how the realisation of the firm's growth potential is going to secure growing cash flows and therefore dividend earnings.

The company must define its unique selling propositions, highlight core competencies and strategic

advantages, illustrate market growth potentials and elaborate on all other key factors underlying the investment story that justifies the IPO. An attractive competitive positioning in growing markets, the development of new promising products or services and an expanding geographical presence are the common ingredients of an interesting investment case.

Every business plan communicating an investment story has to be inherently consistent and in line with the competitive landscape to withstand the scrutiny of potential investors, given the business plan is also a central part of the prospectus, a critical tool used in marketing road shows. Proof of concepts, a resilient business model and the ability to generate sustainable profits in various scenarios of future development are crucial. In a nutshell: the entire business rationale and plan for execution needs to be well articulated to attract investors' appetites.

Management and Board

Before going public, a company essentially needs to start acting and looking like a public company. Public firms have a management structure with clear lines of authority as well as strong and independent boards that can comply with appropriate corporate governance regulations. Formal processes defining the operational set-up as well as financial reporting and controlling enable and secure business continuity.

Management

The CEO is pivotal for the entire offering process. He or she ultimately evaluates the company's readiness, monitors the process and makes key decisions; the CEO's leadership sets the tone for the entire exercise. However, only the support of a well-

structured management team prepared to face the significant additional demands of preparing an IPO will ensure a successful process.

Management experience in taking a company public is a clear asset. Investors look for executives who have a track record in building companies, who meet goals and who have demonstrated the ability to deliver value. Management will need to be a cohesive unit sharing a long-term vision, demonstrating to prospective investors its depth of experience, expertise, commitment and integrity.

Board of Directors

Ideally, an independent board with a broad range of expertise is assembled, as the composition of the board and its members' credentials will speak volumes about the company. However, due to the legal exposure of board members, it can be a tough sell to attract qualified directors for an IPO process. Insurance can be obtained to protect directors against potential legal liabilities, but such insurance is costly and cannot cover all eventualities and risks. Therefore, a high-quality business plan and investment case are considered the most effective instruments to attract the right people for the boardroom, willing and comfortable to take the associated risks.

Accounting and Finance

The reporting and accounting infrastructure of a publicly traded company can deviate significantly from the systems installed within a private company. Before listing, an organisation's financials and accounting policies must be trimmed to fully comply with the rigorous regulations applying to a public company. Apart from regulatory demands, investors also require accurate financial and non-financial information to be pro-

duced efficiently and on a timely basis, including the analysis of sensitivities of projected figures.

It is a considerable endeavour for a company to meet such demands and potentially change from local accounting standards to international standards, for example IFRS or US GAAP. Accordingly, the infrastructure enabling the production of half-yearly and annual reports in compliance with regulations has to be put in place beforehand. Pre-listed companies often need to improve budgeting and forecasting capabilities, require upgrades of accounting and controlling systems, and need to introduce mechanisms capable of recording insider transactions and treasury operations etc.

Corporate Structures

Tax structure

Like other transaction processes, going public has tax implications. Planning for an IPO's tax consequences should begin long before the event itself. A comparison and assessment of possible reorganisation scenarios is highly recommended, as a tax strategy should be implemented that defines a target group tax rate.

Further, a private company may have paid bonuses to key employees / shareholders to reward performance and optimise corporate tax burdens, while dividends may have been paid to distribute retained earnings. As a public company, the approach to profit distribution will completely change and requires early planning and structuring to conform to tax frameworks.

Legal Structure

It is of great advantage if the corporate structure and the associated legal set-up facilitate an IPO process and later public trading. The legal

infrastructure must be suitable for managing day-to-day operations within the context of the public domain and all its regulations. Most often, such a group structure, driven by operative, tax and risk considerations, takes on the legal form of a limited company organised under the umbrella of a holding company.

When designing the legal structure, the fact that a (too) complex legal structure is potentially difficult to understand for investors has to be taken into account. Simplicity reduces hidden risks and is often the better option.

Corporate Governance

Requirements for a public company in relation to corporate governance and internal controls are much higher than for private companies. Clear separation of ownership and control translates into a more pronounced separation of strategic and operational management, as well as planning and monitoring to ensure well-functioning checks and balances. Modern competence regulations are required that strive for efficiency, transparency and the ability of decision-making at highest levels of compliance.

Preparing a company to meet the governance expectations of investors, analysts, regulators and the financial press is of crucial importance. Strong corporate governance mechanisms strengthen investor confidence, helping to facilitate the IPO process and also to obtain a better priced listing. The corporate governance framework analysis executed in the context of an IPO readiness check can be a critical first step in establishing sound policies and procedures for the IPO process and subsequent "public life". However, good governance mechanisms

alone might not suffice – developing a public profile is a process requiring careful "hands-on" management, often demanding the full attention of an experienced investor relations manager handling the financial press and the larger investment community alike.

Willingness to Open Up

While effective planning is critical for a company to successfully seize an IPO opportunity and navigate the associated risks, the effective communication of the IPO plan is equally important. Both the process of planning an IPO and the act of communicating the intention of going public require the current owners and management of an IPO candidate to demonstrate their distinct willingness to open up. Potential investors must be convinced of the genuine intentions of the IPO candidate to transparently disclose all relevant information necessary to assess the investment opportunity.

As building a profile that communicates those intentions takes time, early interaction with the media is necessary to foster relations and gain credibility. The firm's willingness to open up, the investment story as such as well as name recognition depend on effective communication, providing the necessary momentum when entering into the offering process. The company needs to communicate regularly, transparently and honestly – an attitude and willingness to open up is indispensable.

Switzerland – Your Reliable Partner in Tax Matters

by Robin Errico,
Partner, Audit
& Dr. Georg Lutz,
Partner, Head Transaction Tax,
Ernst & Young AG

Switzerland is one of the most attractive business locations in the world and offers numerous strategic advantages. A key factor for the success of the Swiss economy is its stable political, legal and regulatory environment, which is based on Switzerland's political system of direct democracy and federalism. The attractive environment is also characterised by Switzerland's efficient and business-friendly authorities. A comprehensive system of patent, trademark, design and copyright protection provides for one of the world's most advanced protections of intellectual property rights and guarantees that the results of innovation and creativity are protected at both national and international levels.

Due to its lack of natural resources, Switzerland is forced to invest heavily in its exceptional education system. In fact, Switzerland invests more in education per student than any other country in the world. Public schools, universities, postgraduate studies and international private schools are known worldwide for their outstanding quality. Furthermore, hiring a workforce from outside Switzerland or transferring executives to Switzerland is attractive and relatively easy for both employers and employees. The labour market is characterised by liberal legislation and employer-

friendly regulations. The outstanding quality of life, the sound environment, a first-class healthcare system and a wide range of international schools attract highly educated foreign professionals. Although Switzerland is not a member of the European Union, it shares close economic ties with its European neighbours. A solid foundation of bilateral agreements enables the free movement of people, capital, goods and services across the borders (with certain limitations), which provides Swiss companies with access to a market of almost 500 million employees and consumers within Europe. Moreover, with the existence of 120 bilateral investment protection agreements, Switzerland owns the third-largest network in the world which provides modern protection standards to Swiss investors investing abroad.

Geographically, Switzerland is located in the heart of Europe, surrounded by three of the four biggest European economies. It is closely embedded into the European transport infrastructure and owns one of the most advanced motorway and railway networks. Moreover, three international airports offer direct flights to more than 130 destinations in Europe and 70 overseas. As such, multinational companies can enjoy close proximity to their worldwide customer base and benefit from residing in the central European time zone.

Switzerland also has a highly attractive tax system. The total tax burden is – compared with other developed countries – quite moderate. A Swiss corporate taxpayer is normally taxed at a rate between 12% and 25%,

depending on the place of domicile. Substantially lower effective tax rates (ETR) can be achieved by adequate planning (e.g. base erosion or international allocation measures). In addition, Switzerland offers a variety of privileged tax regimes for multinational companies. Holding companies are subject to an ETR of 7.83% prior to participation exemption for dividends and capital gains. Corporations whose business activities are primarily related to business abroad can benefit from the domiciliary or mixed company status subject to an ETR from 7.83% to 10%, whereas a principal company is normally taxed between 4% and 8%. Moreover, full or partial tax holidays for up to ten years may be granted for new businesses established in Switzerland. Needless to say, it is common practice in Switzerland to enter into tax rulings with the Swiss tax authorities to have legal certainty on a variety of aspects (such as privileged tax status or tax neutrality of a restructuring). Tax rulings can be obtained in a short time and are generally granted for an unlimited period. Switzerland has an excellent treaty network with currently approximately 80 tax treaties in force and numerous new treaties are expected to be enacted in the near future. Swiss companies can also benefit from the Switzerland-EU Agreement on Savings Taxation, which provides similar tax relief as the EU Parent-Subsidiary Directive and the EU Interest and Royalties Directive. Last but not least, Switzerland has no Controlled Foreign Corporations (CFC) rules and does not intend to introduce any in the foreseeable future.





If You Are Not Here, How to Get Here

Common ways to relocate to Switzerland are:

- Change of legal seat (migration)
- Cross-border merger
- Merger-like transaction (redomestication)

Swiss law allows the migration of a foreign company to Switzerland by the mere change of legal seat if the law of the origin country allows the migration out of the country. The procedure is rather straightforward under Swiss law. Besides the decision to change the legal seat of the company, the company has to adapt its legal form to the requirements of Swiss law, which may include measures such as the amendment of the articles of incorporation, change of capital, change of name, the election of new board members, and election of the auditor. The migration becomes effective upon the registration with the Commercial Register in the legal form of a Swiss company. One may also consider transferring the place of management to Switzerland only and leave the legal seat abroad.

Apart from the migration, Swiss law also allows a cross-border merger if the origin country allows the same. In a cross-border merger, a foreign entity will be merged directly into an existing Swiss company. Upon registration of the merger with the Commercial Register in Switzerland, all assets and liabilities of the foreign company will be transferred into the balance sheet of the surviving Swiss entity. Another common approach to relocating to Switzerland is a share for share exchange transaction, where the foreign company shares are contributed in kind to a newly formed Swiss

holding company in exchange for shares of the Swiss company. Such a merger-like transaction, also known as redomestication, may be advantageous due to the benefit of the capital contribution principle, which provides for the distribution of qualified paid-in capital reserves free of withholding tax.

Each alternative can be implemented without entailing particular tax costs in Switzerland. The tax liability begins with the incorporation of the new Swiss company or the transfer of the seat and/or the management to Switzerland.

Case Study

One well-known example of a company redomesticating to Switzerland is that of Transocean. Transocean is the world's largest offshore drilling contractor and the leading provider of drilling management services worldwide. In December 2008, Transocean completed its redomestication transaction pursuant to an agreement and plan of merger among Transocean Ltd. (newly formed Swiss holding company), Transocean Inc. (their former parent holding company in Cayman Islands), and Transocean Cayman Ltd. (wholly-owned subsidiary of Transocean Ltd.). In their redomestication, Transocean Ltd. issued one of its shares in exchange for each ordinary share of Transocean Inc. The transaction effectively changed the place of incorporation of the parent holding company from the Cayman Islands to Switzerland.

Transocean's legal seat is in Zug and its principal executive offices are in Geneva where all of its key executives as well as many other positions reside. Transocean currently also has several subsidiaries located and managed out of their Zug offices.

In April 2010, Transocean shares became listed on SIX Swiss Exchange. "With our company headquarters located in Switzerland since late 2008, we believe the listing of Transocean's shares on SIX Swiss Exchange is an excellent way to increase interest in Transocean among Swiss and European investors and re-affirm our presence as a Swiss company," said Steven L. Newman, President and Chief Executive Officer of Trans-ocean Ltd. And in June 2010, Trans-ocean was granted an "extraordinary inclusion" (early admission) in the Swiss Market Index (SMI).

At the 2011 Transocean annual shareholders' meeting, the shareholders approved a distribution to be paid out of qualified paid-in capital reserves. As such, in accordance with the capital contribution principle, Transocean is able to make these distributions free of withholding taxes.

Conclusion:

Companies relocate to Switzerland for a variety of reasons. In addition to all that Switzerland has to offer as a country, the favourable tax environment offers companies a variety of opportunities and benefits. Determination to relocate should be made on an individual case-by-case basis and should be carefully assessed for each circumstance.



Going Public Requires Professional Partners

by *Andrea von Bartenwerffer*,
Senior Relationship Manager
Issuer Relations
& *Marco Estermann*,
Head Issuer Relations,
SIX Swiss Exchange AG

Finding the right partners for the going public process is key, as a company needs professional partners who can make a significant contribution to a successful IPO. Partners involved are the lead manager, the bank syndicate, auditors, lawyers, investor relations agencies and the stock exchange.

Right from the start, all relevant negotiations should be conducted by an experienced project team, and all responsibilities should be clearly defined. When putting together the team of advisors, care must be taken that at least one party is recognised as a knowledgeable representative of the issuer pursuant to Art. 43 Listing Rules.

The Lead Manager and the Bank Syndicate

Usually, the candidate for an IPO mandates the lead manager that will be the key contact in connection with the share placement. The lead manager in charge suggests the other members of the syndicate and appoints them in agreement with the company. The lead manager heads the consortium and coordinates the whole process. In the end, the lead manager allocates the shares to the other members of the syndicate and to the investors.

The tasks of the lead manager and the bank consortium involve the

validation of the business plan and evaluation of the company. They conduct a business due diligence and work out the specific investment case for the investors. Furthermore, they structure the issue, perform the professional research and market the investment case to the investors. Last but not least, the lead manager and the consortium place the shares with interested investors, usually by way of a bookbuilding procedure.

There are various criteria for selecting a lead manager:

- experience in IPO transactions
- knowledge of the financial industry
- issuance strategy (national/international)
- investor contacts/placing power
- quality of equity research
- voluntary market-making subsequent to the IPO
- support and advice once the company is public
- issuance performance and costs
- pre-existing relationships with an investment bank

Lawyers

During the IPO process, lawyers are indispensable partners for the company as transaction lawyers or legal advisors and are as well needed as strong partner for the lead manager. Lawyers have two main tasks in connection with an IPO:

a) Legal due diligence

Legal due diligence means legal assessment of the company (contracts, capital increases, intangible rights, etc.). Legal risks should be established, documented in the issue and listing prospectus and tested vis-à-vis the

lead manager using so-called (technical and disclosure) legal opinions.

b) Prospectus

Usually, lawyers prepare, in cooperation with the other consultants, the prospectus that is used in connection with the IPO. In view of prospectus liability, the entire communication of the company and other parties involved in the transaction must be subjected to a preliminary legal analysis.

The following criteria should be considered when selecting a lawyer:

- expertise/reputation
- transaction experience
- service range and costs in connection with going public
- support and advice in connection with being public
- existing ties to lawyers

Auditors

As a general rule, going public requires audited financial statements for the past three years of the company's existence, as well as preparation of unaudited interim periods. In addition to the audited financial information, the accounting firm will assist the company in determining if any interim financial information is required. The bank syndicate requires a comfort letter from the accountants as part of their due diligence. The letter is typically updated in the form of a bring-down letter at the time the IPO funds are transferred from the underwriter to the company.

When retaining independent auditors, the issuer must fulfil the requirements of the Federal Act on the Admission and Oversight of Auditors, according to which only auditing companies under state oversight

are admitted as auditing bodies for the purposes of the Listing Rules. Other auditing companies shall be registered through the state if they meet all the statutory/compulsory requirements.

IPO Advisors

Independent IPO advisors can support companies in preparing their going public early on. Furthermore, they can give independent advice on choosing advisors, valuing the company and reviewing corporate governance structures.

IR/PR Agencies

Before and after the process of going public, and also as a listed company, it is useful to be able to consult an experienced financial marketing expert who supports the whole communication process. The agency is responsible for the preparation in connection with the requirements pertaining to capital market communication. They help increasing the visibility of the company in the market. Furthermore, the agency helps in organising analyst and media conferences and with communication with investors, shareholders, analysts and the financial media.

The selection criteria for choosing an IR/PR agency are:

- experience in the capital market / references
- experience with IPOs
- comprehensive range of services offered
- good contacts within the financial community (analysts, investors and the financial media)
- representative offices/presence in international financial centres
- support for publicly listed companies

SIX Swiss Exchange – A Reliable Partner

SIX Swiss Exchange supports a company throughout the whole going public process. If required, a company has the opportunity to meet the Issuer Relations team of SIX Swiss Exchange for an informal meeting during which the company gets familiar with the stock exchange landscape and is

provided with first impressions on what is expected of a company during an IPO process. During the whole going public process, SIX Swiss Exchange is a reliable partner and supports the company on any questions regarding the listing on the Exchange.

Once the definitive IPO team is set – meaning all the consultants and advisors are on board – the initial kick-off meeting at the stock exchange is held. This official meeting with SIX Exchange Regulation is often used by the IPO team and the company to discuss the intended transaction, the financial data and other points which might be of any interest (e.g. timetable, exceptions from the Listing Rules, etc.). Before submitting the listing application, SIX Exchange Regulation offers the chance to hand in the prospectus for a preliminary evaluation. The listing application must then be submitted in writing by a representative recognised by SIX Exchange Regulation. It may be written in English, German, French or Italian. The application must be submitted to SIX Exchange Regulation at the latest 20 exchange days prior to the intended listing date. It must include a brief description of the security and a request regarding the scheduled first trading day.

To be submitted along with the application are, among other things, the following documents:

- Listing prospectus
- Listing notice
- Declaration that the printing regulations of SIX SIS Ltd have been maintained (if applicable) or a photocopy of the global certificate
- Extract from the Commercial Register
- Articles of association
- Declaration of the lead manager regarding distribution under Art. 19 Listing Rules
- Declaration of the issuer in accordance with Art. 45 Listing Rules

The listing application is then examined by SIX Exchange Regulation, which writes a proposal to the Issuer Committee. The Issuer Committee is part of the Regulatory Board which is the Group's legislative body, i.e. responsible for issuing the regulations that apply to issuers (rules, directives) and participants (Rule Book and participant directives).

Besides the support during the whole IPO preparation process, SIX Swiss Exchange offers its new client a wide range of additional services. The company has the option to use the Exchange's highly frequented website for marketing purposes, informing a broad audience about the upcoming IPO. Moreover, SIX Swiss Exchange sends a press release on the day of the IPO about the opening price of the shares. The exchange will also organise – if required by the company – a press conference for the company which can be held directly after the launch event in its premises. In order to celebrate the closing of the transaction, SIX Swiss Exchange offers its new issuer a launch event in the building of the Exchange. At market opening, the management of the new issuer has the option to ring the bell into the first day of trading. During the brunch which follows the whole IPO project team has the opportunity to pop the corks.

But the services don't stop with the company's listing. SIX Swiss Exchange offers its issuers workshops and trainings in the area of regulatory requirements (of being a public company). In addition, every year it organises the Issuer Relations Conference in order to bring together the Swiss investor relations community to discuss current trends in the market. This event is jointly organised with the IR club (Swiss Society of Investor Relations), SFAA (Swiss Financial Analysts Association) and GIRAS (Association of the IR/PR agencies). Furthermore, the company has the chance to join one of the many conferences or evening events co-organised by the Exchange where it is possible to network in a relaxed atmosphere.

Lead Managers and Bank Syndicate

The listed banks and financial institutions have been involved as lead manager in IPOs on SIX Swiss Exchange and have a full or partial recognition under Art. 43 Listing Rules, i.e. they are authorised to submit listing applications for equity and debt securities.

Lead Managers

Bank am Bellevue
Bank Vontobel AG
Credit Suisse
Deutsche Bank AG
Goldman Sachs
Morgan Stanley
Neue Helvetische Bank AG
UBS AG
Zürcher Kantonalbank

Other Recognised Representatives

Banque Cantonale de Genève
Banque Cantonale Vaudoise
Bank Coop AG
Bank Julius Bär & Co. AG
Bank Sarasin & Cie
Basellandschaftliche Kantonalbank
Basler Kantonalbank
BEKB | BCBE
BZ Bank Limited
Graubündner Kantonalbank
Landesbank Baden-Württemberg
Leonardo & Co. AG
Luzerner Kantonalbank AG
The Royal Bank of Scotland plc
Thurgauer Kantonalbank
Valartis Bank AG
Valiant Holding AG
Zuger Kantonalbank AG

Lawyers

The law firms listed have a full or partial recognition under Art. 43 Listing Rules, i.e. they are authorised to submit listing applications for equity and debt securities.

Recognised Representatives

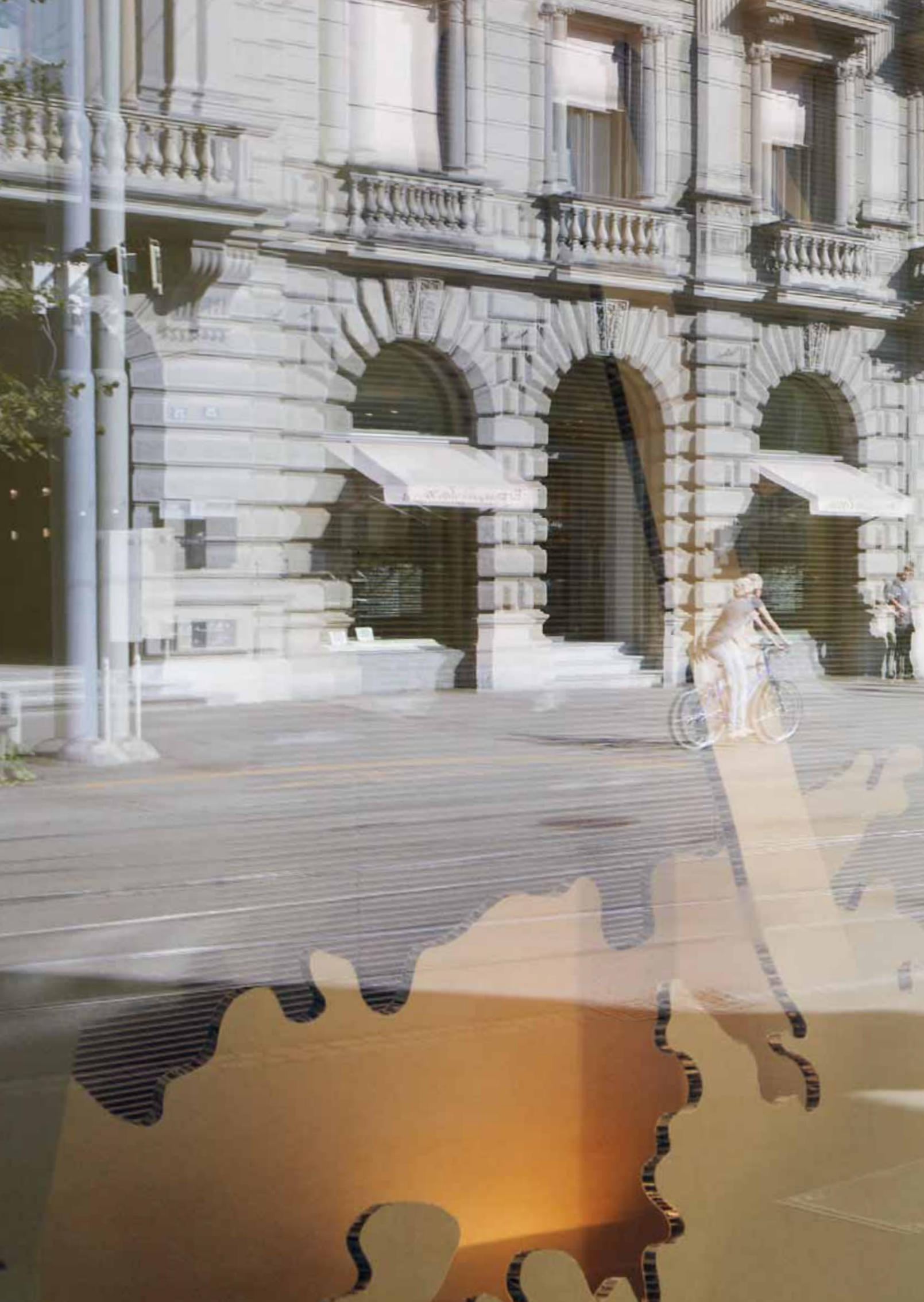
Altenburger, Rechtsanwälte
Anwaltskanzlei Bader Gnehm & Partner
Baker & McKenzie
Bär & Karrer AG
Bill Isenegger Ackermann AG
Binder Grösswang Rechtsanwälte
Blum & Grob Rechtsanwälte AG
Böckli Bodmer & Partner
Bratschi Wiederkehr & Buob
CMS von Erlach Henrici AG
Eversheds AG
Freshfields Bruckhaus Deringer
Froriep Renggli
GHR Rechtsanwälte AG
Gloor & Sieger
Hogan Lovells (Middle East) LLP
Holenstein Rechtsanwälte
Homburger AG
Kellerhals Anwälte
Lenz & Staehelin
Linklaters
Lustenberger Glaus & Partner
Meyer Lustenberger
Naegeli & Partner Rechtsanwälte
Niederer Kraft & Frey AG
Pestalozzi Rechtsanwälte AG
Prager Dreifuss AG
Roesle Frick & Partner
Schellenberg Wittmer
Staiger, Schwald & Partner
Suter Howald Rechtsanwälte
Vischer AG
Walder Wyss & Partners
Wenger & Vieli AG
Wenger Plattner

Auditors

The auditing firms listed have a full or partial recognition under Art. 43 Listing Rules, i.e. they are authorised to submit listing applications for equity and debt securities.

Recognised Representatives

Ernst & Young AG
KPMG AG
PricewaterhouseCoopers AG



The background image is a composite. The top half shows a European city street with a tram and a red sports car. The bottom half features a large, semi-transparent gear and blue confetti. The text is overlaid on the center of the image.

*Preparing
the IPO*



Preparing the Company to Go Public

by Dr. Thomas U. Reutter,
Attorney-at-law, LL.M., Partner
& Michael Trippel,
Attorney-at-law, LL.M., Partner,
Bär & Karrer AG

The following sets out certain listing, corporate and corporate governance requirements to be observed by an issuer aiming to go public and to list its shares in accordance with the Main Standard of SIX Swiss Exchange.¹

Listing Requirements of SIX Swiss Exchange

The Listing Rules of SIX Swiss Exchange set out various requirements with respect to a company that wants to go public and with respect to the securities to be listed by such a company.

A company which aims to list its shares in accordance with the Main Standard must have an equity capital of at least CHF 25 million on a consolidated basis. Subject to certain exceptions, it must have a corporate history of at least three years prior to IPO and must have published its annual financial statements in one of the accounting principles regimes accepted by SIX Swiss Exchange for such a three-year period. IFRS, US GAAP and other internationally accepted accounting standards for issuers not incorporated in Switzerland, are currently accepted accounting standards for a listing in accordance with the Main Standard of SIX Swiss Exchange. A wider range of accounting principles are accepted on the Domestic Standard (Swiss GAAP ARR) or the Standard for Bonds.

Furthermore, the company must have an audit firm that fulfils the requirements of the Swiss Federal Act on Audit Supervision and an audit firm which is accepted by the Audit Supervision must have audited its financial statements for the last three financial years. In addition, the Regulatory Board of SIX Swiss Exchange may determine further requirements where justified by the nature of the business of the company or by the securities to be listed.

Securities to be listed on SIX Swiss Exchange must have been issued in accordance with the law to which the company is subject, the listing must comprise all of the issued securities in the same category, the securities must have an adequate free float at the time of listing², the proper trading of the securities on SIX Swiss Exchange must be ensured and the denominations forming the total value of a security must enable an exchange transaction in the amount of one round lot. Furthermore, the issuer must ensure proper clearing and settlement and should ascertain that services pertaining to dividend payments and all other corporate actions are in place.

Corporate Governance Requirements Related to Listing

Sources

In connection with the IPO, the company must pay attention to the three following sources of rules on corporate governance:

- The Swiss Code of Obligations (CO) requires, *inter alia*, the disclosure of the remuneration

of members of the board of directors and the executive committee as well as the disclosure of significant shareholders in the notes to the financial statements of the business report.

- The SIX Swiss Exchange Directive on Information relating to Corporate Governance (“DCG”)³ provides for disclosure obligations in a separate section of the issuer’s annual report beyond the CO requirements (and, in relation to foreign companies to which the CO does not apply and whose shares are not also listed in their home country, obligations which mirror the CO). In its annex, it enumerates, *inter alia*, disclosing obligations on the group structure and shareholders, the capital structure, the board of directors and the executive committee (incl. compensation), shareholders’ participation, change of control provisions and the auditing body. The DCG follows a comply or explain approach enabling an issuer to deviate from the disclosure obligations set out in its annex to the extent the annual report contains an individual, substantiated justification for such non-disclosure.
- Swiss Code of Best Practice for Corporate Governance (“SCBP”)⁴ is adopted by *economiesuisse*, the Swiss Business Federation. It contains mainly recommendations with respect to functions and organisation of the board of directors.

The section “Aftermarket /Corporate Governance” offers a more detailed overview of the corporate governance requirements of the CO and the DCG. Certain aspects of the SCBP, however, are addressed below as they require attention prior to the IPO.

Swiss Code of Best Practice for Corporate Governance

Contrary to the CO, the provisions of the SCBP constitute best practice recommendations for Swiss-listed companies and not binding obligations. Its non-compliance is not sanctioned by any public authority. Nevertheless, non-compliance with the SCBP recommendations may not be well perceived by investors.

The SCBP envisages a balance between direction and control on one hand and transparency at the top management level on the other hand in order to foster shareholders’ interests. This goal is aimed to be achieved by setting, *inter alia*, the following guidelines and recommendations at the level of the board of directors:

Composition and Procedures of the Board of Directors

The board of directors of the company must be well-balanced with respect to the experience and knowledge of its members. Also, the board of directors should determine its procedures and working methods such that proper performance of its functions is ensured.

A majority of the members of the board of directors should be non-executive.

Formation of Committees

The SCBP recommends the formation of the following committees that are responsible for specific tasks within the board of directors:

- An audit committee that forms an independent judgement on the quality of the external auditors, the internal control system and the annual financial statements.
- A compensation committee that defines the principles for remuneration of the directors and the

members of the top management and submits its proposals for approval to the board of directors.

- A nomination committee that lays down the principles for the selection and assessment of new board members and members of the executive management and is involved in the actual selection of candidates for the board of directors and management.

The compensation committee and the nomination committee are quite often combined in one nomination and compensation committee.

The SCBP provides the following recommendations in relation to the independence of members of the committees: The audit committee must consist of non-executive and preferably independent members. The compensation committee should consist of non-executive and independent members only, while no specific recommendations are made for the nomination committee.

Non-executive members of the board of directors who never were or were more than three years ago a member of the executive management and who have no or comparatively minor business relations with the company are deemed to be independent for the purpose of the SCBP. It may be noted though that, other than it being the predominant view in Anglo-Saxon jurisdictions, a major shareholder may still qualify as being independent for the purpose of the SCBP as long as such a shareholder meets the independence criteria set out above.

Compensation

Say on pay is also a controversial and highly debated topic in Switzerland. The SCBP provides for specific recommendations concerning the compensation of the board of directors. It focuses on the composition of the compensation committee, on the compensation system itself and on the transparency of the compensation.

Corporate Law Aspects⁵

Capital Increase

An IPO typically involves a primary offering of newly issued shares (as opposed to a mere secondary offering by way of the sale and placement of existing shares by selling shareholders). Therefore, the company usually must increase its share capital prior to the IPO either by way of an ordinary or out of authorised share capital. In addition, since the shares are intended to be offered to the public, the pre-emptive rights of existing shareholders must be excluded or at least waived.

Amendments of the Articles of Association

The company must adopt amendments to its articles of association prior to the IPO in order to make it fit for a listed company such as:

- Opting-up / Opting-out: As a Swiss particularity, the threshold of the mandatory bid rule stated by the Federal Act on Stock Exchanges and Securities Trading (“SESTA”) – providing that every person or group acquiring more than 33¹/₃% of the voting rights is required to submit an offer for all listed securities of that company – may be raised up to 49% (opting-up) or can even be entirely opted out (opting-out).⁶ If the company wants to implement the opting-up or -out, a specific clause must be added to the articles of associations.
- Form of securities: As the securities of the company must be issued in a form corresponding to the Federal Intermediated Securities Act (“FISA”) – usually as registered shares in uncertified form, thereafter constituting intermediated securities to ensure proper securities trading – the respective clause of the articles of association should reflect such a form requirement correctly.
- Transfer restrictions: The articles of association of privately held

companies typically contain restrictions on the transfer of shares. Apart from exceptions, the provision of such transfer restrictions are not permissible for a public company and must therefore be abolished.

- Further particular clauses in the articles of association which do not comply with corporate governance standards or are not practical in a public company (e.g. unusually high quorum for important shareholder resolutions) should be amended or entirely abolished, respectively.

Adoption of Internal Regulations

Prior to the IPO, publicity guidelines must be in place in order to control the dissemination of offering-related information.

In order to prepare the members of the board of directors and of the executive committee of the company as best as possible for their post-IPO obligations, it is advisable to adopt internal regulations in advance, particularly with respect to the organisation of the board of directors and other subject matters such as management transactions, insider trading and ad hoc publicity guidelines. A board and management sit-in shortly prior to the IPO is recommended in order to inform and educate the directors and managers on their duties post-IPO.

“The board of directors of the company must be well-balanced with respect to experience and knowledge of its members. Also, the board of directors should determine its procedures and working methods such that proper performance of its functions is ensured.”

¹ The differences between the various Standards are explained on the SIX Swiss Exchange website under: http://www.six-exchange-regulation.com/admission/listing/standards_en.html.

² The free float is regarded as adequate if at least 25% of the issued securities are in public ownership and the capitalisation of those securities amounts to at least CHF 25 million.

³ Available under: http://www.auditcommittee.ch/docs/20081029_06_14-DCG_en.pdf.

⁴ Available under: http://www.economiesuisse.ch/de/PDF%20Download%20Files/pospap_swiss-code_corp-govern_20080221_en.pdf.

⁵ Applicable to Swiss companies only.

⁶ Art. 22 para. 2 and 52 para. 1 SESTA, available under: http://www.six-exchange-regulation.com/download/admission/regulation/federal_acts/sesta_en.pdf.

Process Timeline

by Thorsten Pauli,
Managing Director and Head Equity
Capital Markets Switzerland,
UBS AG

Generally, an IPO can be understood as the transition where a company turns from its current private to a public status. Overall, the process timeline of the IPO execution process can be divided into three phases:

- Preparation of fundamentals
- Regulatory review and investor education
- Marketing and trading

Before launching the effective IPO execution process, a number of preparatory topics need to be addressed in the pre-execution phase to allow full focus on marketing during the actual IPO process. Such topics include early preparation of the investment case, corporate governance topics as well as financial/accounting particularities which are a mandatory prerequisite for a successful IPO execution.

Preparation Phase

The kick-off meeting marks the start of the execution process when the company and all advising parties (incl. legal counsels, accountants, banks, etc.) meet for the first time altogether. It should end with an understanding of the envisaged timetable, roles and responsibilities to be performed by each party, details of the offering, key issues identified as well as next steps.

The kick-off meeting is followed by the due diligence process. It is a comprehensive procedure that is designed to protect the company, its board of directors and the syndicate banks. The objective is to ensure that all material information about the company is appropriately disclosed in

the offering prospectus as a basis for investors' investment decision. Participants are company management, syndicate banks, and legal counsels; additionally, auditors, major shareholders, customers, suppliers and regulators may be involved. The scope of due diligence work covers three areas: business, financial and legal due diligence and will continue throughout the prospectus drafting process – with a short bring-down due diligence before significant events (e.g. signing of underwriting agreement, pricing and closing).

The due diligence results are reflected in the preparation of the offering prospectus. Prospectus requirements are driven by SIX Swiss Exchange's listing requirements, the Code of Obligation (*Obligationenrecht*) and international market practice, other Swiss regulatory requirements and the targeted investor base. The due diligence discussions will form part of the offering prospectus drafting sessions as the document must reflect the respective findings.

Regulatory Review and Investor Education

The goal of SIX Exchange Regulation's review process is to obtain approval on the prospectus prior to listing the stock; the review by SIX Exchange Regulation assesses the prospectus on formal compliance with the Listing Rules and prospectus schemes. In order to sell securities in the US, additional registration considerations need to be undertaken (e.g. Rule 144 A).

To comply with regulatory rules while educating investors, the syndicate banks' legal counsel produces research guidelines that provide a framework around the production of pre-deal equity research that governs any interaction with research analysts during the execution process.

The analyst presentation is the most important occasion for the company to present its investment case to research analysts of the syndicate banks and leads into the preparation of the marketing phase of the IPO. The presentation must be fully aligned with all information in the offering prospectus. Following the presentation, the research analysts will begin to develop their valuation models and draft their research reports. Pre-deal research reports are published after the company announces its intention to float (usually same day). Subsequently the research analyst starts presenting its findings in investor education sessions. Once the research report has been published, a blackout period 40 days after the closing of the IPO begins during which the analyst is restricted from publishing any further research report.

On occasion, the syndicate banks will arrange for the company to meet with a selected group of key investors on a confidential basis prior to announcement of intention to float (i.e. prior to the marketing phase). This early marketing is referred to as "pilot fishing". Pilot fishing is useful in testing investor interest early in the process. It is more common in a difficult market environment and in cases where the company's business is complex, difficult to value or operates in a specialized sector.

Marketing Phase (Assuming a Bookbuilding Process)

The main part of the marketing phase is the roadshow which is the opportunity for the company to present the investment case to institutional investors and address potential questions. Given the often geographically dispersed nature of investors, the roadshow involves visits to major financial centres such as London, Frankfurt and Zurich.



Investor meetings typically take place in three different settings: (a) one-on-one presentations where the syndicate banks will arrange face-to-face meetings with large key institutional investors that are expected to generate the majority of quality institutional demand. (b) group presentations that allow the company to deliver its investment case to a broader audience of institutional investors. (c) finally, group or one-on-one conference calls to ensure broadest coverage of accounts.

In parallel to the roadshow, the syndicate banks start the bookbuilding process which is the term to describe that investors submitting

their orders for the shares to be issued. The syndicate banks collect these indications of the orderbook. The bookbuilding process ends with the closing of orderbook and subsequent pricing. Once the pricing date is set, investors are informed of when the orderbook will close (i.e. the deadline for submitting orders). The syndicate banks will review the book together with the company and recommend an offering price that maximises the offering proceeds consistent with a favourable aftermarket performance and shareholder structure. Generally, allocation to investors is based on criteria including: quality of institution, history of long-term

holding, comparable companies, timing and size of order as well as anticipated aftermarket demand; the allocation process is governed by the guidelines set by the Swiss Bankers Association and international best practice guidelines. Once the offering price is set (pricing), the underwriting and the syndicate agreements are signed. After the transaction has been priced and allotted, the shares are delivered to investors and the company receives the proceeds (settlement).

IPO Process and Key Objectives

Pre-execution	Fundamentals	Regulatory review & investor education		Marketing & trading		
PRE-IPO ▶	PREPARATION ▶	PRE - AITF* ▶	PRE-LAUNCH ▶	LAUNCH ▶	ROADSHOW ▶	AFTERMARKET
<ul style="list-style-type: none"> – Prepare investment case («equity story») – Address financial / accounting particularities – Decide on capital structure – Review corporate governance and corporate structure 	<ul style="list-style-type: none"> – Appointment of sponsor(s) / advisor(s) – Kick-off meeting – Develop timetable – Due Diligence – Develop prospectus and interact with SIX Exchange Regulation – Research and publicity guidelines 	<ul style="list-style-type: none"> – Form underwriter’s syndicate – Specify investment case – Draft analyse presentation – Introduction with existing shareholders – Complete due diligence – Initial valuation – Analyst presentation – Pilot fishing (optional) 	<ul style="list-style-type: none"> – Announcement of intention to float («AITF») – Publish research – Investor education – Continuous feedback loop and market monitoring – Finalise valuation – Agree price range – Stock exchange sign off – Finalise prospectus, legal documents and comfort letters 	<ul style="list-style-type: none"> – Print & distribute preliminary prospectus – Management presentation to sales force – Prepare roadshow – Interaction with key investors 	<ul style="list-style-type: none"> – Roadshow presentation by senior management – One-on-one meetings with investors – Continuous interaction between research, sales and investors – Develop «book» of demand («bookbuilding») – Determine offering price («pricing») – Allocation and closing – Collect feedback 	<ul style="list-style-type: none"> – Aftermarket stabilisation – Exercise Greenshoe (if applicable) – Continuing investor relations

Pre-IPO/execution
Active IPO execution process
Private Status
Public Status
* Announcement of intention to float

Pre-Deal Research

by *Thorsten Pauli*,
Managing Director and Head Equity
Capital Markets Switzerland,
UBS AG

Pre-deal equity research is considered as one of the most important and integral parts for all IPO stakeholders, i.e. the company, its shareholders, institutional investors (such as larger family offices, pension funds or mutual funds) and the accompanying syndicate banks, during the IPO process:

Pre-deal equity research is produced and issued by the investment research department of the syndicate banks to complement the marketing of an IPO. Research analysts writing the investment research report are acting completely independent of the bankers executing the IPO on behalf of the issuer.

Research analysts effectively analyse the company independently vis-à-vis investors and educate investors about the investment case, the company's respective industry and value drivers, comparable peer group and potential valuation. Although, pre-deal research for investor education will include an indicative valuation range, it does not contain any price targets or recommendations.

Investors rely on the expert knowledge as well as the market and industry insights that research analysts provide given their access to investors, industry representatives and specialists for the broader sector peer group accompanied by experience in similar transactions.

Research analysts distribute their pre-deal research reports to various institutional investors (up to 2,000-3,000 investors) before visiting a selection of them in so-called one-on-ones and group meetings and talk about the reports. Investors can ask questions to the research analysts about the company that usually lead into a discussion allowing them to draw up their own financial models and conclusions before meeting the management team during the roadshow (c.f. "Process Timeline").

In terms of timing, whilst equity research is an ongoing element, it starts before a company formally decides to go public. In a first face-to-face meeting well ahead of the IPO process, the company explains to the research analysts the company's strategy and business case. Given the independence of equity research for all major investment banks, the respective research department then decides whether they want to pursue research on a given company or not.

In terms of formal IPO process, research analysts of the syndicate banks attend the analyst presentation held by management (c.f. "Process Timeline") which serves as the basis for their research reports. In many cases, the analyst presentation will be the only opportunity for the company to present the merits of the investment case to research analysts. The presentation material will form the basis for the analysts' valuation model and should give sufficient statistics intended to be included in all research reports. After the analyst presentation, the research analysts will take all the materials and begin to build their financial models. In addition, research analysts may have further questions for the company, requesting additional information or clarification of certain open issues. Answers to these questions will be open to all research analysts of the syndicate banks to ensure analysts have received the same level of information.

Pre-deal research reports are issued as hard-copy to institutional investors only.

Capital Structure

by Daniel Wüest,
Managing Director,
Investment Banking Department,
UBS AG
& Dr. Dieter Gericke,
Attorney-at-law, LL.M., Partner,
Homburger AG

Generally, the capital structure of a private company and a public company differ. Therefore, an important prerequisite of a successful IPO is to set-up an efficient capital structure suitable for a public company and which addresses the needs of the company's stakeholders at the time of being public. There are two main areas to focus on: leverage and share capital structure.

Leverage

To ensure an adequate risk profile for equity investors, availability of debt financing and long-term viability of the company, the leverage ratio, defined as net debt in relation to earnings before interest, tax, depreciation, and amortisation (EBITDA), should be sustainable also considering the company's cash flow profile and potential underlying cyclical nature of the business, the ability to pay dividends in the future and prevailing financial ratios of the defined peer group. Such ratios typically being amongst others equity ratio, leverage ratio and dividend yield.

If the ratios are not sustainable enough to execute the business plan of the company or substantially defer from its peer group, the company could either use the IPO to raise new equity or undertake a refinancing before going public.

Doing an IPO is also an opportunity not only to decrease the leverage by raising equity to pay-down debt but also to amend the debt structure of the company. Besides repaying or converting shareholder loans, financial debt could be optimised by tapping the banking or capital market. In this respect it is also important to adjust the capital structure in a way that the credit ratings are sustainable post-IPO. While in the course of the IPO process the focus is naturally skewed towards equity investors, the company is well advised to also take the interests of creditors into considerations given the interdependency of debt equity.

Share Capital Structure

By determining the right share capital structure several aspects need to be considered. Based on an indicative post-IPO valuation, the issuer needs to define the envisaged number of shares issued after raising any new equity in the IPO and the subsequent implicit share price range. Guidance for the share price is the absolute level of the relevant peer group while as a rule of thumb a too low – below CHF 10.00 – but also a too high share price should not be targeted given investors' perception of either being a "penny stock" or an "expensive" one. It goes without saying that the absolute share price level is not a proxy for the market value of the company.

Under Swiss corporate law the share capital could be structured by issuing either bearer shares (*Inhaberaktien*), registered shares (*Namenaktien*), participation rights (*Partizipationsscheine*) or bonus shares (*Genussscheine*) or a combination of these. It has become market standard that corporate issuers with only one

single share class to follow the concept of "one share one vote", representing best corporate governance, typically using registered shares in Switzerland. The advantage of registered shares in relation to bearer shares is the chance to identify and therefore directly communicate with registered shareholders. Registered shares also permit the implementation of certain voting restrictions.

In order to increase strategic and financial flexibility, companies conducting an IPO should consider creating authorised and/or conditional capital before being public. Authorised as well as conditional capital could be used to directly finance or indirectly refinance future acquisitions. The conditional capital could also be used to back share- or option-based management incentive schemes. While the authorised and conditional capital provides the board and management with a high degree of flexibility, investors do prefer that the delegation to issue such capital does not exceed certain levels. According to corporate law the authorised and the conditional capital may each not exceed 50% of the existing share capital.

There is no magic formula for the right capital structure since it needs to be assessed on a case by case basis and is always based on the needs of the company and the interests of shareholders and creditors as well as those of other stakeholders such as regulators, rating agencies, equity and credit research analysts and others. Generally, equity investors do prefer a single share structure with a well-balanced debt/equity mix reflecting the individual characteristics and prospects of the company once it is public.

Valuation

by Daniel Wüest,
 Managing Director,
 Investment Banking Department,
 UBS AG

On the occasion of the IPO, a market value is assigned to a company for the first time. In order to establish such market value, all parties involved have to form their own views on the fair value of the company: firstly, the company and its existing shareholders – with the support of the investment bank advising them on the IPO – establish an estimated value of the company based on the company's business plan and other proprietary information they possess. In contrast to this internal valuation, potential investors have to base their valuation on publicly available information disclosed in the offering prospectus and on the research reports published by the equity research analysts of the syndicate banks involved in the IPO. While research analysts only have access to publicly available information disclosed in the offering prospectus, they support the investors' decision-making process by providing their own, independently developed views of the company's prospects, including financial forecasts.

Both internal and external valuations are typically derived using a number of different techniques. As investors tend to benchmark an IPO candidate and its investment case against peers, the main focus is typically on so-called relative valuation methodologies. In this approach market values of a company's listed peers are expressed as multiples of their

expected future earnings in the current or the following year. These multiples in turn are applied to the IPO candidate's expected earnings to estimate an appropriate market value. Peers are chosen based on similar business models and geographic spread as well as comparable growth and margin profiles. Where no comparable listed peers exist or an IPO candidate is characterised by high growth and/or negative earnings, such a multiple-based valuation may not be meaningful and appropriate. Thus, a discounted cash flow (DCF) valuation as a fundamental valuation approach is typically used to complement and cross-check the result of the multiple-based valuation. In a DCF valuation, a company's value is determined by estimating the expected future cash flows available to the firm over a longer-term horizon and discounting them at the company's cost of capital to arrive at a present value. While a DCF valuation may be the most well-founded approach from a theoretical perspective, it requires a significant number of assumptions and, therefore, is more subjective than the relatively simple multiple valuation.

Since both approaches – multiples and DCF – require estimates of a company's future earnings as an input, the development of a robust and credible business plan is a key element of a company's internal IPO preparation and due diligence. Although the business plan itself is not disclosed to investors, any market trends or company-specific issues potentially affecting future performance of the company in a material manner would have to be described in the offering prospectus.

The same applies for value-relevant issues that are identified by the company and the advising bank during legal and financial due diligence, such as potential lawsuits or write-offs on the company's assets. As a consequence, valuation is not a static, one-off exercise but a dynamic process involving regular updates based on due diligence findings and changes in market conditions that affect valuation parameters. Furthermore, as the IPO process advances, the internal valuation can be subjected to a reality check by obtaining investor views on valuation during the pilot fishing and investor education phases.

Ultimately, the IPO valuation is determined by the price investors are willing to pay for a company's shares. In many cases, the eventual IPO valuation will be lower than the theoretical value implied by the valuation methodologies referred to above. This phenomenon, referred to as the IPO discount, is caused by the information asymmetry between the company and its existing shareholders as insiders and the investors in the IPO, who do not have access to inside information. In order to mitigate that information gap, investors may take more conservative assumptions regarding the company's future performance and therefore arrive at a lower theoretical value than the company internally. In general, the magnitude of the implied IPO discount will be a function of the complexity of the company's business models and investment case, the track record that management can demonstrate, and the transparency of the company's disclosure.

Investment Case

Although trivial in appearance, the answer to this question is central to the success of an IPO. Before investing in a company, investors want to feel confident about its future prospects. Therefore, developing a strong investment case, also referred to as the equity story, validated by an experienced and credible management team, is essential.

Management and its advisors/ syndicate banks will work together to identify the key characteristics that will motivate investors' interest in the company and define the building blocks of its investment case. This exercise requires careful consideration as an appropriate positioning, tailored to the investor base the company wishes to target (growth vs. value), paves the way for a premium valuation.

Indeed, investors will, to some extent, evaluate the company based on its performance relative to its most comparable public competitors, the so-called peer group. Thus, it is important that the advisor uses its sector knowledge to select the appropriate

names and position the company favourably relative to its peers in order to maximise valuation.

However, to support this positioning, a strong justification will have to be provided – this is the job of the investment case which highlights the company's unique strengths, its competitive advantages relative to its peers and exposes its vision of the future. Management experience and track record will be instrumental in demonstrating and validating the credibility and ability of the company to deliver on its strategy.

Finally, the investment case becomes the central marketing piece to promote the company during the entire IPO process and should therefore convey clear, positive and impactful messages to potential investors. This messaging has to be consistent throughout and cannot be modified en route. Therefore, it is important to anticipate potential investor concerns, such as weaknesses of and threats to the company, so they can be mitigated in advance with well-thought-out and convincing arguments.

*by Daniel Wüest,
Managing Director,
Investment Banking Department,
UBS AG*

Selected Topics that Can Be Considered in the Investment Case

Industry fundamentals <ul style="list-style-type: none"> – Trends – Defensive vs. volatile – Future catalysts 	Market structure <ul style="list-style-type: none"> – Barriers to entry – Concentration – Growth opportunities 	Peers benchmarking <ul style="list-style-type: none"> – Financial – Operational – Geographic
KEY INVESTMENT HIGHLIGHTS		
Management track-record <ul style="list-style-type: none"> – Key achievements to date – Experience 	Strategy <ul style="list-style-type: none"> – Growth vs. value – Niche vs. mass – Innovation vs. mainstream 	Key competitive advantages <ul style="list-style-type: none"> – Target unmet needs – First to market – Best quality

Structure of the IPO

The structure of an IPO is influenced by a number of factors such as the purpose of the offering, the listing location, the targeted investor base and the type of securities to be listed.

The initial consideration with respect to an IPO is the underlying purpose of the offering. Potential rationales vary from internally determined triggers such as the financing of growth, diversification of the shareholder base, reasons related to succession, deleveraging or the desire of investors to liquidate their investment, to externally influenced triggers such as acquisition financing or spin-offs. Depending on the purpose of the offering, the implicit aim of the transaction is either to raise new capital (primary shares) or to achieve a sell-down (secondary shares) of previously privately held shares (e.g. in the case of a private equity firm that seeks a capital market offering to exit its investment). The offering structure may allow for flexibility in that regard and can comprise both, primary and secondary shares. Furthermore, depending on the rationale of the IPO, certain constraints may apply, such as lock up periods for major shareholders, i.e. specified minimum holding periods following the IPO during which they are not allowed to sell their shares.

A next parameter that influences the structure of the offering is the choice of the listing location. In most cases, this will be the issuer's home market. However, SIX Swiss Exchange has also attracted various non-Swiss companies that chose Switzerland as their stock market. In addition, a sec-

ondary listing location can be considered, which will entail discussions with the local regulator accordingly as well as possible additional disclosure and/or another prospectus. It is important to note that a company not incorporated in the jurisdiction of the country of listing may not be eligible for inclusion in the local index unless it fulfils certain criteria (this is not the case for an inclusion in SIX Swiss Exchange's indices).

A third factor which has to be considered is the definition of the targeted investor base. The structure of the IPO and the interaction with potential investors differs in regard to the individual specifications of the investor as well as its geographical footprint. Referring to the first criterion, there are different implications resulting from a retail offering compared to a transaction that predominantly focuses on ultra high net worth individuals (UHNWI) or institutional investors. Moreover, internal parties (e.g. company employees) can form part of the targeted investor base – examples are employee participation or friends and family programmes. Geographical considerations also play a vital role: If there is a desire to target US investors, typically, an offering to qualified institutional buyers (QIB's) in the United States of America is made. Depending on the targeted investor base, the documentation and also the structure of the offering is adjusted accordingly whereby legal considerations do play a relevant role as the applicable legal requirements of the various jurisdictions involved need to be observed.

by Dr. Sebastian Harsch,
Executive Director and Head
Transactions Legal Switzerland,
Thorsten Pauli,
Managing Director and Head Equity
Capital Markets Switzerland,
UBS AG
& Dr. Dieter Gericke,
Attorney-at-law, LL.M., Partner,
Homburger AG

Finally, the type of securities listed determines the IPO structure (c.f. "Capital Structure").

To keep certain flexibility in the execution process beyond the first trading date, one instrument has proved to be very helpful – it is known as over-allotment option or "green shoe" (after the Green Shoe Manufacturing Company, which first implemented the option in 1963). Hereby the company and/or selling shareholders extend to the underwriters the option to purchase a specified number of additional shares beyond the base deal size. This over-allotment option is exercisable within a maximum of 30 calendar days following the first trading day of the offering and typically consists of up to 15% of the offering size. In order to be able to effect the over-allotment, the syndicate banks borrow shares which are then allocated to investors along with the main offering. The primary purpose is to pursue a reasonable offering price while facilitating positive aftermarket performance. If no over-allotment option is provided, the syndicate banks' ability to stabilise the share price is limited, since they cannot buy shares in the market.

Related to the question of the sizing of an offering is the matter of whether 100% of the issuer's shares or a fraction of them should be floated. SIX Swiss Exchange requires all shares of the same category to be listed,

while other categories may remain unlisted. Furthermore, SIX Swiss Exchange posts certain thresholds regarding (among others) free float and market capitalisation for the listing, and also, in order to be included in the equity indices. This is favourable as the membership in leading indices creates a higher investor attention and thus more liquidity in the stock. This will be advantageous especially when the company needs to access markets in order to raise further capital in the future.

Price Fixing Mechanism

There are three main price fixing mechanics:

- bookbuilding
- fixed price
- auctions

Bookbuilding

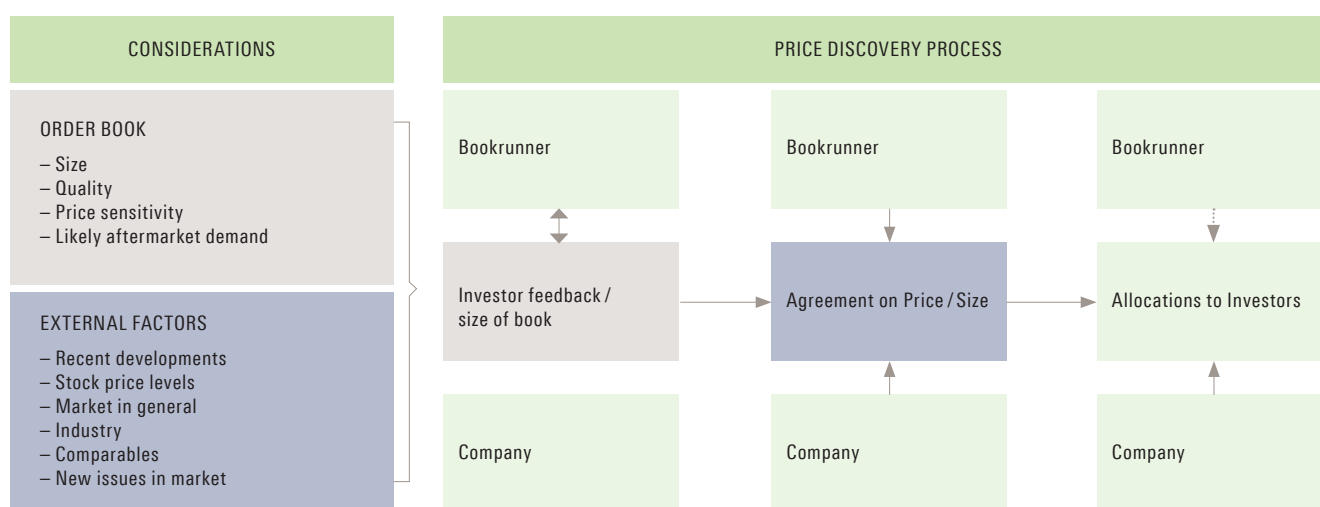
The most commonly used approach is the bookbuilding process. The idea is that the syndicate bank attempts to determine at what price to offer shares in an IPO based on the demand from institutional investors, such that the IPO proceeds are maximised under the constraint of a solid aftermarket performance. In order to do so, the underwriter collects non-binding indications of interests from investors, until a pre-specified deadline, at which the orderbook will be closed. Once the book has been closed, the syndicate banks will review the book of demand in order to assess the following criteria:

- strength of demand
- price sensitivity
- investors allocation expectations
- likelihood of aftermarket buying/selling
- equity market trends and information flows

On the basis of this assessment, the syndicate banks will once again review the orderbook – this time together with the company – and recommend an offering price which, in its judgement, will maximise the offering proceeds to the company or selling shareholders consistent with a favourable aftermarket performance. Once both parties have agreed on an offering price (which often needs a board resolution or other delegated authority), the underwriting agreement and the syndicate agreements will be signed.

After having determined all parameters relevant for the pricing and the size of the IPO, the shares have to be allocated to investors. Within this process, the syndicate banks will come up with appropriate allocation recommendations reflecting various underlying criteria. These criteria generally include:

- quality of institution
- history of long-term holding and continued aftermarket interest in both previous IPOs and comparable companies
- timing of order
- size of order
- anticipated aftermarket demand



The allocation decision also serves as an instrument to control for the institutional, retail and geographic distribution of the offering. The company or selling shareholders will then decide how the orderbook will be allocated and the share allocations agreed upon are then made by the syndicate banks and the consent of the company. The company has to agree to the allocations by the bank and has a right to agree or disagree with the allocation book. The main objective underlying the allocation decision is to ensure a strong aftermarket performance, thus acting in both the issuers' and investors' best interests.

Fixed Price

In a fixed price IPO, the company or selling shareholders and the advising syndicate banks agree on an issue price and the issue size, without run-

ning through the above described steps of a bookbuilding process. The issue price is then disclosed in the offering prospectus where the company has the chance to justify the price by providing investors with details about the qualitative and quantitative factors. This approach is less costly and less time-consuming than the bookbuilding. However, fixed price IPOs risk to underpricing/overpricing the IPO and do not represent an equilibrium price determined by the seller(s) and buyer(s).

Auction Process

Within this rarely used pricing mechanism, the so-called Dutch auction is the most popular process. In a Dutch auction the auctioneer predetermines a starting price and a reserve price. He then begins to lower the starting price, until some participant is willing to accept the auctioneer's

price. The auction stops if all available shares in the IPO are allocated to the investors or if the auctioneer's reserve price is reached. In an IPO, this method reduces the inefficiencies regarding costs and time of the bookbuilding and ensures a fair valuation of the company and thus prevents an underpricing of the IPO, as it is the case for the fixed price process. However, the downside to this approach is that the shares of the issuing firm may perform poorly after the IPO and thus create a bad sentiment within the investor community. In addition, there is less control over the quality of the investor base than in a bookbuilding process. Even though this form of price fixing is not frequently used, there are a few high profile examples of companies that made use of this procedure, the latest being Google in 2004.

Managing Risk: Litigation and Indemnification

*by Dr. Ralph Malacrida,
Attorney-at-law, LL.M., Partner,
Bär & Karrer AG*

Under Swiss law and SIX Swiss Exchange regulations, IPOs of shares involve the obligation to publish an offering and listing prospectus.

IPO Litigation

Prospectus Liability

The principal ground for liability in connection with an IPO in Switzerland is what is called “prospectus liability” according to Art. 752 of the Swiss Code of Obligations (CO). According to Art. 752 CO anyone who participates in the preparation or dissemination of a prospectus or similar instrument containing an incorrect or misleading statement or a statement that does not otherwise comply with legal content requirements is liable to the investors for any damage that has been negligently or wilfully caused.

Under Swiss law, there is no American-style class action. Prospectus liability claims may be brought by investors individually against the issuer, the directors, senior managers, the underwriting banks, auditors, legal

advisors and other experts who are jointly and severally liable to the extent any damage is attributable to each of them. Internally, the underwriting agreement usually provides that the issuer and/or the selling shareholders (if any) must indemnify the underwriting banks in the event of a prospectus liability claim.

Due Diligence Defence

To avoid prospectus liability in the context of an IPO all persons involved must ensure that the prospectus and other communications, such as press releases and roadshow presentations, do not contain any material untrue or misleading statements and do not omit to state a material fact.

If a prospectus turns out to be incorrect, the persons involved may still escape liability if they can prove that they acted diligently when preparing and disseminating the prospectus and any other communication to the public. As the required standard of care is based on an objective test, it is important to observe recognised market practice in order to mitigate prospectus liability risks. Due diligence procedures in relation to the issuer of the securities are typically carried out by the underwriters and their legal, financial and tax advisors.

There are no official due diligence guidelines defining a set of procedures that should be followed in a due diligence exercise. Rather, most of the due diligence processes are based on transactional experience or market practice as applied in international equities securities offerings.

As a rule of thumb, the following procedures are typically considered when planning the due diligence process for an IPO: review of documents (often referred to as documentary due diligence), meetings with management (typically kicked-off with presentations by members of the issuer’s management, followed by Q&A sessions), negotiation of representations and warranties contained in the underwriting agreement, legal opinions and disclosure letters of legal counsels as well as officers’ certificates, comfort letters from the issuer’s auditors on various matters relating to the issuer’s financial position and results of operations, review of financial statements and meetings with accounting personnel and auditors, prospectus drafting sessions (typically involving the issuer, the underwriters and their counsels), directors and officers questionnaires regarding compensation, holdings of securities and

material transactions, interviews with third parties (including creditors, customers, suppliers, and major shareholders on a selected basis), site visits, as well as bring-down due diligence calls at the time when pricing is made and when closing occurs.

Indemnification

Indemnification of the Underwriters

As a matter of standard practice, the underwriting agreement provides that the underwriting banks must be indemnified and held harmless by the issuer, and/or by the selling shareholders (if any), for any losses, claims, and damages to which the underwriting banks may be subject as a result of (a) any breach or alleged breach of any representation or warranty, undertakings or agreements made by the issuer in the underwriting agreement, (b) the omission or alleged omission to state in the prospectus a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, or (c) an untrue statement or alleged untrue statement of a material fact made in any other materials published by or under the direction of issuer in connection with

the offering (including without limitation information to shareholders of the issuer, any press materials, and any and all advertisements made by or on behalf of the issuer).

Indemnification of the Issuer's Directors and Senior Managers

Under Swiss law, directors and senior managers of a Swiss corporation are personally liable for any damage caused by an intentional or negligent violation of their (fiduciary) duties. The liability arises not only vis-à-vis the corporation, but also vis-à-vis each shareholder and creditor of the corporation. Whilst the corporation and the shareholders may bring a claim at any time, the creditors may file a lawsuit on the grounds of directors' liability only if and when the corporation has become insolvent and is declared bankrupt. In addition, as pointed out above, with respect to public offerings of securities, every person, including each director and senior manager, who is involved in the public issuance of shares by way of a prospectus and deliberately or negligently provides false, misleading or incomplete information is liable for any damage caused to the investors.

Swiss law on directors' responsibility may not be changed by an

agreement entered into between a Swiss company and its directors. In consequence, the issuer may not agree to indemnify the directors or senior managers against any losses, claims or damages incurred with an IPO irrespective of the circumstances, as this would effectively relieve the directors and senior managers of their responsibility as laid down by Swiss corporate law. The possibility of Swiss issuers indemnifying directors and senior managers is therefore limited. As a rule, in the absence of a body of precedents, legal scholars are of the view that an issuer may indemnify and hold harmless a director or senior manager from and against all damages, liabilities and expenses suffered only if said person is not found, in a final judgement or decree of a court, arbitral tribunal or governmental or administrative authority of competent jurisdiction to have committed an intentional or grossly negligent breach of his duties as director or senior manager. As a result of this, directors and senior managers will normally want to rely on D&O insurance which is taken out by the issuer on their behalf.

Directors' and Officers' Liability (D&O) Insurance

by Pascal Schweingruber,
Executive Committee Member,
Kessler & Co AG

D&O insurance has become a commodity product for publicly traded companies in Switzerland. The first line of defence for directors or officers is the indemnity the company provides to them.

A properly constructed D&O insurance policy is designed to protect the personal assets of individual directors and officers in the event that the financial protection of the company's indemnification obligation inadequately protects them. The memorandum and articles of a company may allow an indemnity – for greater certainty directors increasingly prefer that a specific deed of indemnity or other contractual relationship be put in place. The D&O policy will then pay for all legal expenses and losses the individuals are liable for, but only in excess of or in absence of any indemnification available. It shall be noted, however, that most D&O policies will also reimburse the company for indemnities paid for or on behalf of its directors and officers (often subject to an agreed self-insured deductible).

So D&O insurance matters most when corporate indemnification may

not be available. Under Swiss law, corporate indemnification is not permissible / not available in the following scenarios:

- When public policy prohibits the company from reimbursing Directors or Officers, e.g. for actions taken in bad faith
- When the company becomes insolvent, or unable to pay because of actions taken by an administrator or liquidator
- When the board becomes antagonistic towards a prior Director or Officer seeking protection or indemnification
- When damages assessed are to be paid to the company itself, as in derivative actions according to section 756.1 of the Swiss Company Law

D&O policies are generally written on a "claims-made" basis. It is the actual making of a claim against the insured during the term of the policy, not the occurrence of injury or damage that causes the policy to respond. The type of allegation a D&O policy covers is described in the policy's definition of "wrongful act", which generally means any error, misstatement, misleading statement, act or omission, neglect, or breach of duty actually or allegedly committed or attempted, by an individual in his/her capacity as a director or officer of the company.

D&O Insurance Pre and Post-IPO

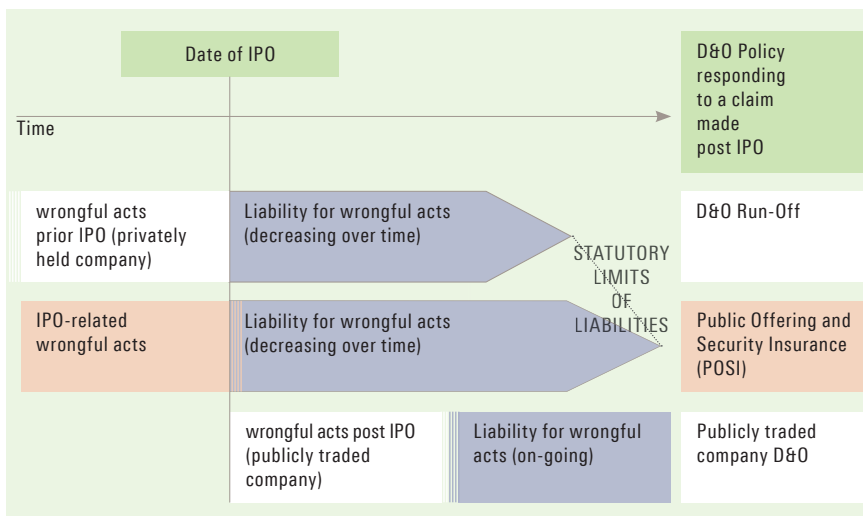
Following an IPO and with a much harsher management climate to contend with, claims are possible by a whole range of external stakeholders in addition to regulatory matters including shareholders, bondholders, employees, competitors and governments. But not only the ownership in the company changes with an IPO. New people come on board, new stakeholders will want to protect their interests, and the company and its D&O's receive much greater media and public attention. This, combined with the additional duties and liabilities that come as a publicly traded company, means that the old D&O policy of a company that existed pre-IPO will no longer suffice to cover both, the past and the future.

Companies undergoing a full listing are best advised:

- to let their existing (pre-IPO) D&O policy go into run-off, thereby covering future claims against the past D&O's, and
- to cover the new D&O's and possible future wrongful acts and omissions through a new D&O Policy designed for a publicly traded company and with fresh limits of liabilities.



D&O Insurance Structure for an IPO



The new D&O policy will pay for the legal costs of directors and officers to protect their interests in relation to civil claims, breach of securities laws, and regulatory investigations. The limits of liability for both legal costs and indemnities may need to be increased drastically. In Switzerland, privately held companies purchase limits of roughly CHF 14 millions¹, while public companies obtain on average limits of CHF 51 millions (with maximum limits of several hundreds of millions).

The growing number of companies launching lawsuits against their former directors can also present an issue. Most standard policies include “insured versus insured” cover for such claims, but the scope of such cover can vary widely. Lastly, the scope of coverage may be broadened to also cover the company’s costs and legal indemnities in a security litigation. This additional cover is only available as an add-on to a D&O policy. It provides valuable coverage but it clearly dilutes the limits of liability purchased. Any payment to the company will reduce the limits available to the directors and officers.

D&O Insurance for the Transaction

The liabilities attached to the transaction and more importantly to the prospectus need specific consideration. The IPO prospectus is both a selling document and a document that is required to meet the disclosure requirements of the regulator

¹ Kessler D&O Message, Edition 2011.

("a liability document"). Frequent types of claims brought against directors, officers and deal advisors (investment bankers, underwriters, legal advisors, accountants etc.) are for misrepresentations and non-disclosure of material information in the prospectus. Signatories of a public prospectus for a securities offering have a personal responsibility for its contents and could therefore be found personally liable for the losses of securities holders. Also it is common on a flotation, for directors and/or the company to give indemnities about the prospectus to the underwriter or the sponsor of the flotation. Such warranties made outside their capacity as a director or officer or not arising from a wrongful act (as defined in the D&O policy) are unlikely to be covered by their D&O' policy.

These risks can be ceded to the insurance market in form of a Public Offering and Security Insurance (POSI). This insurance protects companies and their directors and officers from liabilities associated with an IPO (or secondary offerings). POSI is designed specifically for the transaction and therefore ensures suitable coverage for liabilities arising out of the prospectus/listing, for liabilities relating to prior negotiations, discussions and decisions in connection with the offering, and for losses arising from securities claims. POSI provides long-term non-cancellable coverage for future claims made against all persons involved in the transaction and for as

long as the statutory limits of liabilities apply under Swiss law. This will offer directors, officers and deal advisors a greater confidence that their insurances provide cover, which matches their exposures and objectives, and as a result provides peace of mind.

The Insurance Market in Switzerland

Switzerland has the highest density in insurances globally, with annual premium spending of USD 6,633 per-capita. The city of Zurich is home to some of the largest international insurers and reinsurers. In this competitive environment, directors and officers of any corporation seeking to access the Swiss capital market can be assured: there is sufficient enough capacity, intelligence and expertise available to cover any personal and professional risk. Swiss-admitted insurance markets in total offer D&O insurance capacity well in excess of CHF 500 millions.

The insurance sector (carriers, brokers, agents) is regulated by FINMA, the Swiss Financial Market Supervisory Authority and insurance contracts (policies) are governed by the Swiss Insurance Contract Act. This law is recognised for its liberal content, so insurance buyers in Switzerland benefit from the freedom in contract design and the very few obligations the law imposes on the policyholder. With respect to D&O insurance, this is especially true for the disclosure requirements and

warranties to the insurer. Additionally, the law allows amending some of its more stringent rules in favour of the policyholder, as in the case of gross negligence or the provisions about mid-term cancellation.

Conclusion

It is evident that publicly traded companies and their boards of directors and C-level suites may well face lawsuits at some point. D&O insurance is a great tool to mitigate those risks. The company will want to negotiate coverage with the carrier in view of the specific risk situation and in consideration of the interests to be protected. And the company is best advised to evaluate all options and alternatives the insurance market offers to obtain the best value for the premium francs spent.

Directors' Advice:

It is crucial you know your D&O policy and how to make a claim. Know as much as possible about the policy's limits, key extensions and exclusions. It provides an aggregate limit that is shared with other directors in your group, so it is important you are happy that this is high enough. Ensure you are aware of any restrictions in the cover or geographical limits (especially when the D&O policy is placed outside Switzerland within a non-admitted carrier) and how the D&O insurance interacts with the indemnities provided.

Board-level Risk Management: Delegation and Monitoring Processes

*by Pascal Schweingruber,
Executive Committee Member,
Kessler & Co AG*

An IPO marks a watershed in the organisational design and processes of enterprises. These enterprises may be formed as a private company, with a handful of owners. They may also be organised as a partnership, with a number of employees also holding the rights of control over the organisation. Regardless of the form of organisation, the decision to use the public equity markets to raise capital brings with it a new set of circumstances which those in charge must address. The paragraphs that follow explain these key features, and how they can be dealt with in terms of risk management at the board level.

The principal new feature is that a set of external investors are granted certain powers and rights in exchange for committing their capital. Linked to this is that the equity becomes listed for trading on a public, regulated market. From the company's perspective, once powers and rights are assigned to these external parties who do not have a day-to-day presence inside the company, then it becomes necessary to develop new mechanisms (or strengthen existing ones). These mechanisms ensure that the participation in the company is made meaningful by the provision of information about company performance, and the sense

that the external parties' interests are being protected. A useful way of approaching this exercise is viewing existing management as having been delegated powers from the external investors, and being accountable to the investors for the use of that authority.

Companies going down the IPO route will need to establish a board of directors. It is now commonplace around the world for boards of public listed companies to have a number, if not a majority, of independent non-executive, outside, or supervisory directors. From an organisational perspective, this involves the pre-IPO controllers inserting a new group of decision-makers in the chain of authority between the external investors and management. There may be both executives and non-executives in that board, and for effective risk management it is necessary for the unique role and function of the new body to be defined.

The board in turn transfers a lot of authority to the CEO and management for carrying out the management function (even though the CEO might also be a member of the governing board). Failing to recognise and then articulate these unique and different roles can lead to confusion, and overlap, which in turn heightens the level of manageable risk which is faced by board members.

The choices that are available to management and the incoming new board Chairman, for example, really

centre on the appropriate tasks that the board should carry out. From these tasks flow the supporting processes and information requirements. In selecting these tasks, the Chairman and senior management need to recognise the limits of the board's capability. It can only act as a group, spends a limited amount of time together, and has limited resources (when compared with management). So leading boards will limit their formal authority over decisions to those where it is more efficient for the board to take rather than the CEO and senior management, and to those where there is a conflict of interest if the CEO and senior management were to have the decision authority – an obvious example is in remuneration decisions.

In terms of the decisions for which it is more efficient for boards to hold authority, this is largely a question of what has worked well for the organisation in the past. However, it is worth revisiting this question at the time of an IPO. It may be that very large capital expenditure decisions over a threshold require the board to take the decision because it can essentially 'bet' the company. This may also be the case where there are significant shifts in operations, such as into new geographies or into new business areas.

Equally, boards might also have an important and valuable role to play in the development and adoption of certain key policies, such as policy on environmental matters for companies

that are involved in the extractive industries. In each case, the matters decided for board involvement and authority are determined by the unique capability that the board has, and can bring to the particular issue. Indeed, the way in which the board role and its decision authority takes shape may determine the qualities and experience being sought of new non-executive directors.

Carefully identifying and articulating the board role can therefore have a role in the recruitment and nomination process. Of course, formal legal requirements may also be relevant as to what is considered to be within the board's remit, although there is normally significant discretion as to what authority is retained and what is delegated.

As for the board's role in dealing with natural conflicts of interest, this tends to be concentrated in the areas of audit and risk, and executive remuneration areas. For boards that have executive members, one organisational step that must be taken is for committees composed only of independent non-executive directors to be established, and given mandates. These mandates (or terms of reference) become a further elaboration of how the board (or committees, under board authority) take on processes to represent and protect the interests of external investors.

In audit process terms, the mandates extend to the development of financial reporting and accounting

policies, the relationship with the external auditor (including appointing and evaluating that firm), the relationship with the internal auditor, and indeed setting the risk management framework and evaluating the company's performance under it.

In remuneration process terms, the mandates extend to the design of overall policy applying to the CEO and senior management, the development of metrics by which performance will be judged, the processes for interacting with the senior human resources professionals in the company, and the format and style of reporting to shareholders over remuneration choices.

For a company coming to the public markets for the first time, the practical timing issues are important and designing and implementing a board delegation and monitoring system and associated processes needs to be done over a 12- to 18-month period, where possible. For companies shifting from a pure executive board model, a very helpful, practical step is to design a forward board and committee agenda for the first 24 months following IPO. This requires the existing reporting and assurance processes to be revisited and to work out what new or stronger reporting processes are necessary.

Management with the new Chairman can then assess the extent to which the format and content of reports need to be adjusted to support the active and confident participation of new non-executive directors.

Where an Audit Committee Chairman has been identified, close cooperation between the CFO and that person is clearly very beneficial in the set-up phase. Invariably, the preparatory work identifies resourcing and personnel gaps which need to be budgeted for and filled. Depending on the existing structure of the company, this might involve at a minimum strengthening the Company Secretariat, the Internal Audit, and the Investor Relations functions.

With all the pressure of keeping the business going in preparing for the IPO, and the constraint on resources, it is tempting to focus only on the transaction. However, from a board risk management perspective, there are a number of important choices and steps that can be undertaken in a structured way to support the transition from a private, closely held organisation to a listed public company. Where a new board with non-executive directors follows from selling a significant proportion of equity to external investors, there is a genuine need to develop new structures and processes. Boards and management can make a great contribution to managing risk at the asset level and at board level by being disciplined about the manner in which authority is transferred and accounted for.



Tax Due Diligence / Tax Structuring

by Peter Uebelhart,
Partner, International Corporate Tax
& Susanne Schreiber,
Director, International Corporate Tax,
KPMG AG

Unlike in a sales process, an investor has no option to ask for contractual protection, but can only reflect tax risks in his investment decision based on the information disclosed in the prospectus. Thus, the tax risks of the group going public are normally reviewed in a tax due diligence and, where relevant for the investor, disclosed in the prospectus.

The following areas will typically be a focus of the pre-IPO tax due diligence:

Risks from Past Restructurings and Tax Structuring

The preparation of the IPO may require changes in the group structure in order to streamline and optimise it for the capital market. Disposals, mergers or intercompany transactions which have not been diligently planned and implemented can trigger significant tax exposures (taxation of hidden reserves, withholding tax, stamp duties, transfer taxes etc). When considering certain pre-IPO tax structuring measures, it should be taken into account that the structure will be subject to a pre-IPO due diligence and thus, confirmation by the competent tax authority should be sought, where possible. The impact of an aggressive or non-tested structure on the valuation may in certain cases outweigh its tax benefits.

Special Tax Status and Tax Holidays

If the conditions for certain tax privileges or tax holidays are or will not

be met, this may result in tax implications going forward or trigger historic tax risks. Such risks may impact the valuation of the group and the findings of the tax due diligence can therefore also be a starting point for looking for solutions to mitigate such risks.

Impact of the Capital Contribution Principle

Switzerland has introduced the capital contribution principle in 2011 which allows the distribution of certain qualifying reserves of Swiss companies without withholding tax, as well as providing for Swiss investors to receive such distributions free of income tax (also from foreign companies). As this is very attractive for investors, the amount of qualifying reserves should be analysed and possible reductions may need to be disclosed in the prospectus.

Utilisation of Tax Loss Carry Forwards

Tax loss carry forwards may in certain countries forfeit upon the IPO or prior restructurings. Where tax losses have been reflected in the effective tax rate going forward, a possible forfeiture should be addressed in the prospectus.

Compliance / Tax Audits / Tax Litigation

Negligence in compliance tasks can – at least in certain jurisdictions – result in severe penalties and cash-outs for the group. Where a tax audit has started and material tax liabilities appear likely, a provision or at least a disclosure may be required. The same is true for ongoing tax litigation.

Intercompany Relationships / Set-up of Foreign Activities

Transfer pricing, i.e. the set-up of intercompany relationships, is becoming more and more important and the tax authorities increasingly focus on identifying non-arm's length transactions and lacking documentation of such relationships. Challenges by the tax authorities can result in additional tax payments, but also penalties. Thus, it is highly advisable to establish a solid transfer pricing concept in the pre-IPO phase. Further, the set-up of foreign activities may trigger taxes, e.g. if a permanent establishment (fixed place of business or dependent sales agent) is assumed by a foreign tax administration. This may lead to double taxation and compliance duties (for corporate income tax, but potentially also payroll tax).

VAT

In an international group, VAT issues can be complex and formalistic requirements can be of significant importance. The VAT position should therefore be carefully reviewed in the pre-IPO phase in order to avoid unexpected cash impacts on the group later on.

Summary:

As mitigating tax risks and implementing tax planning takes time, it is essential to perform an assessment of the tax position and tax risk management processes very early on in the process and not only when the due diligence is required in the IPO process. This is the best way for tax exposures to be effectively managed and tax risks to not affect the valuation of the group during the IPO.



Legal Due Diligence

by Dr. Hansjürg Appenzeller,
Attorney-at-law, M.C.J., Partner,
Homburger AG

Legal due diligence is an integral part of the process required to be carried out in connection with a contemplated IPO. The term “legal due diligence” in connection with IPOs broadly refers to an investigative process pursuant to which information relating to the company, its subsidiaries and their operations is reviewed with the aim of providing prospective investors in the prospectus with all material information, without a material misstatement or omission, prior to making an investment decision.

Legal due diligence is designed to help minimise potential liability for the persons involved in the preparation of the prospectus. The scope and comprehensiveness of the legal due diligence investigation is important not only from a legal standpoint to minimise liability but also from a reputational perspective as the reputation of persons involved in the IPO process may be significantly damaged if it turns out that they failed to uncover and disclose to prospective investors critical issues relating to the company or the IPO.

Responsibilities and Potential Prospectus Liability

A company that intends to make a listing application must produce a prospectus disclosing the information required by the Listing Rules of SIX Swiss Exchange and, in connection with primary offerings, article 652a of the Swiss CO. The prospectus must include, in addition to a number of specific disclosures, sufficient

information for knowledgeable investors to reach an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the company, as well as the rights attached to the shares to be listed.

If a prospectus is inaccurate or incomplete, every person involved in its preparation may be exposed to prospectus liability claims if such a person has acted wilfully or negligently. In addition, if the company issues a defective prospectus, the persons responsible for such information may be at risk of criminal sanctions.

Persons who have participated in the preparation of the prospectus may exonerate themselves to a certain degree if they can demonstrate that they exercised all diligence and care in connection with the preparation of the prospectus or that they justifiably relied on the advice of experts (the so-called “due diligence defence”). Legal due diligence plays a key role in establishing a due diligence defence.

In addition, legal due diligence will highlight at an early stage of the process any issues that need to be dealt with to ensure that the company will be suitable for the IPO. Through this process, the company will also gather the information required to be included in the prospectus.

To minimise potential liability the persons involved must:

- ensure that the prospectus contains all of the necessary information and complies with the prospectus disclosure requirements
- reduce the risk of any material omissions and
- ensure that the prospectus informs potential investors of any risks associated with investing in the company

To achieve this, a comprehensive process of due diligence must be carried out in relation to the company, its subsidiaries and their operations. If adequate due diligence has been carried out, it will be more likely that persons involved will be in a position to show that reasonable care was used in the preparation of the prospectus, and that it was reasonably believed that the information it contained was true and not misleading or that a matter was properly omitted.

Legal Due Diligence Process

The overall due diligence process will consist of legal due diligence, financial due diligence and business due diligence. In the process, the information required to be included in the prospectus will be gathered. Such information will form the disclosures that must be made to comply with the prospectus disclosure requirements.

Legal Due Diligence Request List

The first step in the process will usually be the preparation of a legal due diligence request list setting out all documents and information necessary for analysing and evaluating the company, its subsidiaries and their operations. It is an important step in formulating the scope of a due diligence review.

The company and its advisors will be asked to provide written responses in relation to the questions set out in the request list and/or copies of documents. The legal due diligence request list will usually be extensive and will cover almost all of the areas of the company’s business. A detailed and targeted request list can make the due diligence process more efficient, which may also lead to a more thorough and cost-effective review.

In general, a due diligence request list will cover:

- corporate information (e.g. constitutional documents) and history of the company
- share capital and shares
- board of directors and officers
- financial information
- tax matters
- financing
- property and leases
- business activities of the company and its subsidiaries, including strategy, markets and competitors, customer and supplier information as well as material agreements, such as agreements with unusual or onerous terms and/or related party contracts
- intellectual property and information technology and the associated rights used by the company and its subsidiaries
- employee matters, pension and employee benefit plans
- any litigation and investigation that the company and its subsidiaries may be involved in
- insurance
- environmental and safety issues
- regulatory and compliance

Despite the general nature of the types of information that will be requested, the list itself should be fairly specific, and tailored to the company and the business sector in which it operates.

Directors' and Officers' Questionnaire

In compliance with applicable regulations, the prospectus must contain certain information pertaining to the members of the board of directors and the executive management of the company. The aim of the directors and officers questionnaire is to gather the necessary information required to be included in the prospectus.

The questionnaire to be sent separately to each (proposed) member of the board of directors and the executive management of the company usually requests information about the personal circumstances, interests in the company or its group, bankruptcies, convictions and the like.

Data Room

The documents and information collected based on the due diligence request list will be made available to the persons involved in the preparation of the prospectus. To that end, the company must set up a data room that will allow these persons to review the collected documents and information. The data room will enable the company, the underwriters and the advisors to verify necessary information to be included in the prospectus.

The traditional data room is a physical room, normally in the company's offices (or those of its lawyers), which the underwriters and the advisors will visit in order to inspect and report on the various documents and other data made available. Teams involved in the due diligence review will typically have to be flown in from many countries.

On certain IPOs it may prove more convenient and efficient to set up a virtual data room (VDR) where the key documents and information requested under the due diligence request list will be made available for online review. A VDR is essentially an internet site with controlled access (using a secure log-on supplied by the company which can be disabled at any time) to which the underwriters and the advisors are given access.

Due Diligence Review

The legal due diligence includes the review of all documents in the data room with respect to their potential relevance for disclosure in the prospectus. Any information which

- may have an influence on a reasonable investor's decision to purchase shares of the company
- may have an influence on a reasonable investor's perception of the price or value of the shares of the company or
- may shed a new light on statements made in the prospectus should be disclosed in the prospectus.

Legal Due Diligence Report

A legal due diligence report will then usually be produced from the information gathered in the due

diligence process. The report is supposed to reflect the results of the due diligence. Insofar as a document has a direct bearing on the contents of the prospectus, the prospectus should be amended as appropriate.

The depth of detail in the report will depend on the nature of the transaction, including the amount of the fundraising to be undertaken by the company and the level of risk associated with the IPO.

Legal Opinions

The syndicate banks request it and the company's legal advisors to issue legal opinions. Legal opinions often serve to establish their due diligence defence. To enable legal advisors to issue legal opinions, a thorough due diligence review is indispensable.

Usually, legal advisors are requested to issue technical legal opinions and disclosure opinions. The key points in technical legal opinions would cover legal aspects (such as due incorporation of the company, valid title transfer of the shares and the like). In a disclosure opinion, legal advisors confirm that to their knowledge and belief, the prospectus neither contains any statements which are incorrect, misleading or not in compliance with the statutory requirements, nor omits to state any material fact.

Conclusion:

Due diligence and, in particular, legal due diligence play an integral part in preparing a company for the IPO. The comprehensive investigation involved in carrying out legal due diligence in relation to a company, its subsidiaries and their operations will assist in minimising any potential prospectus liability by helping to ensure that the prospectus contains all the relevant details relating to the company and that it complies with the applicable disclosure requirements.



The Underwriting Agreement

by Dr. Daniel Daeniker,
Attorney-at-law, LL.M., Partner
& Dr. Frank Gerhard,
Attorney-at-law, LL.M., Partner,
Homburger AG

When a company goes public, it enters into an agreement with the banks organising the share offering and listing. This agreement, known as an underwriting agreement, broadly serves two purposes:

- firstly, the underwriting agreement defines the IPO process and the rights and obligations of the company (and selling shareholders) on the one hand, and the banks on the other hand
- secondly, it provides for a risk allocation between the company and the banks, in particular with a view to potential prospectus liability

The banks are organised in a banking syndicate the members of which are sometimes called underwriters, sometimes managers. There is a certain hierarchy of banks within the syndicate: the top level comprises one or several global coordinators and bookrunners responsible for managing the offering, assessing the demand and making proposals for the final IPO price as well as the investors to whom shares are allocated. Lead managers and co-lead managers, each underwriting a smaller number of shares, assist in the offering process. Gener-

ally, only securities dealers registered with the Swiss Financial Market Supervisory Authority FINMA may act as underwriters in Switzerland; non-Swiss banks dealers may participate in the offering on a cross-border basis.

Usually, the underwriting agreement is executed on the day before the launch of the IPO, i.e. before the subscription period begins. However, in order to be responsive to current market conditions, the offer price will only be determined after the end of the subscription process. Hence, the agreement will be completed by a pricing supplement signed before the first trading day.

Underwriting agreements are usually governed by Swiss law and typically provide for a jurisdiction clause with place of jurisdiction being Zurich.

The Underwriting Agreement Defines the IPO Process ...

The underwriting agreement is entered into by the company and the selling shareholders, if any, on the one hand and the members of the banking syndicate on the other hand.

Shares Sold in the Offering

An IPO may involve the sale of newly issued shares, which is known as a primary offering. The proceeds of a primary offering go to the company and can be used for debt reduction or investments into ongoing projects.

Alternatively, an IPO may involve the sale of existing shares by one or several selling shareholders, known as

a secondary offering. The proceeds of a secondary offering go exclusively to the shareholders who have chosen an IPO as a way to exit their investment. An IPO may also combine a primary with a secondary offering.

In both cases, the company will commit to taking all necessary steps to procure the creation of newly issued shares and the delivery of existing shares on the closing date.

Pricing and Allocation

The bookbuilding method is the prevalent pricing method for IPOs in Switzerland. Before the bookbuilding commences, in the pre-marketing period, the banks canvas the views of potential investors on the company and the valuation of the offered shares. Based on this feedback, the banks will set the price range for the bookbuilding which will take place as part of the subscription process.

During the subscription period, the offering is marketed to institutional and retail investors for up to two weeks. Institutional investors have the right to place preliminary, non-binding orders for a given quantity and price of the shares being offered; the investors' indications of interest are recorded by the syndicate in an order book. Retail investors place orders for a given number of shares without any indication of purchase price.

At the end of the bookbuilding process, the bookrunners (i.e., the most senior banks in the syndicate) assess the highest price at which

the shares can be offered consistent with a satisfactory performance in the aftermarket. Selling at the highest price to the highest bidder makes little sense, because investors who have over-subscribed will immediately dump their shares on the market, causing downward pressure on the share price. Rather, shares should be placed with long-term investors at a price which causes them to buy additional shares immediately after the IPO, thus effecting a share price increase after the offering.

Concurrent with the determination of the offer price before the first trading day, the banking syndicate allocates the shares to the institutional and retail investors in accordance with allocation criteria agreed between the company and the banking syndicate. Swiss underwriters are subject to the Swiss Bankers' Association's Directive on the Allocation of Equity-related Securities offered by way of a Public Offering in Switzerland (the Allocation Directive), which sets up minimum standards for the banking industry.

Over-allotment Option

The underwriting agreement typically allows the banking syndicate to over-allot, i.e. to sell more shares than have actually been offered in the first place. Since the banks sell more shares than are being offered, they are "short" with respect to the over-allotted shares; this short position is covered by an over-allotment or "green shoe" option granted to the banks by the company or other sellers of shares. The over-allotment option entitles the banks to subscribe or purchase, respectively, additional shares on the same terms as the original offer shares. It therefore affords the underwriters some flexibility in providing aftermarket support for the shares following the IPO:

- If the share price rises and stays above the offer price, the underwriters typically exercise the over-allotment option and thus close their "short" position
- If the price falls below the offer price, the underwriters typically repurchase shares in the open

market, which has a stabilising effect on the share price, and thus cover their "short" position by these repurchase without having to exercise the over-allotment option

Thus, the over-allotment option is generally exercised only if the shares perform well in the aftermarket.

Commission

The underwriting agreement usually provides for the payment of a commission to the underwriters only in the case of the closing of the offering. In addition, the underwriting agreement sometime provides for an incentive fee paid by the company at its sole discretion. Finally, the agreement sets forth the costs and expenses which have to be paid by the company and the selling shareholders.

... and the Underwriting Agreement Provides for Risk Allocation

Representations and Warranties

The underwriting agreement normally provides for a list of representations and warranties by the company and, to a lesser degree, the selling shareholders. Among other things, the company will represent:

- that the offer prospectus is complete, correct and not misleading
- that the shares to be offered are duly authorised and validly issued, and that subscribers will obtain ownership of these shares without any restrictions
- that the books and records of the company are in order
- that the company is operating its business in compliance with applicable law, in particular as regards obtaining the necessary authorisations and licences, complying with anti-bribery and similar laws, being up to date with taxes and social security and the like

The selling shareholders generally represent that they own and can freely sell the shares being offered, and that they are not aware of any is-

sues relating to the company or the prospectus under which the shares are being offered.

Indemnity

In a public offering of securities, the most common basis of liability is based on false or misleading statements in the offering prospectus. Under Swiss statutory law, anyone who has participated in the preparation or dissemination of a prospectus or a similar communication containing statements which are untrue, misleading or not in compliance with statutory requirements, may be held liable to any acquirer for the loss incurred as a result of such statements.

The underwriting agreement will typically contain an indemnity under which the company and, to a certain extent, the selling shareholders, agree to compensate the banking syndicate if a third party sues the banks for prospectus liability. The logic behind the provision is that the company is better in a better position to control the accuracy and completeness of the prospectus than the banks.

Conditions and Termination

The underwriting agreement typically provides that the obligations of the banking syndicate to purchase and pay for the shares will be subject to the satisfaction of certain conditions, including:

- the correctness of the representations and warranties of the company and selling shareholders
- the approval of the listing
- the absence of any material adverse change likely to affect the company's business
- the receipt by the banks of certain confirmations from the auditors and the lawyers advising on the offering (comfort letters, legal opinions)
- the absence of material market disruptions, known in jargon as force majeure events

In case of a termination after the capital increase has been registered in the Commercial Register, a mechanism to unwind the transaction is provided for in the underwriting agreement.

Management Participation

*by Dr. Matthias Courvoisier,
Attorney-at-law, MSc in Finance, Partner,
Dr. Marcel Giger,
Attorney-at-law, M.C.J., Partner
& Theodor Härtsch,
Attorney-at-law, Partner,
Baker & McKenzie*

Management participation is key in every IPO. It is management that bears responsibility for a significant portion of the offering documents. Management typically prepares the data room for the legal due diligence, participates in the drafting sessions for the prospectus and in the financial due diligence meetings. It is also management which holds the road show presentations, thereby selling the stock of “its” company to prospective anchor investors. It goes without saying that a proven management with a strong track record, which remains invested in the issuer after the IPO, is a strong signal of confidence to the market. Because of these factors, it is important that management participation is structured and disclosed in an appropriate manner.

In some instances, particularly in case of issuers held by private equity companies prior to an IPO, there are different share classes providing special rights to investor and/or to management shareholders. Typically, an issuer will create a single share class prior to the IPO. Very often, issuers have incentive schemes for the members of the executive management in place. In many cases, these incentive

schemes must be adjusted prior to the launch of an IPO, as incentive structures in a closely held company are rarely compliant with the requirements of a publicly listed company. In particular, where certain pre-IPO incentives are agreed, they should be paid out to management prior to the IPO. This may lead to disclosure in the prospectus.

In addition, new management participation schemes (share or restricted stock unit plans, stock option plans, or cash-based performance plans or similar participation plans) will be put in place, which must be disclosed in the prospectus as well. These participation schemes will have to be tailored to the circle of participants. When doing so, the issuer will need to take into account employment and tax law restrictions of all countries in which participants are domiciled or in which they work. In many instances, an issuer will establish an umbrella participation scheme, which is complemented by a number of local sub-plans dealing with the particularities of each jurisdiction.

If management holds a stake in the issuer, it will typically be subject to lock-up obligations for a term of 180 days to 360 days. During this period, management must not sell any shares without the prior consent of the syndicate banks. Provided their aggregate shareholding in the issuer exceeds 3%, the members of the management subject to lock-up obligations will also form a group of significant shareholders in accordance with Art. 20 of the Swiss Federal Act

on Securities Trading and Stock Exchanges. Again, disclosure is required. Apart from the stake held in the issuer, the prospectus will contain a description of the lock-up obligations, including their term.

Some issuers wish to allow for a preferential allocation of shares in the offering for second tier management. It is possible that the shares are allocated at the offer price or with a discount to the offer price, giving an additional incentive for members of the second tier management (or even employees) to subscribe for such shares. Both options are perfectly possible, provided that there is adequate disclosure in the prospectus. In such cases, the syndicate banks will insist on additional lock-up obligations for these members of the management or the employees (particularly if they receive shares at a discount).

Additional disclosure is related to compensation of the members of an issuer’s board of directors and executive board. As per CO requirements, the aggregate total compensation of each of these governing bodies and the highest individual compensation of a member of both management bodies must be disclosed. In addition, loans to members of the governing bodies or transactions between them and the issuer, which are material or not at arms’ length must be disclosed as well. To avoid disclosure, the parties may restructure their relationships ahead of the IPO, bearing in mind that this may avoid disclosure in the prospectus but not in the financial statements.



Prospectus Including Offering Restrictions

by Philipp Haas,
Attorney-at-law, LL.M., Partner
& Thomas M. Brönnimann,
Attorney-at-law, LL.M.,
Senior Associate,
Niederer Kraft & Frey AG

An issuer intending to list its shares on SIX Swiss Exchange is required to publish a listing prospectus pursuant to articles 27 et seq. of the Listing Rules. In addition, public offerings of newly issued shares are subject to certain prospectus requirements set out in article 652a of the Swiss Code of Obligations (CO) (issue prospectus). In practice, the information required to be published in the listing prospectus and in the issue prospectus is usually integrated in one single document (a so-called “offering and listing prospectus”).

No Offering Restrictions

Article 652a CO requires an issue prospectus when new shares are offered to the public in Switzerland and also contains certain disclosure items that must be included. The issue prospectus must be made available to investors but is not subject to any registration requirements with any Swiss regulator. Thus, in contrast to many other jurisdictions, the public offering of shares in Switzerland is not subject to offering restrictions in the narrow sense. A breach of the prospectus requirements set out in article 652a CO may, however, result in prospectus liability.

Contents of the Prospectus

Disclosure Requirements Pursuant to the SIX Swiss Exchange-Listing Rules

The disclosure requirements under the SIX Swiss Exchange Listing Rules are largely modelled on the EU Prospectus Directive, but are less extensive and more flexible. Switzerland is not an EU Prospectus Directive jurisdiction, i.e. the EU Prospectus Directive is not applicable to a public offering of shares in Switzerland and the listing of shares on SIX Swiss Exchange.

The listing prospectus must contain the information necessary for competent investors to make an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the issuer, as well as of the rights attached to the shares. The information must be presented in such a way that a competent investor is enabled to assess the quality of the issuer and the characteristics of the shares. The prospectus must not contain inflammatory or promissory statements. These are the overreaching requirements of the SIX Swiss Exchange Listing Rules but there are some more detailed content requirements for the listing of shares contained in the prospectus disclosure schemes A (relating to equity securities), B (relating to investment companies) and C (relating to real estate companies), in the Directive on Financial Reporting and in the

Directive on the Presentation of a Complex Financial History. The principal disclosure items are:

- Risk factors
Under a specific heading “Risk Factors” of the listing prospectus, the issuer must describe the principal risks of relevance for the issuer and the shares. The former should be specific to the issuer and its industry – often a prospectus will divide the risk factors so as to address these separately.
- Business description
This section must describe the issuer’s business and operations. It usually starts with an overview section, followed by a summary of the issuer’s strengths and strategies and a description of the principal products or services sold by the issuer, together with a description of where and how these are produced and sold, including information on the issuer’s customers and suppliers. The business description section must also include information on the number of employees, location and real estate ownership, patents and licences, research and development and pending or threatened material court, arbitral and administrative proceedings.



- Information on the supervisor body, the executive management and the auditors
The listing prospectus must provide information on the members of the supervisory body and the executive body including their ownership of shares and option rights of the issuer and potential legal proceedings and convictions against them, describe employee participation schemes and state the auditors for the last three years
- Financial information
The listing prospectus must include the audited consolidated annual financial statements for the last three (Domestic Standard: two) full financial years (exemptions specifically applying to young companies are laid down in a directive), drawn up in accordance with IFRS, US GAAP or other internationally accepted accounting standards for companies not incorporated in Switzerland (Swiss GAAP ARR is also permissible for a listing under the Domestic Standard), and interim consolidated financial statements if the balance sheet date of the last audited consolidated financial statements is more than nine months in the past on the date the listing prospectus is published. The listing prospectus must also disclose material changes in the issuer's assets and liabilities, financial position and profits and losses that have occurred since the most recent annual or interim financial statements. If the corporate structure of an issuer has undergone significant changes that has not been presented in the most recent audited financial statements, additional pro-forma financial information for the last financial year and/or audited combined financial statements for the last two (possibly three) financial years must be presented in the listing prospectus.
- Other information about the issuer:
 - Capital structure, shares, voting and other shareholder rights

- Overview of capitalisation and indebtedness
- Dividend policy
- Principal past, current and future investments
- Principal shareholders

Disclosure Requirements Pursuant to Article 652a CO

With the exception of the requirement to include the most recent unconsolidated statutory financial statements of the issuer and to provide information on the dividends distributed within the last five years, the disclosure requirements pursuant to article 652a CO are not particularly demanding and a prospectus compliant with the SIX Swiss Exchange Listing Rules generally contains the minimum disclosure requirements of the CO.

Form of the Prospectus

As a general rule, the prospectus must be a single document. There are two exceptions to this rule:

- Offer price and/or offer size supplement:
Information on offer price and/or offer size can subsequently be published in a supplement to the first part of the prospectus once the offer price and/or the offer size is/are fixed at the end of the bookbuilding period. The first part of the prospectus together with the supplement forms the final prospectus.
- Incorporation by reference:
Information may be included in the prospectus in the form of a reference to specific previously or simultaneously published documents including annual financial statements and auditor's reports as well as interim financial statements and documents that have been produced in connection with a specific transaction, such as a merger or spin-off.

Language

Generally, all documents that must be submitted to the Regulatory Board may be produced and published in German, French, Italian or English. This rule also applies to the

prospectus meaning that the prospectus may for instance, be produced and published in English only, without the need to prepare a summary in German, French or Italian.

Responsibility for the Prospectus

The prospectus must include a statement of the issuer that it assumes responsibility for the information in the prospectus. Responsibility for the prospectus carries with it the possibility of liability for the issuer as well as its directors, officers, employees or advisors involved in the preparation or dissemination of the prospectus.

Listing Procedure

The listing of shares on SIX Swiss Exchange requires a listing application that needs to be submitted together with, among other documents, the prospectus to the Regulatory Board for review and approval no later than 20 trading days prior to the intended listing date or, if the offering and listing of the shares involves a bookbuilding procedure, no later than 20 trading days prior to the start of the bookbuilding period. Generally, the prospectus approval process is less onerous than in most EU jurisdictions and the US. For example, the prospectus may be submitted to the Regulatory Board in draft form and amended drafts may be filed within the 20-trading day review period without starting the review period all over again.

Research and Publicity Guidelines

by Dr. Matthias Courvoisier,
Attorney-at-law, MSc in Finance, Partner,
Dr. Marcel Giger,
Attorney-at-law, M.C.J., Partner
& Theodor Härtsch,
Attorney-at-law, Partner,
Baker & McKenzie

Research and publicity guidelines have one common goal: they shall ensure that any communication of the issuer as well as research reports prepared by syndicate banks are prepared and distributed in accordance with applicable securities laws. If complied with, these guidelines are an effective means of mitigating risk for all parties involved in the IPO.

In many jurisdictions, any communication by the issuer in connection with the offering is considered to be a prospectus-like document which could potentially trigger prospectus liability for the issuer. In addition, any uncoordinated dissemination of offering-related communication could lead to registration obligations in certain jurisdictions. Both events could trigger lengthy cooling-off periods which would lead to a postponement of a planned IPO or even to its cancellation. Remember the famous *Playboy* interview of the two Google founders a few weeks prior to the first day of trading!

Similarly, investment banks are subject to a number of rules relating to the avoidance of conflicts of interest. Naturally, the investment banking division orchestrating an IPO aims at presenting an IPO candidate in the best possible way. Banks therefore prepare IPO-related research reports. However, it is key that a bank's buy-side analysts prepare the reports independently from the investment banking division as well as the issuer. This is the purpose of the research guidelines. They also ensure that the research report is not considered as an offering-related document, thereby creating potential prospectus liability for the banks.

To mitigate these risks, all parties involved in the IPO process commit to adhere to certain procedural rules. The publicity guidelines provide for the prior approval of any issuer communication by the syndicate banks and the law firms involved in the IPO. Furthermore, they contain appropriate legends which must be included in the press releases. Finally, they also deal with the use of the internet. As this is a global medium, the issuer will usually ensure that any offering-related information is accessible only after a user has passed through a series of filters.

The research guidelines in contrast ensure that the analyst reports are independently prepared by the syndicate banks' research departments. They contain detailed rules and regulations as to the flow of information between the syndicate banks and the issuer as well as within the syndicate banks. Typically, the issuer and the investment banking division will only have the opportunity to review the redacted draft research reports with respect to factual errors. The analysts' valuation and the conclusions will not be shown to them, thereby ensuring that neither the issuer nor the investment banking division may even be tempted to influence an analyst's opinion. Only the syndicate banks' compliance departments and their law firm will review the entire report. Furthermore, the research guidelines also contain rules related to the dissemination of research reports, as the banks involved otherwise could also become subject to prospectus liability, given that a research report could be considered an offering-related document.

Even though both guidelines seem to be of a formal nature only, and are often regarded as a nuisance, they are key to a smooth and successful IPO.

Comfort Letters

by *Therese Amstutz*,
 Director, Legal
 & *Thomas Wicki*,
 Director, International
 Accounting and Reporting,
 KPMG AG

Banks acting as lead managers in capital market transactions involving a securities prospectus regularly require the issuer to procure a comfort letter from its auditors. In such cases, the auditors perform agreed-upon procedures relating to financial information of the issuer.

The procurement of a comfort letter is part of the financial due diligence process, which lead managers undertake in order to verify the accuracy and completeness of a prospectus. The scope of work to be carried out by the auditors is determined by the lead managers and the issuer. Accordingly, a comfort letter does not include representations regarding the sufficiency of the procedures for the lead manager's purposes.

Professional Standards

In the absence of specific Swiss professional standards governing comfort letters, audit firms have developed model comfort letters based on established foreign guidance such as the Statement on Auditing Standards No. 72 (SAS 72) of the American Institute of Certified Public Accountants, the Handbook of the International Capital Market Association (ICMA) and the German "Standards for Issuance of a Comfort Letter" issued

by the Institute of Public Auditors in Germany (IDW AuS 910). The type of comfort letter issued depends on the facts and circumstances of the transaction.

Content and Procedures

In a typical comfort letter, the auditors report on the procedures performed and on changes in financial information through a date shortly before the issuance of the comfort letter (the "change period"). The change period procedures are made on specific financial statements line items in relation to the latest audited or reviewed financial statements included in the prospectus. These line items are agreed between the lead managers and the auditors and typically include line items such as revenue, share capital and long-term financial debt.

The lead managers will usually request that the auditors provide what is referred to as "negative assurance" on the change period findings. Negative assurance is a representation by the auditors that nothing has come to their attention that caused them to believe that there have been changes in the specified financial statement items during the change period (e.g. a decrease in revenue or an increase in long-term financial debt). If the auditors have not received sufficient appropriate evidence with respect to such changes, they may not provide negative assurance. In such cases, the comfort letter is limited to stating the procedures performed and the findings obtained. The same can apply if the change period exceeds 135 days, according to for example, standards such as SAS 72 or IDW PS 910.

For the purpose of the issuance of the comfort letter the auditors carry out certain procedures which usually include the reading of minutes of the board of directors, reading of internal management accounts and making enquiries and receiving representations from management. In addition to the procedures related to the change period, auditors are generally asked to verify whether certain financial information included in the prospectus agrees to the audited or reviewed financial statements or the underlying accounting records of the issuer.

A comfort letter is dated on the same date the prospectus is issued. The lead managers may ask the auditors to provide more than one comfort letter in cases where there is a book-building process and more than one prospectus is issued. In addition, auditors may be asked to provide an update of the comfort letter (referred to as a "bring-down" comfort letter) on the closing date.

Due Diligence Calls or Meetings

In addition to obtaining a comfort letter, lead managers often request that auditors participate in "due diligence" calls or meetings, during which the auditors are asked to respond to certain questions in relation to the audit or review. Information provided by the auditors during such calls or meetings is generally limited to responses to enquiries regarding factual matters of the audit or review and does not include commentary on specific accounting matters, details of internal controls or future events.

Listing Requirements on SIX Swiss Exchange

by Rodolfo Straub,
Head of SIX Exchange Regulation

The equity market of SIX Swiss Exchange comprises all types of equity. Underpinned by the strength of the Swiss financial marketplace, SIX Swiss Exchange has always pursued an international strategy, not only in the form of an integrated, fully automated trading, clearing and settlement system that forms an ideal system platform for equity trading, but also in the form of internationally recognised regulatory provisions.

Furthermore, the distinct international private-banking clientele of Swiss banks is an ideal environment for international companies. These factors make SIX Swiss Exchange the home stock exchange for globally leading multinational companies. The widespread presence of banks, and their tremendous research activity,

ensures that listed companies are visible and valued fairly.

In principle, shares and equity securities can be listed in accordance with the Main Standard and Domestic Standard of SIX Swiss Exchange. Investment and real estate companies, which may only be listed according to the standards specifically designated for them, constitute an exception in this regard. There are, however, good strategic reasons for a given company to apply for listing under one or the other standard.

Because of the way SIX Swiss Exchange accommodates the needs and corporate strategies of issuers in the context of the regulatory framework, many companies consider the fact of being "listed on SIX Swiss

Admission and Maintenance Criteria by Regulatory Standards

STANDARD REQUIREMENTS	MAIN STANDARD*	DOMESTIC STANDARD	STANDARD FOR INVESTMENT COMPANIES	STANDARD FOR REAL-ESTATE COMPANIES	STANDARD FOR DEPOSITORY RECEIPTS
Accounting standards**	IFRS, US-GAAP	Swiss GAAP ARR, IFRS, US-GAAP	IFRS, US-GAAP	Swiss GAAP ARR IFRS	IFRS
Track record	3 years	2 years	-	-	3 years
Free float	25%	20%	25%	25%	25%
Min. market cap Free float (CHF)	25m	5m	25m	25m	25m
Equity capital (CHF)	25m	2.5m	25m	25m	25m

* Special rules apply to young companies ** And for foreign issuers other accounting standards valid for their home country and recognised by the regulatory board

Exchange” to be more than a sign of excellence. The simple admission procedure, the low listing fees and the straightforwardness of the market are further advantages of being listed on SIX Swiss Exchange.

Admission and Maintenance Criteria by Regulatory Standards

Some differences to other listing locations – which are appreciated by the issuers, include:

- Listing documents are accepted in various languages: English, German, French or Italian
- No quarterly reporting required
- No insider list needs to be maintained

Main Standard

The main standard serves as a means for listing equity securities of companies that are seeking access to the international capital market, as the provisions governing the accounting principles and transparency criteria for this standard are formulated to satisfy the needs of global investors. In order to offer young companies the opportunity to list, the Regulatory Board can grant exceptions to companies with a track record of less than the required three years. However, those companies must fulfil stricter transparency obligations, such as quarterly reporting until they have published three consecutive audited annual statements.

Domestic Standard

The Domestic Standard allows for a lesser degree of share distribution and a lower amount of equity capital, as well as application of the domestic accounting standard, Swiss GAAP ARR besides IFRS, US GAAP ARR and other internationally accepted accounting standards (for foreign companies only). Therefore, this standard is especially suitable for companies that wish to address a more local shareholder base.

Standard for Investment Companies

Investment companies are joint-stock companies whose main purpose is the investment in collective investment schemes and thus earning

yields/and or capital gains. They do not perform a commercial activity in the literal sense (see Arts. 65 et seq. Listing Rules).

Standard for Real Estate Companies

A company qualifies as a real-estate company if it continually draws at least two-thirds of its revenue from real estate-related activities (see Arts. 77 et seq. Listing Rules).

Standard for Depository Receipts

The standard for global depository receipts serves as a means for listing global depository receipts (“GDRs”) (see Arts. 90 et seq. Listing Rules).

Efficient Listing Procedure

As a securities marketplace with self-regulatory competencies, SIX Swiss Exchange offers its new issuers an efficient admission process that takes no longer than four weeks to complete. From the submission of the listing application straight through to the first trading day, all related decisions are taken by the competent internal governing bodies so there is no involvement of any governmental authorities that could prolong the listing process and make it more expensive.

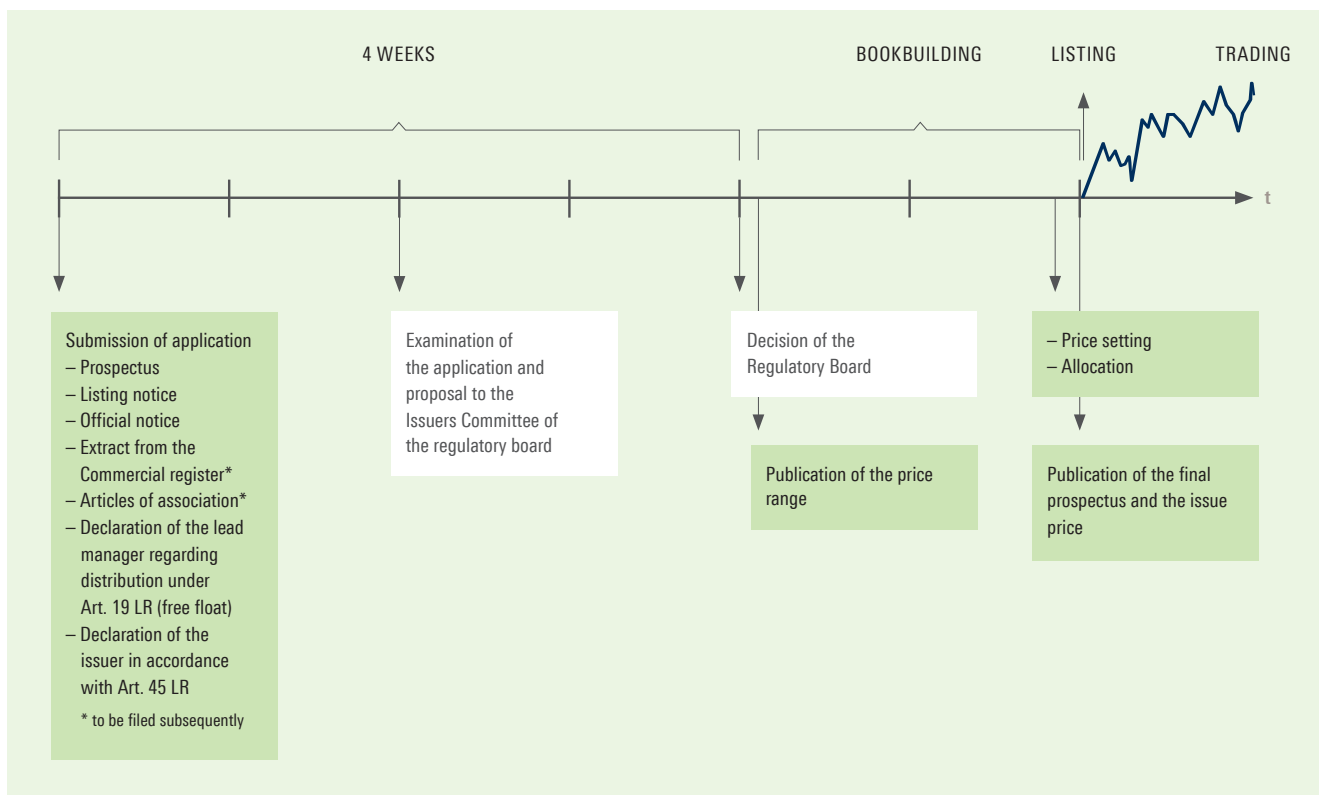
Being Public – After the First Trading Day

Once successfully listed, issuers are under the obligation to report certain facts and events. Reporting obligations under stock-exchange law are intended to ensure that all relevant information on listed securities is made available to the Exchange and market participants in a timely manner and suitable form. The information transmitted to SIX Exchange Regulation allows the Exchange to guarantee smooth and orderly securities trading.

The fulfilment of these reporting obligations is a basic requirement for maintaining listing on SIX Swiss Exchange. Reasonable ongoing listing requirements keep the overall costs of being public on a comparatively low level.

“In principle, shares and equity securities can be listed in accordance with the main standard and domestic standard of SIX Swiss Exchange.”

Efficient Listing Procedure



Ongoing Listing Requirements

BEING PUBLIC			
PRIMARY LISTING - ISSUER DUTIES			
RECURRING DUTIES		EVENT-RELATED DUTIES	
Financial Reporting	<ul style="list-style-type: none"> – Audited annual and unaudited interim reports* – No quarterly reporting 	Ad hoc Publicity	– Disclosure of price-sensitive facts
Corporate Governance	<ul style="list-style-type: none"> – Principle of «Comply or Explain» – Exceptions Art. 663b CO 	Disclosure of Management Transactions	<ul style="list-style-type: none"> – Members of the board of directors, the executive committee or related parties – Manager has duty to notify company within 2 business days
Regular Reporting Obligations	<ul style="list-style-type: none"> – Main contacts – Dividends – Capital structure changes etc. 	Disclosure of Shareholdings (acc. to SESTA 20)	– Duty to disclose if thresholds of 3, 5, 10, 15, 20, 25, 33 1/3, 50 or 66 2/3 % exceeded

* IFRS, US GAAP and Swiss GAAP ARR plus other internationally accepted national accounting standards (for foreign issuers only)



Cross-border Listings / Dual Listings

by Dr. Christoph Balsiger,
Attorney-at-law, Partner
& Andrea Huber,
Attorney-at-law, LL.M.,
Senior Associate,
Niederer Kraft & Frey AG

Cross-border and dual listings have gained in importance over the past few decades as many companies have become more international in their orientation. In addition, technological progress and the liberalisation of capital flows have fostered considerable competition among global stock exchanges for equity listing and trades. Access to a broader investor base and increased marketability of a firm's securities are the main benefits of pursuing cross-border and dual listings.

SIX Swiss Exchange has issued a Directive on the Listing of Foreign Companies ("DFC"). If a foreign company is not yet listed on another stock exchange recognised by the SIX Swiss Exchange Regulatory Board, its only route to go is a primary listing. By contrast, if a company is already listed on a recognised stock exchange recognised with equivalent listing provisions, it may choose between a primary listing and a secondary listing. The same applies if a company is to be listed simultaneously on its primary exchange and on SIX Swiss Exchange, also known as dual listing. Where the form of securities is subject to the law of the issuer's home country, the applicant must ensure that trades can be cleared and settled efficiently on SIX Swiss Exchange.

Primary Listing

Listing Requirements

Securities from an issuer having its registered office outside of Switzerland and that are not listed on a stock exchange either in the issuer's home country or in a third country may only be listed on SIX Swiss Exchange if the issuer can provide confirmation that the absence of listing in these countries is not due to non-fulfilment of investor protection regulations. Thus, issuers must provide either a legal opinion from an independent law firm or a relevant extract from the rejection decision issued by the competent authority in the home country in connection with the registration process in question. It must be clear from this extract that the company was not refused listing because it failed to comply with the pertinent investor protection regulations. Prospectus requirements for equity securities are the same as for Swiss issuers.

Listing Procedures

The issuer must describe in the listing prospectus those publications in which the announcements required under the home country's company law will appear. In addition to the issuer declaration required under Art. 45 SIX Swiss Exchange Listing Rules, the issuer must recognise the Swiss courts as having jurisdiction over claims arising out of or in connection with the listing on SIX Swiss Exchange.

The SIX Swiss Exchange Regulatory Board reserves the right, however, to modify the listing procedures as appropriate if, under the home

country's company law, the time at which the shares are legally created is not the same as that under Swiss law (such as entry in the Commercial Register).

Being Public

Primary-listed foreign companies are generally subject to the same reporting obligations as companies incorporated in Switzerland.

Financial Reporting

The SIX Swiss Exchange Directive on Financial Reporting specifies the accounting standards recognised by the SIX Swiss Exchange Regulatory Board. With respect to the listing according to the Main Standard of SIX Swiss Exchange, it accepts either IFRS or US GAAP. Foreign incorporated issuers may also apply the accounting standards of their home country if these standards are recognised by the SIX Swiss Exchange Regulatory Board. Issuers of debt securities only that are not incorporated in Switzerland may use other accounting standards if certain requirements are met as described in the SIX Swiss Exchange Directive on Financial Reporting.

Corporate Governance

The SIX Swiss Exchange Directive on Information relating to Corporate Governance also applies to foreign incorporated issuers whose equity securities are listed on SIX Swiss Exchange but not in their home country. Such issuers are further obliged to apply Art. 663b^{bis} of the Swiss CO (which sets out certain corporate governance related disclosure duties) analogously.

Disclosure of Shareholdings / Takeover Laws

The rules on disclosure of shareholdings pursuant to Art. 20 of Federal Act on Stock Exchanges and Securities Trading (“SESTA”) do, as a rule, not apply to foreign incorporated companies whose shares are listed on SIX Swiss Exchange. Likewise, the SESTA rules on public tender offers only apply to Swiss companies whose equity securities are, in whole or in part, listed on a stock exchange in Switzerland. Exceptions may apply if the foreign company has significant operations in Switzerland.

On 31 August 2011, the Swiss Government submitted to parliament a draft bill for a revised SESTA which, *inter alia*, provides that the rules on disclosure of shareholdings and public takeovers shall also apply to foreign companies whose shares are listed on SIX Swiss Exchange. It is likely that this change will become law such that the disparity between Swiss and foreign incorporated companies with equity listing on SIX Swiss Exchange would disappear.

Secondary Listing

Listing Requirements

The requirements that apply to the issuer are regarded as having been fulfilled if its equity securities are listed in its home country or in a third country on a stock exchange recognised by the Regulatory Board with equivalent provisions. By appointing auditors, the issuer must fulfil the requirements of the Federal Act on the Admission and Oversight of Auditors. The issuer must report any changes concerning its auditors immediately to SIX Exchange Regulation.

The free float is considered adequate if the capitalisation of the shares circulating in Switzerland is at least CHF 10 million, or if the applicant can demonstrate otherwise that there is a genuine market for the equity securities.

Listing Procedures

If an issuer submits a listing application for equity securities within six months of the same equity securi-

ties being listed on the primary exchange, the SIX Swiss Exchange Regulatory Board will recognise the listing prospectus drawn up in connection with listing on the primary exchange, as approved by the competent body of that exchange, provided that technical information such as security number, Swiss paying agent, settling agent and trading currency be added for the Swiss market.

An abridged prospectus for secondary listing on SIX Swiss Exchange must be submitted if the initial SIX Swiss Exchange listing takes place more than six months after listing on the primary exchange, and a listing prospectus was produced in connection with the primary listing. Please note that each abridged prospectus must also contain a “no material change” declaration.

In addition to the fulfilment of the provisions concerning form and timing, a listing notice must further contain reference to the secondary listing, including mention of the home country exchange and the trading symbol used there and trading currency on SIX Swiss Exchange.

In case of all capital transactions that are subject to a listing application, as well as the reporting of dividend payments, the issuer must ensure that an official notice is submitted to SIX Exchange Regulation.

Being Public

The annual and interim financial statements must be drawn up in accordance with the financial reporting standards of the primary exchange and submitted to SIX Exchange Regulation. In addition, confirmation from the primary exchange of the current number of listed equity securities must be submitted once a year.

Facts arising in the issuer’s sphere of activity that are potentially relevant to the price of the equity securities must be published in accordance with the regulations of the primary exchange. The issuer must ensure that SIX Exchange Regulation and the primary exchange are supplied with the information at the same time.

SIX Exchange Regulation conducts an annual data collection survey among secondary-listed issuers with respect to data such as information about the company and the securities, its capital structure, dividend payments, etc. Further, the issuer must ensure that all information that is published under the primary exchange’s regulations is also made known to the Swiss investing public. In addition to the annual data collection survey, specific reporting obligations exist vis-à-vis SIX Swiss Exchange concerning financial statements, change of name or registered office, capital reduction and dividend payments.



NIDC GROUP

SMI 2400.67
 DAX 2305.75
 CAC 40 2949.14

-0.51%
 0.08%
 0.98%
 0.00%

Mittel 252
 DAX Index Average
 EURO 2011
 Hong Kong

WINNER SPI

Global Natural
 Von Roll Hldg
 Frescocon W
 Petrolus Hldg W
 Metall Group W
 Julius Baer Grp W
 Lenz Hldg W

Mittlerer Zinssatz W

0.08
 3.32
 21.50
 5.02
 3.30
 30.33
 280.52
 1.32%
 1.32%

LOSER SPI

UBS W
 NEWTON PHARMA
 Cyto Biotechnolo W
 COLTIE HLDG W
 RMB
 Vonovia Hldg W
 KB Wafa
 Bell W
 Luzerner KB W

14.29%
 6.01%
 3.00%
 5.24%
 5.48%
 5.28%
 5.00%
 1.32%
 1.32%

N-A- 252 00 0.00%

Syndents 17

Financial Reporting

by *Lukas Marty,*
Member of the Executive Committee
& *Susanne Haas,*
Director, Audit,
KPMG AG

One of the prerequisites applicable to IPO candidates is a financial track record documented by historical financial information covering three (Domestic Standard: two) financial years preceding the listing. Exceptions may be granted for young companies.

Historical Financial Statements

SIX Swiss Exchange generally requires financial statements prepared in accordance with IFRS, but US GAAP is also permitted, except in the case of real estate companies. When listing on the Domestic Standard or as a real estate company, entities also have the option of applying Swiss GAAP FER Accounting and Reporting Recommendations, which form a less complex accounting framework that also provides a true and fair view. Issuers not incorporated in Switzerland may use the accounting standards of their home country provided these are recognised by the Regulatory Board (currently IFRS as adopted by the European Union and Japanese GAAP).

These requirements apply to the consolidated financial statements. In most transactions, the prospectus also includes the (unconsolidated) statutory financial statements of the issuer. Annual financial statements need to be audited and the respective audit firm has to be licensed by the Federal Audit Oversight Authority or an equivalent foreign authority.

According to the Listing Rules, interim financial information is required if the listing occurs later than nine months after the date of the latest annual financial statements. Shorter time limits may apply based on company law, for example six months in the case of capital increases by Swiss entities. Interim financial information does not need to be reviewed by the entity's auditors.

Reporting on a Complex Financial History

The issuer's corporate structure may have undergone a significant change or the issuer may intend to carry out a significant transaction, for example an acquisition or a spin-off of certain operations. If such a structural change is significant and has not been presented in the historical financial statements, additional information is required in order to provide a transparent picture of the issuer's financial situation. The determination of whether a structural change is significant is based on a comparison of profit, turnover and total assets before and after the change in structure.

Depending on the nature of the change in structure, the additional financial information may be in the form of pro forma financial information or in the form of specific historical financial statements such as carve-out or combined financial statements. Carve-out financial statements are used when only a part of the organisation, such as a division, will be listed. Combined financial statements are prepared in the absence of consolidated financials by combining the individual financial statements of business units under common control so that

they are considered as one reporting entity. Carve-out or combined financial statements have to be prepared in accordance with one of the accepted accounting frameworks and have to be audited.

The purpose of pro forma financial information is to present the hypothetical financial situation of the issuer as if the structural change or transaction had occurred at the beginning of the last annual period presented in the historical financial statements. This is accomplished by adjusting the historical financial statements (balance sheet and income statement including earnings per share) of the last annual period by applying appropriate assumptions, which may not take into account any anticipated synergies. Pro forma adjustments are presented individually in the form of a tabular reconciliation. In addition, the basis of preparation and each adjustment need to be described in detail by way of explanatory notes. The pro forma financial information must be reviewed by independent auditors.

Practical Considerations

The timely preparation of the financial information required may be challenging, considering that additional consolidated financial information (such as interim financial statements) or a conversion to another accounting framework may be required. Diligent time planning and sufficient allocation of resources are therefore key.

Identifying Investor Relations

by *Thorsten Pauli*,
Managing Director and Head Equity
Capital Markets Switzerland,
UBS AG

Investor relations (IR) describe a company's activity of communicating with its existing shareholders and creditors as well as potential debt and equity investors. This communication includes both mandatory (e.g. annual reports, ad hoc publicity) as well as voluntary (e.g. corporate social responsibility reports) elements. The IR department is responsible for shaping a company's public perception and interacts most frequently with existing shareholders, potential investors, research analysts and journalists. Larger corporations usually establish a dedicated IR team. For smaller companies it can be more viable to assign this role to the responsibilities of a CFO/Treasurer or to outsource it to a specialized public relations firm acting as external IR advisor, although this is less common.

IR in the Context of an IPO

In the context of an IPO, IR is an issue which should be considered early on in the IPO process. Ideally, a dedicated team is appointed at the start of the IPO preparation process to make sure it can get to know and deal with investors early in the process and become familiar with them. This team will be the first point of contact for investors pre- and post-IPO and hence the better settled it is the more valuable it can be for the company and its investors. The company, the potential external IR advisor and the mandated syndicate bank must closely work

together, in particularly when there is leakage of deal-specific information. Generally, external IR advisors can be especially helpful in managing external communication in leak situations due to their field-specific know-how and experience. It is also worth mentioning that external IR advisors are most useful in raising public awareness in situations where there is an offering to retail persons in the domestic market. In this context, IR advisors can perform a retail demand analysis, if required.

Objectives and Benefits

It is essential for a company with the intention of going public to recognise that IR is not just a support function. It is a key strategic element, which creates value by ensuring a fair valuation and reducing risks. The main objective of IR activities is to create an environment of informed investors and to avoid misperceptions or false expectations in the market. Another important measure, which IR is responsible for, is to implement the so-called Regulatory Compliance. Regulatory Compliance ensures that policies and processes are in place within the company so that the laws, rules and regulations of the relevant listing location and stock exchange are followed and satisfied. This also includes an informed management and employees being educated on topics like compliance.

These efforts will pay off, because they finally lead to a community of supportive and trusting investors and stakeholders, as the company demonstrates its commitment to shareholder value. Direct implications and benefits from a good and

intensive relationship with the investor base is a higher liquidity post-IPO and thus a lower share volatility. This also guarantees a full and fair valuation by the market. An established relationship with the investor community allows the company to obtain direct feedback from market participants and to maintain an ongoing dialogue post-IPO. This can be especially valuable when the company intends to raise capital in the future, as the access to capital markets is facilitated and the cost of capital is minimised. Furthermore, the operational and, more importantly, the reputational risk can be minimised by controlling the corporate information flow to the public. Other positive side-effects are that the value of the issuer's brand is enhanced and the culture within the company and its personnel is promoted.

Proactive and Inactive IR

In general, there are two different approaches to IR that have to be distinguished: the proactive and the inactive approach. Proactive IR is based on the provision of a maximum amount of information and transparency creating a better understanding of the company and its competences in the market leading to a greater investor confidence. On the other hand, the inactive approach limits the information flow to a minimum. Furthermore, there are two possible approaches lying in-between these extreme views: the company can provide the market with sufficient information such that investors are guided to a certain view or it can make available just the information that is requested by market participants.

Case Study: Weatherford International Ltd.

by *Thorsten Pauli,*
Managing Director and Head Equity
Capital Markets Switzerland
& *Dr. Sebastian Harsch,*
Executive Director and Head
Transactions Legal Switzerland,
UBS AG

The 2010 SIX Swiss Exchange listing of Weatherford International (Weatherford) provides an illustrative overview of the key characteristics of a listing process:

Company Information

Weatherford is one of the largest global oilfield services firms and provides equipment and services used for the drilling, completion, and production of oil and natural gas wells. Weatherford conducts operations in virtually all of the oil and natural-gas-producing regions in the world operating in more than 100 countries. The company is domiciled in Switzerland, and employs more than 50,000 people worldwide. It is listed on the New York Stock Exchange (NYSE), Euronext Paris, and SIX Swiss Exchange (Source: Weatherford, Bloomberg).

Transaction Background

In February 2009, Weatherford redomiciled from Bermuda to Switzerland to reinforce its Swiss presence as well as tax domicile and to elevate the corporate profile across Western Europe. Originally, being listed on the NYSE, the company undertook a cross-listing on NYSE Euronext in October 2009. As a consequence of moving its incorporation to Switzerland, Weatherford opted for a dual primary listing on SIX Swiss Exchange with the first day of trading on 17 November 2010. The Swiss listing was a logical step for the company to broaden its (European) investor base and to increase demand and trading volumes in its share.

Transaction Highlights

It is worth mentioning that the announcement to list was made less than four weeks after kick-off, and the first trading day took place less than eight weeks after kick-off. This time span can be considered as relatively tight and can take much longer in the case of an additional offering.

The Weatherford listing provides insights into additional specific obstacles which had to be managed.

One issue was the high demand from index tracking funds within the first trading days. Such a setting can cause a demand overhang that can lead to artificial hikes in the share price. To avoid this additional share price volatility the Lead Bank agreed in close cooperation with SIX Swiss Exchange on a staggered approach for the Swiss Performance Index (SPI) inclusion. Firstly, this move included a 20% free-float market capitalisation that was factored into the SPI after close of trading on the first trading day. Secondly, an additional 20% of free-float market capitalisation was added on each of the subsequent four trading days. After four months of trading and as a result of an expedited inclusion process, in March 2011, Weatherford was included in the Swiss Leader Index (SLI).

Another main issue during the listing process was the compilation of selected audited financials. Due to the fact that Weatherford redomiciled to Switzerland only a year prior to listing, specific disclosure requirements had to be taken into account, e.g. filing of statutory financial statements, or the provision of a three-year track record for audited financials.

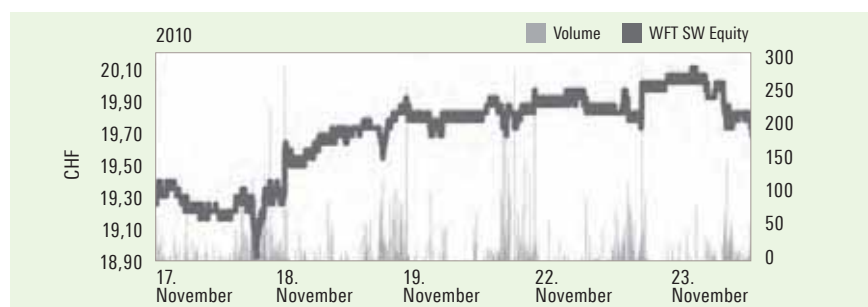
Company Overview

Company	Weatherford International Ltd.
Incorporation	Switzerland
Listing locations	Switzerland and United States
Sector	Oil-field services
Revenue (2010)	USD 10,221mn

Transaction Summary

Issuer	Weatherford International Ltd.
No. of shares listed	758,446,637
Trading currency	CHF
Ticker on SIX Swiss Exchange	WFT
First trading day	17 November 2010

Share Performance Post Listing



A third issue occurred due to the firm's initial sole primary listing at NYSE which gave the company the option of "incorporation by reference" in compiling the prospectus. Under this rule not all of the relevant filings have to be separately disclosed in the prospectus. Instead, it can be referred to the already published financial statements from its primary listing location. However, an incorporation by reference reduces the marketability of the document given it is more difficult to condense it in a marketing presentation.

This case shows that a listing is not a generic process but will often create additional and unique obstacles. With this in mind it is important to maintain close co-operation between the company, banks and other advisors to manage these issues and allow a successful listing.



Initial PR Offensive

by Dr. iur. Michael Düringer,
Martin Meier-Pfister, lic. oec. HSG
& Jürg Stähelin, lic. oec.,
IRF Communications AG

An initial public offering poses major communications challenges. Companies will have to respond adeptly to a spike in interest from the financial community and the general public as well as expert specialists. Once listed, a company must comply with stock-exchange disclosure rules and regulations; this will entail new policies and operating procedures and a change in corporate culture.

An IPO marks a major milestone in a company's development. It always changes the ownership structure, from a family-owned or private-equity-backed business to a truly or at least partially public company. The most frequent reason for a going public is to raise capital to finance future growth. Whatever the specific circumstances are, an IPO significantly changes a company's communications activities. Greater complexity with regard to information policies and the need to interact with a greater number of stakeholders and interested parties with differing interests make a professional, comprehensive approach imperative. From one day to the next, communications activities will have to be addressed to a larger group of institutional and/or private investors. Also financial analysts and

journalists will be expecting a steady flow of information from the company. Moreover, a listed firm will attract more attention from competitors, the representatives of industry associations and, not least, from industry experts and the stock exchange.

Pre-IPO phase: Raising Public Awareness and Creating a Communications Toolbox

Once listed on the stock market, a company is no longer free to decide when and which information to share with internal and external audiences. Going public requires a company to comply with the listing regulations, which includes adherence with SIX Swiss Exchange's directives on financial reporting and ad hoc publicity as well as on corporate governance. These directives set new standards regarding corporate transparency, reporting schedules and much more.

Hence, a company cannot go public overnight. Operating procedures that are usually closely intertwined with a specific culture and that have grown organically over time must be reconciled with the public stage. To qualify as an IPO candidate, a company must uphold a certain set of financial reporting standards and refine its public profile and corporate culture.

Public Awareness Matters

During the course of an IPO, the company's shares are sold to new owners at a price that balances the

interests of the former and new shareholders. The valuation will be driven in particular by the company's strategy and management, its recent operating performance and its growth prospects. Additional factors, such as the general market sentiment, the company's image and reputation, risk management policies, how the company's achievements are communicated, a comparison with competitors and so on, are also relevant.

A key question, then, is how to positively influence internal and external perceptions. To begin with, a company's messages and communications activities must be carefully coordinated in order to create a consistent impression. Conveying a coherent image is possible only if there is an internal consensus regarding the values and messages that will be cultivated and projected, both internally and externally. A common stumbling block here is that a company's principal visions and targets continue to be upheld long beyond their half-lives and they end up becoming more and more diffuse. Thus, one of the first steps on the communications front in preparing for an IPO is a thorough analysis of the status quo. This is followed by a concise and crisp formulation of the firm's visions, strategies and targets. Communicating the outcome of this process is the next step and the objective here is to secure shareholder support for the company's plans.

Practical Questions to Be Addressed During the Pre-IPO Phase:

- Have the key messages been formulated regarding company markets, products, services, expansion and development plans, etc.?
- Are these key messages being reflected in the current corporate communications tools?
- What is the IPO holding statement and leak procedure?
- Is the communications toolbox based on the latest tools and technologies?
- Will the company's brochures, presentations and website be in compliance with future requirements?
- Do I know my key contact persons in the financial press? Am I in regular contact with these journalists and do they know our story?
- Which are the delicate topics a journalist might write a story about? What can be done to minimise the likelihood of such a story?
- Who communicates with investors, the media and the public at large? How are the related responsibilities organized and delegated? To what extent does it make sense to institute the one-voice principle?
- Which other new stakeholders must be addressed, and how?

Adaptation of Corporate Culture

Going public brings with it fundamental change. The company, its management and the public and, first and foremost, the potential new investors, must be prepared for this milestone. This is particularly important immediately before the pre-IPO phase gets under way, which would be a few weeks before the actual transaction. This is when investment bankers and lawyers are heavily involved in the process. At this point communications activities will be severely restrict-

ed for regulatory reasons. Some key issues at this stage, which are often overlooked, are how confidential information is being treated, and the company's information management policies in general. The precept of non-discrimination towards any and all stakeholder groups, the ad hoc publicity directive and the generally higher level of transparency required of public companies impose certain restrictions on the IPO candidate and mandate changes in company culture. Employees may no longer be given potentially price-sensitive information before the general public is informed, for example. The compensation paid to the Board of Directors and the top executives must be made public and will be scrutinized. The same applies to management transactions in the company's shares. If the operating results fall short of expectations, there will be a swift and severe negative backlash, and individual company managers may also be singled out for criticism. This abrupt shift from private to public might cause resistance, uncertainty or anxiety. Clever communications can help in making this a gradual change, and can also help prevent missteps.

IPO Phase: The First Impression Counts

This is when things get serious – the decision has been made to launch the IPO. One critical point is whether the financial community and the media have already been familiarised with the company's business activities and targets. The timing of an IPO announcement must be carefully selected. Companies can choose from a variety of platforms on which to make their announcement, ranging from an exclusive interview in a major financial newspaper to a simple press release.

The time between the initial announcement of an IPO and the publication of the transaction details, typi-

cally a period of two weeks, can be used for informal talks with selected media to deepen their understanding of the company. These are also relationship-building opportunities and a means of ensuring that the journalists who will be reporting on the IPO are up to date on the company's strategy and issues. The accuracy of media coverage is greatly enhanced if the journalists are already familiar with the company and its prospects before they write about the share offering and the fundamental outlook for the individual business areas. One of the basic rules of communications must be heeded here: First impressions count. Opinions are formed on day one. Changing first impressions is an extremely difficult undertaking, especially because the media, once it has taken a certain position, will not change its position and take a completely different viewpoint unless there is good reason to do so.

The announcement of the transaction details, usually via publishing a press release and arranging a press conference, is followed by a roadshow that is organised by the banks in the underwriting syndicate. Company management takes to the road to present the equity story to interested investors in numerous group and one-on-one meetings. These meetings are scheduled over two weeks and take the top executives to the major financial centres in Europe and overseas for certain transactions.

Practical Questions to Be Addressed During the IPO Phase:

- How and when will the intention to go public be announced?
- Are the key journalists familiar with the company, its business activities and targets? What is the general level of knowledge about the industry? What information has to be provided to make the case easier to be understood?

- What groups of investors with what level of knowledge and familiarity with the company will be primarily addressed? Has appropriate documentation been drawn up?
- Have the new target groups been added to company mailing/distribution lists?
- What new sections and services or information must be added to the company's website?

Equity Story Serves as the Main Sales Instrument

The equity story is a short version of the company's strategy in the language of the financial analysts and investors. It describes the positioning and the development of the company in relation to growth opportunities and value-creating potential as well as the relevant KPI's to measure progress. It also reflects the risks associated with the business. Information about the company's market environment as well as its organisational structure is of primary importance, which means attention should focus on factors that management can influence or even control. Other factors that a firm must contend with by virtue of its business concept and which it cannot influence directly are also important. Examples of major internal factors are corporate strategy, growth plans, acquisition criteria and strategic alliances as well as the unique selling points of the company's products and services. Examples of external factors are market data, the competitive situation, risks not directly related to operating activities and environmental factors.

Overdoing it Can Backfire

An IPO is a salesmen exercise. It is about selling shares to new shareholders. A management must be convinced about the company's strategy and prospects or it will not be able to convince new investors, who are sceptical by nature.

“An IPO significantly changes a company’s communications activities. Greater complexity with regard to information policies and the need to interact with a greater number of stakeholders and interested parties with differing interests make a professional, comprehensive approach imperative.”

Communication Strategy – Phases and Measures

PHASE I PRE-IPO COMMUNICATION, PREPARATION	PHASE II SHARE MARKETING	PHASE III ONGOING IR
Objectives <ul style="list-style-type: none"> – Investment case is fine-tuned – Company introduced to Swiss Financial Community and media – Tools of Phase II ready 	Objectives <ul style="list-style-type: none"> – Investment case is known by target groups – Awareness is there – Shares are allocated 	Objectives <ul style="list-style-type: none"> – Credibility is built thanks to good news, over-delivering on promises ... continuity and consistency
Measures <ul style="list-style-type: none"> – Introduction/awareness programme – Communications concept IPO/after IPO – Key messages, Q&A, rehearsals – Prepare IR database – Market monitoring – Prepare tools of phase II 	Measures <ul style="list-style-type: none"> – Media one-to-ones – Press releases – News/analyst conference – Roadshow, presentations – Website – Factsheet – Market monitoring 	Measures <ul style="list-style-type: none"> – Establish IR office – Annual/interim reports – Investor road shows – Concept ad-hoc publicity – Media relations – Update website – Market monitoring

Hence it is no wonder that there is a tendency to oversell. Nonetheless it is crucial that the equity story is firmly grounded in reality. Management can jeopardise its own credibility quite quickly if false expectations are created. Therefore when formulating the equity story, it is best to follow the classic rule of investor relations: slightly under-promise, try to over-deliver. Hence the intention must be to give private and institutional investors a detailed picture of the firm's operating performance and strategy, with concise reasons why the company merits their investment. IPO candidates are well advised not to use all their ammunition during the IPO process and to save a few PR arrows in their quiver for the subsequent demands that will be placed on them as a public company.

The IPO process ends with the fixing of the issue price and the allocation of shares by the underwriting syndicate. There are various ways of setting the issue price, the most common being the bookbuilding method where interested investors tell the underwriting syndicate how many shares they would be willing to buy at what price. The issue price and the number of shares that will be issued are based on the bids received and announced in press releases issued by the underwriting banks and the issuer. This also coincides with the first day of trading: the IPO has been completed!

Post-IPO Phase: Focus on Building Trust

During this phase a company must establish its place on the trading floor. Building trust is a top priority and this requires a regular flow of information and active public relations – even

during hard times. The SIX Swiss Exchange's listing regulations oblige companies to comply with certain requirements concerning financial disclosure, ad hoc publicity and other reporting guidelines, which include the publication of an annual and interim report and regular updates to the investor relations pages of the company's website. In addition, current and potential investors will be interested in group or one-on-one meetings. To handle this new processes and procedures will have to be established and monitored closely to avoid sanctions by the stock exchange.

Practical Questions to be Addressed During the Post-IPO Phase:

- Does the share price reflect the intrinsic value of the business?
- What can be done if the market and company management are too far apart in their assessment of the firm's true value?
- How can long-term-oriented investors be attracted to the company?
- How does the company address the expectations of analysts and investors? How can these expectations be managed?
- What information qualifies for an ad hoc statement?
- How can I manage the investor relations and financial PR processes cost-effectively?
- When must a profit warning or upgrade be issued?
- How can a company resolve the conflict of interests between providing the greatest possible transparency for the financial market while not revealing too much information to competitors?

Conclusion:

Being Accurate is the Best Solution

The aim of active public relations encompassing all stakeholders is to plant the business firmly in a steady environment that takes due consideration of the needs and interests of all stakeholders. From an investor's standpoint, determining the fair value of a company's stock is the key issue. Shareholders expect full transparency from the boardrooms regarding the current course of business and future prospects, upon which they base their estimation of the future direction of the share price. Hollow promises and unrealistic expectations will lead to excessive fluctuations in the company's stock price, as will overly cautious and conservative statements. Such extremes benefit primarily short-term-oriented investors seeking to profit from the high volatility. Therefore, company management has a great interest throughout the IPO process in conveying a "true and fair" picture of the company's performance to internal and external target groups.



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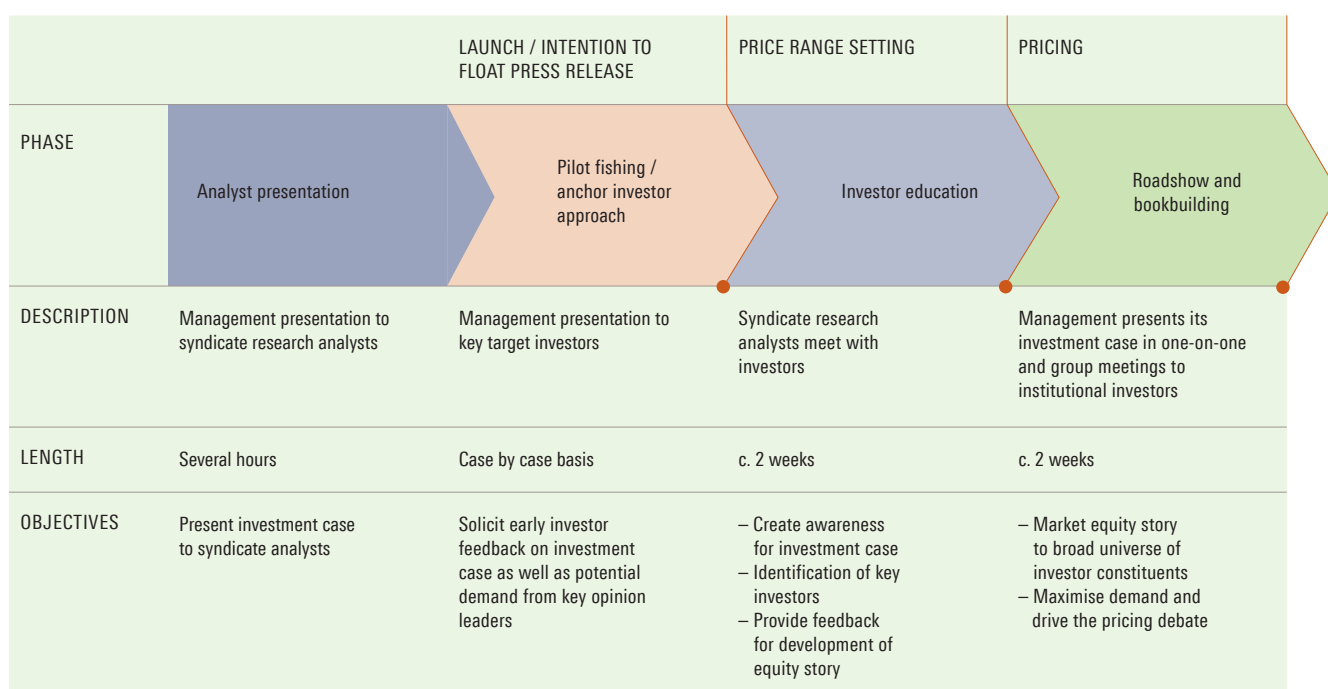
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*Market the
Investment
Case*



Market the Investment Case – Overview

IPO Marketing Campaign



The quality of the marketing process is of utmost importance for an IPO. The execution of the marketing strategy will determine the positioning of the company in the public market and not only influence the amount of demand and the price achieved for the IPO, but also the post-IPO investor base of a company. To achieve the best possible outcome for the company, its employees, its shareholders as well as new investors, every marketing campaign will be uniquely tailored and adapted to the prevailing market conditions (see e.g. ORIOR case study). The typical phases of a marketing process are laid out above.

by Patrick Treuer,
Head Equity Capital
Markets Switzerland
& Amanda Robinson,
Associate Equity Capital
Markets Switzerland,
Credit Suisse AG

Analyst Presentation

by Patrick Treuer
& Amanda Robinson,
Credit Suisse AG

The management presentation to syndicate equity research analysts is a key milestone in the IPO marketing preparation. It is the opportunity for the management team to present the company's detailed investment case to the independent equity research analysts of the syndicate banks in a physical meeting. The objective is to educate the syndicate research analyst on the company's equity story which will form the basis for the drafting of the pre-deal research reports. The analyst presentation document is handed out in hard-copy format to the analysts and, among other items, typically includes an overview of the company's market, competitive landscape and products as well as business and financial overview and strategy.

The management presentation to the syndicate research analysts usually lasts for several hours, whereby the various divisional management representatives are invited to present their own segments/divisions in addition to top management. If deemed relevant, the company presentation can be combined with a site visit.

The presentation is prepared by the bookrunner(s) together with management, whereby it is important to assure that the content is aligned with the offering and listing prospectus. The business plan is not shared with analysts in order for the financial fore-

casts to be independent estimates by the research analysts.

Additional syndicate banks are invited to join the IPO syndicate a few weeks ahead of the analyst presentation, with the goal of having relatively broad pre-deal equity research coverage and allowing investors to review different reports during investor education (c.f. "Investor Education"). In order to ensure that all syndicate analysts follow the same timetable and guidelines for the preparation, review and distribution of research reports, all syndicate banks are sent the research guidelines prepared by the underwriter(s)' counsel ahead of the analyst presentation.

Following the analyst presentation, the syndicate research analysts have a circa four-week drafting period before the publication of the research reports. It is common to have Q&A and a structured dialogue between the management of the company and the syndicate analysts during this period, in order to ensure that the analysts don't have any open questions. In addition to the documents provided to the analysts at the analyst presentation, the analysts are also performing their own due diligence on the company during this period. Before the research reports are published, management typically has the opportunity to review the draft reports for a factual accuracy check (as defined in the research guidelines).

The research reports are extensive (depending on the company's complexity) and typically include the company description, the investment case, the positioning of the company

within its sector as well as valuation. The analysts will determine an equity and/or enterprise valuation range but will exclude specific share price guidance and recommendations. The valuation is typically based on a combination of relative valuation methodologies (e.g. P/Es and/or EV/EBITDA multiples) as well as a fundamental discounted cash flow analysis (i.e. DCF). Depending on the company and its sector, there may be no or a limited number of publicly listed comparable companies available which requires in-depth fundamental analysis and investor education.

Pilot Fishing and Anchor Investor Process

by Patrick Treuer
& Amanda Robinson,
Credit Suisse AG

Before the intention to float (ITF) press release is published and the pre-deal research reports are released, it is recommended for issuer's to meet with selected key investors and opinion leaders on a confidential basis. This process is called pilot fishing and has been a key feature of most European IPO executions in the last few years.

The meetings allow investors to develop greater comfort with management through early involvement, which can deliver valuable feedback on positioning, valuation, investment appetite and potential concerns allowing the company to refine the equity story ahead of roadshow meetings. It also gives management the opportunity to meet investors and practice the roadshow presentation. Furthermore, it allows them to potentially

obtain early indications of interest from investors ahead of the formal launch of the bookbuilding process, thereby driving demand momentum once the IPO is launched and therefore de-risking the IPO execution.

In addition to pilot fishing, it is possible to include an anchor investor process into the overall IPO marketing campaign as seen in various recent European IPO's (e.g. Glencore and Orior). Anchor investors are knowledgeable investors that have credibility among the investment community and which can either agree to subscribe to the IPO prior to the launch of bookbuilding (so called cornerstone investors; need for disclosure in the prospectus) or alternatively at the beginning of bookbuilding. In case of early IPO subscription (i.e. prior to launch of bookbuilding), these investors typically are expected to sign a lock-up agreement.

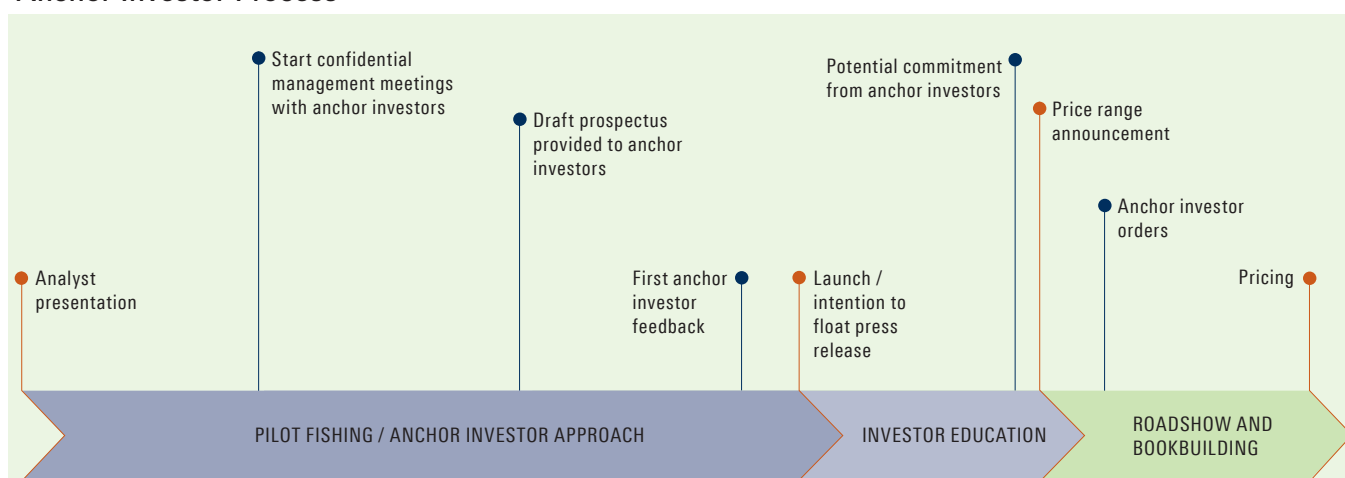
Anchor investors are selected by the bookrunner(s) based on the following criteria:

- understanding/track record of investing in the company's sector and region
- institutions that can effectively act as opinion leaders and have the potential to exhibit significant support for the upcoming IPO
- investors that typically provide insightful feedback and
- long-term focused investors who are likely to support the company

Although a pilot fishing or anchor investor process is not a prerequisite for a successful IPO, it typically helps drive the valuation of the offering, supports momentum and demand generation and therefore de-risks the IPO execution. From an investor's perspective it allows early contact with management which facilitates the decision making process.

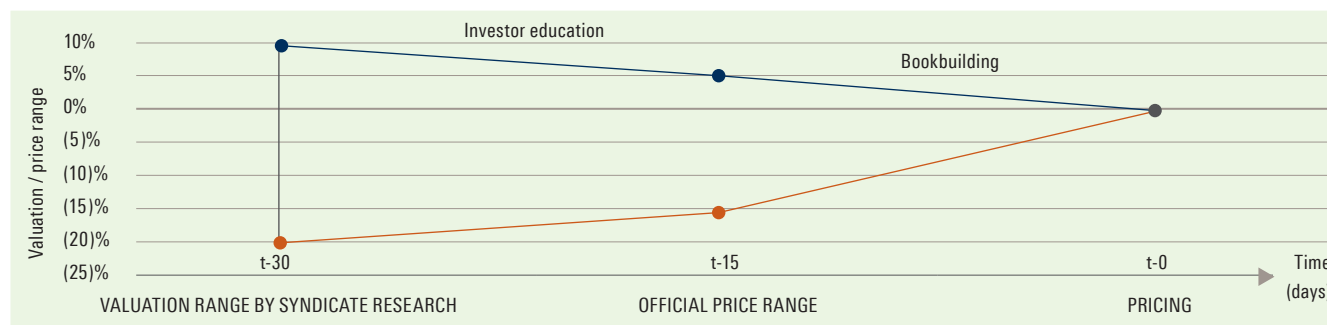
Feedback from the pilot fishing and/or anchor investor process as well as from the equity research analysts via the research reports can be used to take the final go-/no-go decision with respect to the public IPO announcement (ITF).

Anchor Investor Process



Investor Education

Evolution of Price Determination



by Patrick Treuer
& Amanda Robinson,
Credit Suisse AG

The investor education starts with the distribution of the pre-deal research reports to institutional investors by the syndicate banks – a well established practice in markets outside the US. The pre-deal research reports provide a valuable tool to educate target investors about the issuer’s industry, peer group, investment case and valuation drivers while raising the company’s profile in the capital market. Given that these reports are widely distributed by the syndicate banks, the distribution of the reports is typically preceded by the public intention to float announcement (ITF), where the company pro-actively informs the market about its IPO plans in order to drive the communication with the market. While the entire IPO process has been confidential until this point, the company’s plans are now exposed to the public.

Once the pre-deal research reports have been published, the research blackout period commences, prohibiting any additional distribution of research reports until 40 days post closing of the IPO. Syndicate research analysts can now start their investor

education in Switzerland and internationally, a period which typically lasts up to two weeks. During this period, the analysts visit target investors, principally on a one-on-one basis but also in certain group functions, in order to educate investors on the company’s investment case and value drivers.

Feedback from investors following investor meetings is collected by the syndicate banks’ sales forces and forwarded to the bookrunner(s). In order for the syndicate sales forces to be as effective as possible when setting up the investor education meetings and collecting investor education feedback, each syndicate analyst is briefing the bank’s equity sales force about the equity story at the start of investor education. In addition, it is recommended for the company’s management to present the investment case to the syndicate banks’ sales forces at the beginning of investor education. This will give the sales teams the opportunity to meet management and ask potential questions directly and will provide a good backdrop to address potential investor questions. Investor education feedback is valuable for the following reasons:

- Valuation feedback: Investors’ reactions to the valuation proposed in the pre-deal research can be assessed and taken into consideration when setting the IPO price range.

- Feedback on positioning: Investors’ reactions to the positioning of the equity story can be used to fine-tune the roadshow presentation and address key investor concerns.
- Selection of target investors: Based on investors’ reactions to investor education, the bookrunner(s) can fine-tune the selection of target investors for one-on-one meetings with management, ensuring that management time during the roadshow phase is used to maximum effect.

Investor education is a period of active dialogue between equity research analysts, investors as well as the sales forces. Investors typically have a variety of questions during this period which need to be addressed directly by the sales forces as well as equity research analysts in order to educate investors. The corporate finance teams are actively updating the sales forces with relevant (sector) news during this period.

Investor education is a key element of the price determination during the IPO process.

Price Range Setting

by Patrick Treuer
& Amanda Robinson,
Credit Suisse AG

The bookbuilding method is the most frequently used price and discovery mechanism for IPOs (alternative pricing methods include the fixed price offerings and e.g. Dutch auctions). It is a mechanism in which, during a period of up to c. 2 weeks, the offer book is open and bids from investors are collected at various prices, within a band specified by the issuer, the “price range”.

The price range is based on a range of data points, such as the valuation feedback collected during investor education and potential pilot fishing and/or anchor investor meetings and is backed by the fundamental valuation from the equity syndicate research and the corporate finance valuation conducted by the lead banks.

All this feedback is collated to set a price range per share, published in the preliminary prospectus.

Given that investors are likely to receive pre-deal research reports from different syndicate banks with different assumptions, projections and financial models, valuation feedback is typically communicated using different metrics: e.g. certain investors may provide feedback using different relative valuation multiples (e.g. P/E vs. EV/EBITDA multiples), different projection years (e.g. 2011 vs. 2012 multiples), different absolute numbers (e.g. equity vs. enterprise value) or different projections (e.g. their own bottom-up model or using one particular analyst’s projections or consensus estimates).

It is the bookrunner(s) responsibility to translate all such feedback into a uniform picture, in order to be in a position together with the company to determine the appropriate valuation /price range for the IPO. Investors often expect to pay a discount to the fair value of a stock (so called “IPO discount”), in order to be compensated for the risks associated with a new listing. The size of the IPO discount is largely a function of the market vola-

tility/robustness of the market prevailing at the time of the IPO. Demand tension in the order book can reduce such IPO discount.

The IPO price range typically corresponds to a valuation range circa 20% wide (depending on the specific company as well as prevailing market conditions – the Swiss IPOs since 2004 had an average price range of 19-20%), which provides flexibility and protects against potential adverse market developments or adverse changes in comparable stock trading during the bookbuilding period.

Common practice is to set the bottom end of the price range at such a level to maximise overall interest and demand momentum. The top end will then be set at a level which is aspirational without being so high that it focuses investors solely on the bottom end of the price range. The momentum generated in the roadshow is designed to move investors up the price range, with the pricing leverage shifting from investor to issuer as demand for the offering accelerates.

Illustrative Investor Valuation Feedback

	535	550	565	579	594	609	624	638	653	668	682	697
Enterprise value (CHFm)	535	550	565	579	594	609	624	638	653	668	682	697
Equity valuation (CHFm)	485	500	515	529	544	559	574	588	603	618	632	647
Implied share price (CHF)	33.0	34.0	35.0	36.0	37.0	38.0	39.0	40.0	41.0	42.0	43.0	44.0
Implied P/E ⁽¹⁾	8.8x	9.1x	9.4x	9.6x	9.9x	10.2x	10.4x	10.7x	11.0x	11.2x	11.5x	11.8x
Investor 1												
Investor 2												
Investor 3												
Investor 4												
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Investor 10												
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Investor 14												
Investor 15												

Management Roadshow and Bookbuilding

by Patrick Treuer
& Amanda Robinson,
Credit Suisse AG

Following announcement of the price range and the distribution of the preliminary prospectus, the marketing strategy culminates in a c. two-week intensive series of management presentations to investors. The preliminary prospectus is distributed by the syndicate banks to a wide audience of investors and is also available on demand by eligible investors.

The roadshow is typically kicked off by a management press conference on the day of announcement once the press release with the details

of the transaction has been published. Media representatives attending the press conference are given the preliminary prospectus as well as a company presentation or brochure (optional).

The management discussion with investors during the roadshow takes the form of one-on-one meetings, group events and conference calls, each normally lasting up to 60 minutes including Q&A and usually starting on the day of announcement following the press conference. The roadshow material typically includes the preliminary prospectus and a presentation slidebook. A well-rehearsed and well-briefed management team is crucial for a successful roadshow.

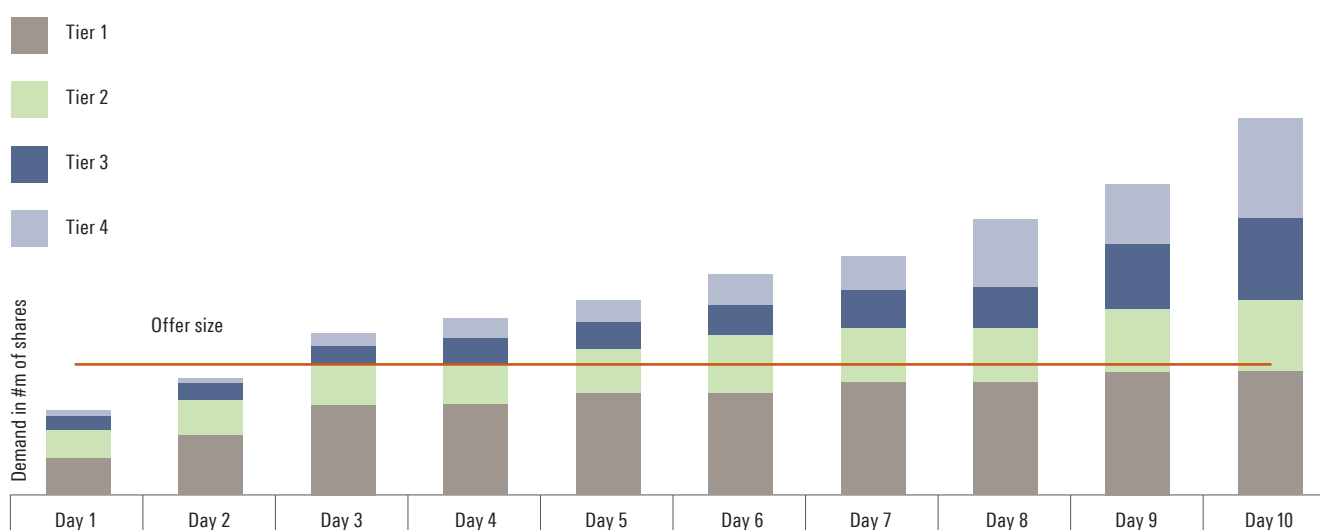
The bookrunner(s) typically brief the management team in detail ahead of every roadshow meeting about the next investor meeting and key issues / questions to be addressed.

Target investors for the roadshow meetings are carefully selected by the bookrunner(s) based on investor education feedback as well as investor quality and tiering (c.f. "Pricing and Allocation") in order to maximise the hit ratio during the roadshow and attract a high quality order book. It is important to market the investment case to the entire addressable investor universe for the offering (including e.g. non-institutional investors) in order to increase overall demand.

Illustrative Book of Demand

INVESTOR NAME	RANK	COUNTRY	DEMAND (SHARES)	LIMIT PRICES	DEMAND IN SHARES (@ PRICE PER SHARE)			
					38.0	39.0	40.0	41.0
Investor 1	Tier 1	Switzerland	500,000	Unlimited	500,000	500,000	500,000	500,000
Investor 2	Tier 1	Switzerland	450,000	Unlimited	450,000	450,000	450,000	450,000
Investor 3	Tier 1	UK	450,000	Unlimited, 41, 40, 38	450,000	400,000	380,000	370,000
Investor 4	Tier 2	UK	400,000	Unlimited, 39	400,000	350,000	350,000	350,000
Investor 5	Tier 1	Germany	300,000	Unlimited	300,000	300,000	300,000	300,000
Investor 6	Tier 2	US	250,000	40	250,000	250,000	–	–
Investor 7	Tier 1	US	250,000	39	250,000	–	–	–
Investor 8	Tier 1	Switzerland	250,000	39	250,000	–	–	–
Investor 9	Tier 2	US	200,000	40	200,000	200,000	–	–
Investor 10	Tier 1	UK	100,000	Unlimited	100,000	100,000	100,000	100,000

Illustrative Evolution of Book of Demand



The exact sequence of the roadshow schedule will depend on the expected investor demand and typically starts in the company's home market in order to maximise early demand momentum. If shares are also offered to US investors under Rule 144A, the roadshow schedule will typically include marketing in the US. Depending on the target demand analysis, considerations can be given to splitting the management team into two separate groups to cover more ground during the roadshow.

The bookbuilding is launched in parallel to the management roadshow. Investors are invited to participate in the offering on the basis of the price range per share published in the pro-

spectus. As the management team progresses on its schedule of meetings and conference calls during the roadshow, investors place orders for shares with the bookrunner(s), generating a book of demand which grows over the course of the roadshow. Investors can submit orders by either indicating an absolute amount of demand in CHF or in number of shares. In the event that certain investors set price limits on their orders, a demand curve emerges reflecting any price elasticity in the order book.

The sales force(s) are in constant dialogue with investors during bookbuilding, discussing the investment proposition and valuation while addressing potential investor concerns –

it's not over until it's over. If the order book is well subscribed with high-quality demand towards the end of bookbuilding, the bookrunner(s) may issue a price guidance to the market, thereby giving investors the chance to remove or increase their price limits. At the end of a successful bookbuilding, the order book should be over-subscribed with high-quality allocable demand.

Pricing and Allocation

by Patrick Treuer
& Amanda Robinson,
Credit Suisse AG

Based on the book of demand generated in the IPO and prevailing market conditions, the bookrunner(s) will recommend a price per share at the end of the roadshow and bookbuilding. The objective is to price the IPO in the upper half of the price range should conditions allow – i.e. a strongly oversubscribed IPO with high-quality orders and little price sensitivity on the part of target investors – while at the same time allowing for a positive aftermarket performance.

In order to achieve such a positive aftermarket performance, allocations to investors should be scaled back, thereby encouraging buy orders in the immediate aftermarket. However, too low allocation levels should be avoided as they create disappointment and lead to aftermarket sales if the positions received by investors are too small to actively manage.

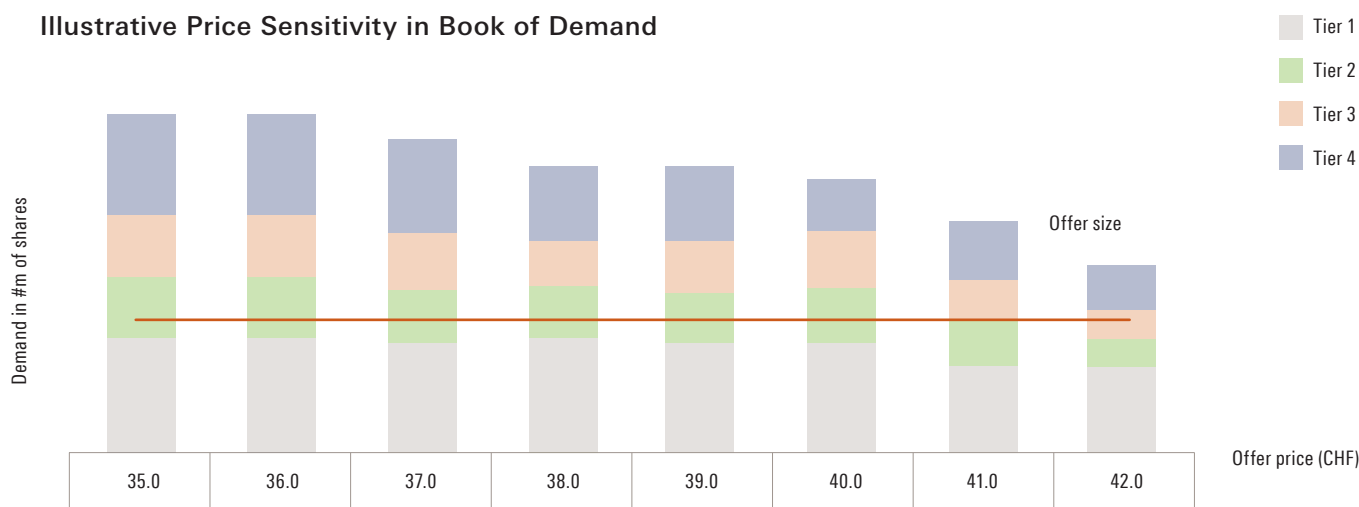
The allocation process is performed on a bottom-up basis by the bookrunner(s) which are proposing the allocations to management. The objective is to create a high-quality, diversified and broad shareholder base comprised of investors who intend to retain their shares in the company in the long term. The allocation strategy should cover both qualitative as well as quantitative criteria as follows:

- Overall quality: measured by (i) level of sophistication and, (ii) investment time horizon in combination with (iii) funds under management
- Commitment: measured by (i) active participation in the marketing of the transaction (eg. investor education and roadshow meetings), (ii) amount of effort put into understanding and evaluating the company's investment case, (iii) the existence of holdings in comparable companies, (iv) order size relative to an investor's typical holding (or assets under management), (v) likely, or explicit, aftermarket strategy with respect to further purchases, and (vi) post-offer behaviour in other relevant offerings
- Price sensitivity: measured by the existence of price limits while making the appropriate judgement on orders without explicit price limits

In order to optimise the allocation process, institutional investors are ranked by the bookrunner(s) in tier groups reflecting their assessed quality, as illustrated below.

Once the allocations have been agreed by management and the bookrunner(s), the individual allocations are communicated to investors via the syndicate banks ahead of start of trading. Market sentiment towards the issuer post-IPO is often linked to pricing in relation to the price range and the immediate aftermarket performance making the pricing and allocation process a critical success factor for the IPO.

Illustrative Price Sensitivity in Book of Demand



Illustrative Investor Tiering

TIER 1	<ul style="list-style-type: none"> - Demonstrated commitment to the transaction throughout the (pilot fishing), investor education and company roadshow process - Undertaken detailed analysis - Provided valuation feedback and insight - Placed orders early in the bookbuilding - Substantial assets under management - Show limited price sensitivity - Are known as top participants in IPOs and holders of new stock in the aftermarket
TIER 2	<ul style="list-style-type: none"> - Undertaken detailed analysis in investor education and roadshow - Provided valuation feedback and insight - Generally smaller assets under management than Tier 1 investors and/or smaller order size
TIER 3	<ul style="list-style-type: none"> - Mixed quality investors, due to: <ul style="list-style-type: none"> - size of assets - level of analysis - amount of feedback - timing of order
TIER 4	<ul style="list-style-type: none"> - Investors who have spent little time on the proposition - Typically provide liquidity in the aftermarket

Over-allotment Option and Aftermarket

by Patrick Treuer
& Amanda Robinson,
Credit Suisse AG

To ensure a successful aftermarket performance, an over-allotment option (often referred to as the “greenshoe”, named after the first company to use an over-allotment option, the Green Shoe Manufacturing Company) is commonly part of an IPO offer structure. The over-allotment option is a mechanism that gives the syndicate the right to purchase shares representing up to an additional 15% (typically) of the offering size at the IPO price for a period of 30 days following the first trading day. This over-allotment option allows the bookrunner(s) to allot up to 115% of the respective offer size at pricing, thus creating a significant technical short position for the syndicate. In order for the syndicate to allot 115% of the offer size at IPO, the additional 15% must be lent to the syndicate by either the company or a pre-IPO shareholder.

If the company’s share price does well in the aftermarket and

trades above the issue price, the short position can be covered by exercising the over-allotment option. Exercising the greenshoe means exercising a call option (an option to buy shares) given by the company or selling shareholder to the syndicate banks, to convert the loaned shares into shares available to the syndicate banks for sale to investors. In this way the base offer will have been increased by the greenshoe amount. The syndicate will then transfer the proceeds of the sale of the extra shares to the company or selling shareholder(s).

In the event that the share price falls below the IPO issue price in the 30 days following the first trading day, the short position can be covered through aftermarket purchases by the stabilisation manager (i.e. the bookrunner responsible for the stabilisation on behalf of the syndicate). IPO investors deem this support mechanism as an important “safety net”.

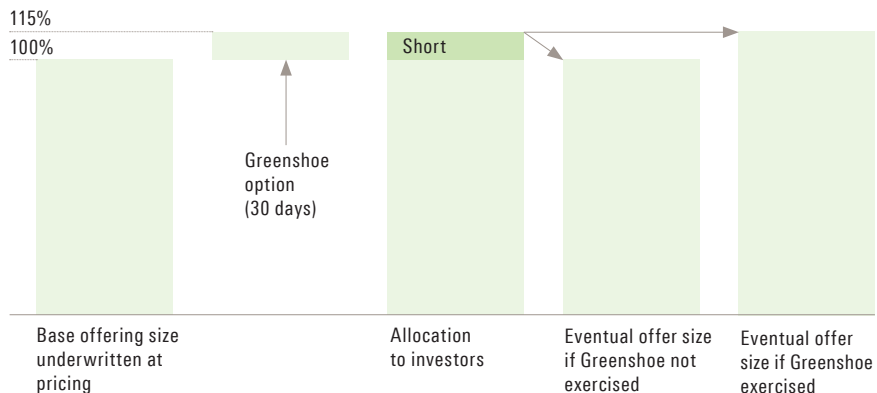
All things being equal and assuming the company is profitable, investors typically have a preference for the over-allotment option to consist of secondary (i.e. existing) shares rather than from new shares stemming from

a capital increase. The reason for such preference is that the company’s capital needs should primarily be covered by the capital increase in the base offering, rather than from an uncertain over-allotment option. In addition, a sale of new shares would have a valuation impact depending if the over-allotment option is exercised or not (i.e. more shares outstanding) and therefore makes it harder for investors to build accurate financial models.

Once the company is public, stakeholders such as shareholders, potential new investors, analysts, press, employees and clients will take a much more active interest in any communication by the company. Hence, effective public relations and IR are of utmost importance. It is critical that the designated IR person (if different from CFO) is in place at the time of the IPO. Ideally, this person is already on board during the IPO execution phase, so that it can, for example, attend the roadshow and analyst presentation, and meet investors and syndicate analysts at an early stage.

Syndicate analysts are subject to the research guidelines which prohibit them from publishing their initia-

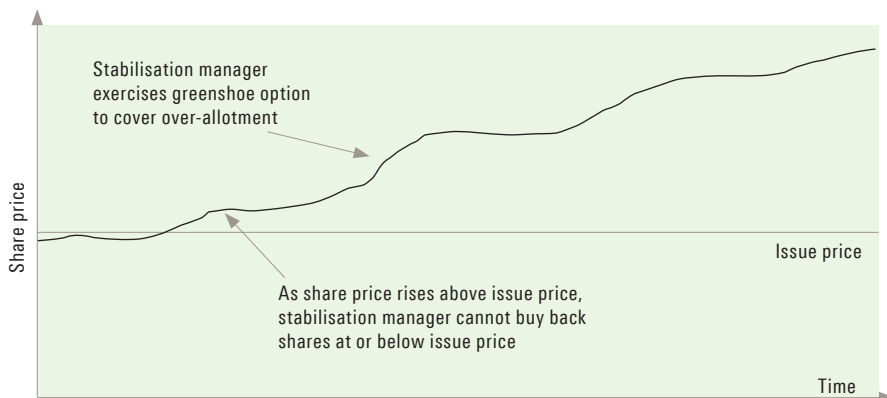
Greenshoe as a Main Stabilisation Instrument



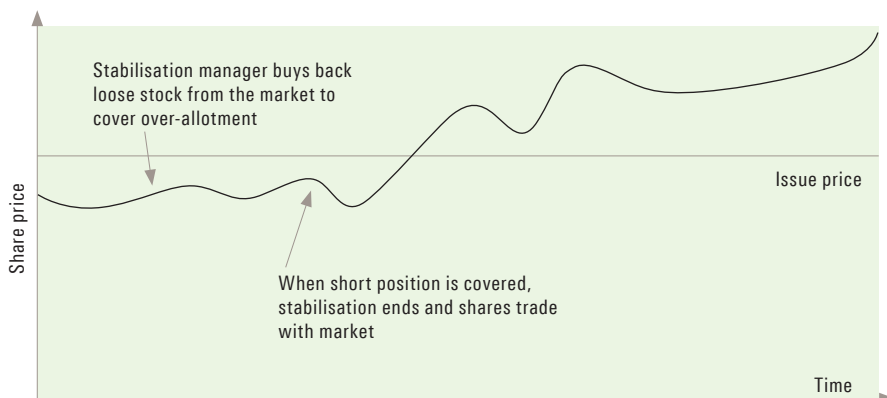
tion research reports on the company for a period of 40 days post closing. Once this period has lapsed, syndicate analysts typically publish their initiation research reports on the company. In addition to syndicate analysts, the company can also reach out to other analysts post-IPO in order to achieve the broadest possible research coverage. It is important for the company to stay in contact with the analysts not only upon results announcements but also at other times throughout the year (e.g. management meetings, analyst days).

Equally important is the regular contact with existing and prospective shareholders in order to develop a stable shareholder base consisting of investors who appreciate the longer-term prospects of the company. In addition to the communication of results and important business developments, investors appreciate other forms of period contacts such as non-deal roadshows and meetings at sector/regional conferences.

Scenario 1 – Market Rises After Pricing



Scenario 2 – Selling Pressure After Pricing



Case Study: ORIOR

Company Overview

ORIOR REFINEMENT		ORIOR CONVENIENCE			ORIOR CORPORATE, EXPORT AND LOGISTICS	
<ul style="list-style-type: none"> – Heart of the Swiss premium meat industry – Strong brand heritage and recognition – State-of-the-art production facilities 		<ul style="list-style-type: none"> – Pioneer of the Swiss convenience food market – Unrivalled track record in innovation (e.g. meat alternatives) – Unique processing and recipe know-how – Leading solution provider for food service (gastronomie) 			<ul style="list-style-type: none"> – Specialised in distribution of fresh products – Unique distribution capabilities – Leading exporter of 'Bündnerfleisch' – Unique product and brand propositions serving as beachheads for exports 	
Rapelli	Spiess	Fredag	Le Patron	Pastinella	Lineafresca	Export

Equity Story and Positioning

ORIOR combined all the ingredients for a successful IPO:

KEY THEME	ORIOR POSITIONING	RESULT
STABLE AND FOCUSED BUSINESS MODEL	<ul style="list-style-type: none"> – Swiss niche convenience food producer – Market leader operating through 5 market leading competence centres in above average growing market – Focus on fresh convenience food with a sophisticated supply chain for both retail and the food services market – Competitive advantage through outstanding product innovation and strong corporate culture (modesty and strive to exceed expectations of all stakeholders) 	✓
ATTRACTIVE SECTOR	<ul style="list-style-type: none"> – ORIOR strategically positioned in above average growth sectors in the Swiss food market – 27% gap in per capital convenience food between Switzerland and UK 	✓
STRONG MARKET POSITION	<ul style="list-style-type: none"> – Undisputed category market leadership in growing fresh convenience food niches 	✓
SOLID FINANCIAL RESULTS	<ul style="list-style-type: none"> – Solid growth despite difficult economic environment – Stable gross margins despite volatile raw material prices 	✓
LOW BALANCE SHEET RISK	<ul style="list-style-type: none"> – Net debt / EBITDA of 3.1x pre IPO – Increase in equity ratio from 11.5% in 2008 to 17.6% in 2009 	✓
STRONG CASH FLOW GENERATION	<ul style="list-style-type: none"> – Tight working capital management and sufficient capex to ensure productivity improvements and sustainable growth results – Best in class cash generation capabilities (65% cash conversion in 2009) – Attractive dividend payment capacity 	✓
CONVINCING MANAGEMENT	<ul style="list-style-type: none"> – Experienced management team with long tenure and strong expertise in both retail and food services market – Successful management of Swiss and international growth, strong acquisition and integration track record as well as proved crisis management 	✓

Management Roadshow



by Patrick Treuer,
Head Equity Capital
Markets Switzerland
& Amanda Robinson,
Associate Equity Capital
Markets Switzerland,
Credit Suisse AG

On 22 April 2010, the CHF 189 million IPO of ORIOR AG on SIX Swiss Exchange was successfully completed.

Company Overview

ORIOR is the leading fresh convenience food producer in Switzerland with key products including charcuterie, fresh pasta, pâté and vegetarian foods sold under private label and well recognised brands such as Rapelli, Ticinella, Nature Gourmet, Albert Spiess and Le Patron.

In 2009, ORIOR employed 1,271 FTEs, generated sales of CHF 501 million, an EBITDA margin of 10.4% and a cash conversion of 65%.

Marketing Strategy

The marketing strategy for ORIOR was designed to de-risk the execution in a volatile market environment.

Analyst Presentation

The objective of the analyst presentation was for research analysts to achieve a thorough understanding of the key value drivers of the Swiss convenience food market and ORIOR's positioning as niche convenience food producer. Analysts were invited to a 1-day presentation at Rapelli in Stabio which included a site visit.

Pilot Fishing

In order to educate key opinion leaders on the ORIOR equity story and to get their feedback on valuation and appetite to participate in the IPO in an increasingly volatile market environment, ORIOR's management met with a number of long only funds and some hedge funds in Zurich and London.

Following the meetings, detailed feedback on attractions, potential concerns, valuation indications as well as indications on likely appetite were gathered and evaluated.

Anchor investor approach

Increased nervousness and declining risk appetite in the market due to sovereign debt woes in Greece and other peripheral EU countries, led to the postponement of several European IPOs in February 2010. Despite positive feedback from pilot fishing, the project team decided to approach additional investor constituents to further de-risk the IPO execution. Several Swiss and international non-traditional investors met with management and indicated strong interest to participate in the IPO.

Investor Education

The analyst presentation led to a consistent understanding of ORIOR's equity story and in the 2 weeks following the intention to float announcement, the syndicate analysts met with a large number of institutional investors in one-on-one and group meetings across Europe. Valuable feedback on the investment case and valuation was gathered. Key investor attractions included the solid business model, the defensive equity story, the high predictability of earnings, strong brands

and a leading market position as well as solid financials and an experienced and highly committed management team.

Price Range Setting

The price range was set at CHF 42-52 per share, representing an equity value of CHF 259-301 million. Such pricing was consistent with institutional investors' price indications, with the corporate finance valuation as well as with the research analysts' views on fully distributed fair value.

The price range was set to create positive momentum and to generate strong interest by Swiss and international lead investors, while the bottom end of the price range provided a protection against adverse changes in markets during the marketing period.

Management Roadshow/ Bookbuilding

Following the investor education by the syndicate research analysts, ORIOR's management embarked on a seven-business-day roadshow across Europe.

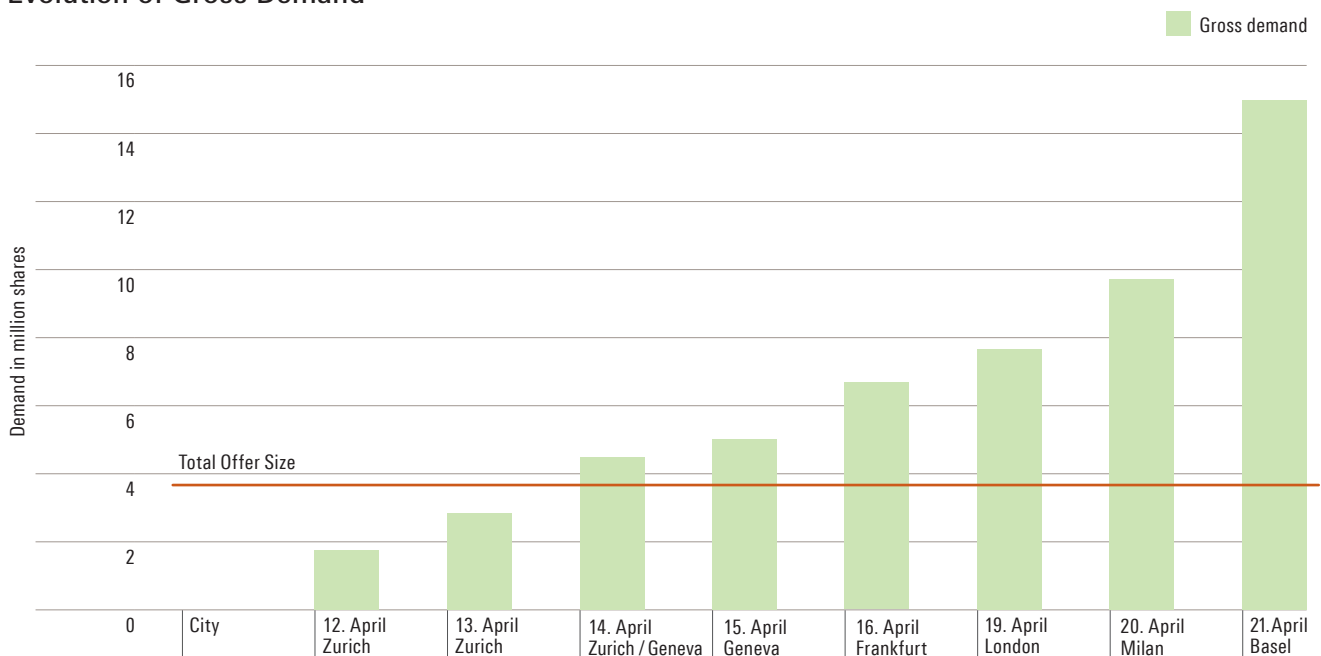
The management teams met with more than 70 investors in one-on-one meetings, conference calls and group meetings. The Icelandic volcano eruption hampered ORIOR management's travelling schedule and a video recording of management presenting the ORIOR equity story was used in order to reach as many interested investors as possible.

The offer size for the ORIOR IPO was covered on the third day of the roadshow and ended up being multiple times covered at the end of bookbuilding. In total, over 200 institutional investors had subscribed for the shares at the offer price. The conversion rate of orders vs. investors met in one-on-one meetings was 70%.

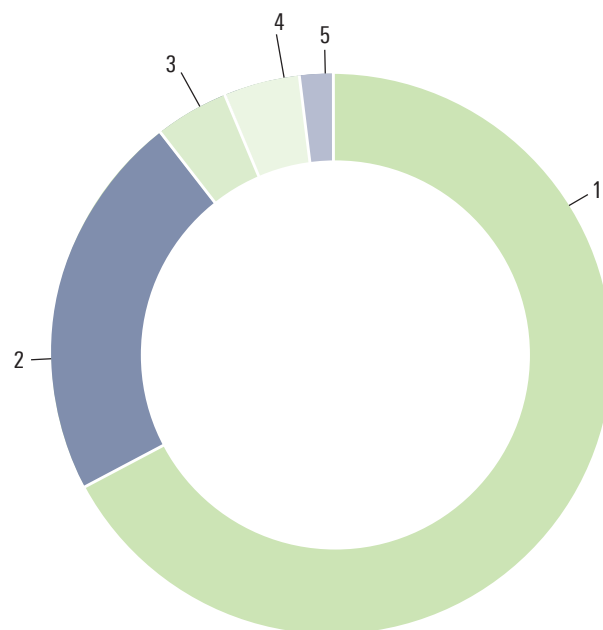
Pricing and Allocation

The strong demand allowed to price the offering at CHF 48, the upper half of the price range. The allocation strategy for the ORIOR IPO was concentrated to achieve a long-term stable investor base and to generate maximum aftermarket buying. The share price had a good start to trading, opening up 3.1% and closing up 4.7% on the first day of trading. The strong aftermarket performance allowed exercising the over-allotment option on behalf of the banking syndicate on the 11th day of trading.

Evolution of Gross Demand



Demand by Geography



1. Switzerland 66%
2. UK 22%
3. Italy 5%
4. Germany 5%
5. Other 2%

Summary of the Offering

ISSUER	ORIOR AG
PRICE RANGE	CHF 42 - CHF 52
OFFERING SIZE	CHF 189m including over-allotment option
SHARES OFFERED	Base offering: 3,425,000 shares 1,675,000 primary and 1,750,000 secondary Over-allotment: 513,750 shares (all secondary) TOTAL OFFERING: 3,938,750 shares
FREE FLOAT	66% including over-allotment
LISTING	SIX Swiss Exchange
TOTAL SHARES ISSUED	5,925,000 shares
DISTRIBUTION	Switzerland: Public offering International: Distribution to institutional investors under Reg. S outside the US
LOCK-UP	6 months for company 6 months for selling shareholders 12 months for members of the Board of Directors and the Management Board
PRICING	CHF 48
MARKET CAPITALISATION AT PRICING	CHF 284m
GLOBAL COORDINATOR AND SOLE BOOKRUNNER	Credit Suisse



RENAISSANCE
HOTEL

A photograph of a modern cable-stayed bridge. The bridge features a prominent red walkway and a curved structure with white and grey panels. The sky is blue with some clouds. The text "Obligations of a Public Company" is overlaid in a white, serif font.

*Obligations
of a Public
Company*

Obligations of a Public Company

by Dr. Patrick Schleiffer,
Attorney-at-law, M.C.J., Partner
& Urs Reinwald,
Attorney-at-law, LL.M.,
Lenz & Staehelin

While a private company's duty to provide shareholders with information can be characterised as being "periodical" (because it is, with some exceptions, essentially limited to the duty to prepare an annual business report and respond to the information requests of shareholders at shareholders' meetings), a public company is held to higher standards with respect to both the quantity and the quality of information it has to provide to its shareholders and the market.

Shareholders' Right to Information

The main information instrument for shareholders is the annual business report. Companies listed on SIX Swiss Exchange must publish an annual report including the audited financial statements and the auditors' report and a half-year report including (unaudited) interim financial statements within four months and three months, respectively, of the respective balance sheet date. Quarterly

reports are not required. See also "Reporting Requirements", "Corporate Governance" and "Maintain the Listing" for details.

Shareholders have a right to review the annual business report and the auditors' report prior to the ordinary shareholders' meeting which should take place no later than six months after the end of any given business year. The reports must be available for review by shareholders at the company's registered office at least 20 days prior to the shareholders' meeting. Each shareholder may also request delivery of a copy of these documents. A listed company must provide shareholders as well as any other person with a copy of the business report in the form approved by the shareholders' meeting and a copy of the auditors' report upon request for a period of one year following the respective ordinary shareholders' meeting. Also, the annual business reports and the interim reports must be available on the website of the issuer for a period of five years.

At the shareholders' meeting, shareholders may also request information from the board of directors and the auditors relating to the busi-

ness of the company and the execution and the results of the audit, respectively. These information rights, however, are not unlimited; in particular, the company may refuse to disclose information if and to the extent that business secrets or other legitimate interests of the company are at risk.

Shareholders may only inspect the company's business records on the basis of an express authorisation by the shareholders' meeting or the board of directors. Such inspection right, however, is subject to business secrets of the company. If a shareholder's request for information or inspection of the business records is denied by the company, the shareholder may refer the matter to the competent court. Any shareholder may further request that certain facts be investigated in a special audit by a court-appointed special auditor, provided that (i) such audit is necessary for the exercise of shareholder rights; and (ii) the above-mentioned information and inspection rights have already been exercised to no avail. The decision on whether a special audit is conducted lies with the shareholders' meeting, or, alternatively and subject to certain conditions, the competent court.





Ad Hoc Publicity and Other Duties to Provide Information

Any Swiss issuer and any non-Swiss issuer that is listed on SIX Swiss Exchange, but does not have any securities listed in its home jurisdiction, must inform the market of any potentially price-sensitive facts within its sphere of activities in the form of an ad hoc notice as soon as it becomes aware of such facts. In order to trigger the disclosure duty under the ad hoc publicity rules, a fact must be significantly price-sensitive (i.e. expected to result in a share price movement considerably larger than usual fluctuations) and therefore capable of affecting an average market participant's investment decision.

Ad hoc notices have to be distributed to (i) SIX Exchange Regulation; (ii) at least two widely used electronic information systems (e.g. Bloomberg or Reuters); (iii) at least two Swiss newspapers of national importance; and (iv) interested parties who have requested to receive ad hoc notices ("push system") outside the trading hours (whenever possible). Further, the issuer must simultaneously publish the ad hoc notice on its website where it must remain available for a period of two years after publication ("pull system"). Annual and interim reports also have to be published in accordance with the ad hoc publicity rules.

An issuer may delay the disclosure of price-sensitive information; provided such facts are based on a plan or decision of the issuer and the publication is capable of prejudicing interests of the issuer, but only for as long as it can keep the information confidential.

In addition to disclosures pursuant to the rules on ad hoc publicity, issuers of securities listed on SIX Swiss Exchange have to notify SIX Exchange Regulation of certain changes relating to the issuer itself or the listed securities (c.f. "Maintain the Listing").

Disclosure of Management Transactions

Issuers with a primary listing of equity securities on SIX Swiss Exchange are subject to the rules on dis-

closure of management transactions. The basic principle of these rules is that members of the board of directors and the executive committee of an issuer have to report transactions in equity securities and certain other financial instruments of the issuer to the issuer who must then forward such information to SIX Exchange Regulation for publication.

While the duty to report management transactions primarily lies with the company's board of directors and management committee, it is the issuer who is formally subject to the disclosure obligation and who therefore has to ensure that the members of its board of directors and executive committee report all transactions subject to the reporting obligation by implementing the necessary internal regulations and reporting processes.

The reporting obligation is limited to members of the board of directors and the executive committee, i.e. the two top management levels, and certain related parties (spouses, individuals living in the same household and legal entities, partnerships and fiduciary institutions if the person subject to the reporting obligation holds a management position within such an entity, controls the company directly or indirectly, or is a beneficiary of such company or institution). Other executives are not subject to the reporting obligation, and neither are former members of the board of directors or the executive committee or members of any advisory board.

Provided the respective transaction has a direct or indirect impact on his/her assets, a member of the board of directors or executive committee must report any transaction involving (i) shares or similar equity securities of the issuer, (ii) conversion rights or rights to sell or purchase that provide or allow for a physical settlement in shares or similar equity securities, conversion rights or rights to sell or purchase of the issuer, and (iii) financial instruments that provide or allow for a cash settlement and contracts for difference the performance of which depends to at least one-third

on shares, similar equity securities, conversion rights or rights to purchase or sale of the issuer.

As a general rule, any transaction executed without the person subject to the reporting obligation being able to influence such a transaction is exempted from the reporting obligation. In particular, no reporting obligation exists if a transaction takes place on the basis of an employment contract or is part of a compensation scheme and the person subject to the reporting obligation cannot effect such a transaction by his/her conscious decision. Thus, a firm allocation of shares, similar equity securities, options or other rights to acquire shares is not subject to the reporting obligation. However, a subsequent exercise or sale of such shares or rights must be reported. Further, transactions of the issuer in its own equity securities or related financial instruments are not subject to the reporting obligation and neither are pledges, usufructs, securities lending, inheritances, gifts or the division of marital property.

The reporting obligation arises when the reportable transaction is entered into, even if such transaction is subject to conditions. For transactions settled over an exchange, the reporting obligation arises when the transaction is executed. The person subject to the reporting obligation must notify the issuer no later than on the second trading day after the reportable transaction has been entered into. The required content of the notification is set forth in detail in article 56 of the Listing Rules of SIX Swiss Exchange. The issuer must within three trading days after receipt forward any notifications to SIX Exchange Regulation via the electronic reporting platform made available by SIX Swiss Exchange. SIX Exchange Regulation keeps a database of all notifications and publishes them (stating the function, but not the name of the person subject to the report obligation). Notifications remain publicly accessible for a period of three years after publication.

Maintenance Costs

The fees for a listing on SIX Swiss Exchange are set forth in the list of charges of SIX Swiss Exchange (Gebührenordnung). The table on the right shows the fees in connection with an initial public offering of equity securities on SIX Swiss Exchange as well as the annual fees for maintaining the listing on SIX Swiss Exchange.

In addition to the costs incidental to an initial public offering and the costs for maintaining the listing, the higher reporting and transparency standards for listed companies also lead to increased costs in other areas. Since the amount of such additional costs may vary greatly, the following is only a generic description of factors that will likely lead to higher costs.

After their initial public offering, listed companies typically need to invest in additional manpower for their finance and/or investor relations departments, improved internal control systems as well as the implementation of the necessary corporate governance structures (e.g. board committees). As compared to private companies, listed companies typically also incur additional costs in connection with the maintaining of the share register and typically also incur higher auditors' and legal fees. The increased investor-relations-related costs are typically related to the preparation of the annual report, support in connection with ensuring compliance with the ad hoc publicity rules, organisation of the presentation of the financial results as well as the preparation and organisation of the annual shareholders' meeting.

by Dr. Patrick Schleiffer,
Attorney-at-law, M.C.J., Partner
& Urs Reinwald,
Attorney-at-law, LL.M.,
Lenz & Staehelin

Fees in Connection with Listing

Processing of listing application	CHF 3,000
Examination of listing prospectus	CHF 5,000
Surcharge for new issuers	CHF 10,000
Variable fee for listing of new equity securities (calculated on the closing price of the shares on the first trading day)	CHF 10 per each million of market capitalisation, but not more than CHF 80,000

Annual Fees for Maintaining the Listing

Annual fee	CHF 6,000
Variable fee (calculated on the closing price of the shares on last trading day of previous year)	CHF 10 per each million of market, but not more than CHF 50,000



Ownership Reporting by Shareholders

by Dr. Jacques Iffland,
Attorney-at-law, Partner,
Lenz & Staehelin

The listing of a company's shares on a stock exchange not only results in obligations imposed on the company itself. The listing also involves obligations imposed on the company's shareholders. These are required to make announcements when their interest in the company reaches, exceeds or falls below certain thresholds. The violation of this duty is a criminal offence, which can result in the imposition of significant fines or, as the case may be, in the suspension of the relevant shareholders' voting rights.

Triggering Events

The duty to notify significant interests in listed companies arises when a discloseable interest reaches, exceeds or falls below a disclosure threshold.

The discloseable interests are calculated by aggregating certain positions held by a person in both the shares of the relevant listed company and certain financial instruments having these shares as underlying. To assess whether a duty to notify exists, shareholders are required to determine whether either one of the following "baskets" reaches, exceeds or falls below a disclosure threshold:

- so-called "share positions", i.e. positions in physical (including borrowed) shares
- so-called "acquisition positions", i.e. positions in physical shares as well as in certain financial instruments that increase the exposure of the holder to such shares (such as call options) and
- so-called "disposal positions", i.e. positions in certain financial instruments that reduce the exposure of the holder to the relevant shares (such as put options)

A disclosure obligation arises if any of the baskets mentioned above reaches, exceeds or falls below a disclosure threshold. The disclosure thresholds are set at 3%, 5%, 10%, 15%, 20%, 25%, 33 $\frac{1}{3}$ %, 50% and 66 $\frac{2}{3}$ % of the issuer's voting rights.

The aggregate number of shares used to make the relevant calculations (i.e. to determine the denominator of the relevant fractions) is the number of shares of the issuer registered in the commercial registry.

The Swiss disclosure rules only apply to positions held in Swiss-listed companies, i.e. in companies with registered offices in Switzerland whose equity securities are listed in whole or in part on a Swiss stock exchange. The initial listing of the shares of a Swiss issuer on a Swiss stock exchange consequently results in all shareholders whose discloseable

positions represent 3% or more of the issuer's voting rights having to notify their interest in the company. This involves in principle the delivery of a notice to both the company and the Swiss stock exchange where the relevant equity securities are listed. However, where the relevant shares are listed on SIX Swiss Exchange, the delivery of a notice of significant shareholding is not required if the detail of the relevant shareholders' interest is described in the listing prospectus of the issuer.

Persons Required to Make the Disclosure

Under the Swiss regulations, the duty to notify significant interests in listed companies lies with the beneficial (as opposed to legal) owner of the relevant positions. This means that where certain positions are held through controlled entities, the person required to notify the position is the person ultimately controlling the relevant entities, and not the entities through which the positions are held. For example, if a discloseable interest is held through a holding company, the duty to notify lies with the controlling shareholder of the holding company, and not with the holding company itself.

The Swiss rules require shareholders to provide detailed information on the manner in which they hold their discloseable interests in Swiss listed companies. In particular, where

the discloseable interests are held through controlled entities, the Swiss rules require that information be provided with respect to both the legal (direct) and beneficial (indirect) owners, and that the relationship between the legal and beneficial owners be explained.

The Swiss rules contain detailed provisions relating to the reporting of positions held by particular categories of investors or intermediaries, such as investment managers, investment funds, banks or securities dealers.

The Swiss rules require that the discloseable interests of persons acting in concert be aggregated and notified on a consolidated basis. Resolving to act in concert can consequently result in the relevant shareholders being required to notify their interest in the company if their aggregate position reaches, exceeds or falls below a disclosure threshold as a result of the formation of the group. For example, three persons each holding 1% of the voting rights of a Swiss-listed company will be required to notify a consolidated interest of 3% if they resolve to be acting in concert with respect to their relevant positions. A concerted action is deemed to exist in this context where different persons coordinate their conduct with a view to acquiring or selling equity securities or exercising voting rights.

Under a controversial practice that has however been confirmed on several occasions, the Disclosure Office of SIX Swiss Exchange takes the position that shareholders who enter into lock-up agreements (i.e. who undertake not to dispose of their shares during a certain period of time) in connection with a public offering of securities are deemed to be acting in concert for the purpose of the disclosure rules, and are consequently required to report their positions as a group. This creates significant difficulties in practice, since it requires all the persons having entered into lock-up agreements to inform each other of their trading activities. The Disclosure Office of SIX Swiss Exchange has tried to address some of the issues

resulting from this regime. In a "Disclosure Office Notice" 1/09 dated 7 April 2009, it has eased the disclosure obligations that would otherwise apply to the persons having entered into lock-up agreements, by exempting such persons from the duty to publish certain information.

Time Limits

Where a duty to notify arises, the relevant shareholder (or beneficial owner) is required to inform both the relevant issuer and the Disclosure Office of the stock exchange where the relevant equity securities are listed (i.e. generally the Disclosure Office of SIX Swiss Exchange). The notice must be submitted within four trading days.

Issuers must publish the notices of significant shareholdings submitted to them within two trading days from receipt. Where the equity securities of the relevant issuer are listed on SIX Swiss Exchange, the publication must be made through a dedicated web platform administered by this stock exchange. In addition, issuers are required to publish information relating to the positions held in their own share capital (e.g. treasury shares) within four trading days from these positions having reached, exceeded or fallen below a disclosure threshold.

Particular Disclosure Duties in Takeover Situations

Swiss law imposes particular disclosure duties in takeover situations. In such a case, certain persons are required to report any trade relating to the securities of the target company or (where the takeover offer is an exchange offer) the securities offered in exchange. The trade reports must be made on a daily basis to the Swiss Takeover Board (TOB) and the Disclosure Office of the relevant stock exchange. They are published on the website of the TOB. The persons subject to this particular trade reporting regime during an offer period are:

- the bidders and any persons acting in concert with them
- the target
- any person holding 2% or more of the target's voting rights and

- who has asked to participate in the proceedings held by the TOB to assess the legality of the relevant public takeover offer and
- where required by the TOB, persons holding 3% or more of the target's voting rights and/or of the voting rights of the company whose securities are being offered in exchange

During an offer period, the bidder and the persons acting in concert with it are required to notify their trades in accordance with the above-mentioned rules exclusively. The general duty to notify the fact that their interest in the target has reached, exceeded or fallen below certain thresholds is suspended until the end of the offer period.

Sanctions

Failure to comply with the regime regarding disclosure of significant interests in Swiss listed companies is a criminal offence and may result in the imposition of a fine of up to twice the purchase or sale price of the discloseable interest subject to the breach (for intentional breaches) or up to CHF 1 million (for non-intentional breaches).

In addition, a court may decide to suspend the voting rights held by any person who has failed to notify a significant interest in a Swiss-listed company in compliance with the Swiss disclosure rules. The suspension can be imposed for a maximum period of five years. The ruling can be issued at the request of the Swiss Financial Market Supervisory Authority (FINMA), the issuer or any of its shareholders. It can also be issued at the request of the TOB if the violation of the Swiss disclosure rules occurred in the context of a public takeover offer.

Corporate Governance

by Matthias Wolf,
Attorney-at-law, LL.M., Partner,
Lenz & Staehelin

Under the Swiss Federal Stock Exchanges and Securities Trading Act (the “SESTA”), SIX Swiss Exchange is authorised to determine the information required to be published by listed companies to allow investors to evaluate their securities and their quality as issuers. In so doing, SIX Swiss Exchange is required to take into account internationally recognised standards. According to the Listing Rules of SIX Swiss Exchange, the Regulatory Board of SIX Swiss Exchange has the competence to determine the extent of such information to be disclosed. On this basis, SIX Swiss Exchange has adopted the Directive on Corporate Governance (the “DCG”) which contains the reporting requirements of issuers relating to corporate governance. SIX Exchange Regulation periodically reviews issuers’ reporting for compliance with the DCG.

Purpose and Scope of Application of the DCG

The purpose of the DCG is to improve transparency and allow investors to have access to certain important corporate governance information relating to issuers. The information to be so disclosed is set out in the Annex to the DCG (the “DCG Annex”).

The DCG applies to Swiss issuers with equity securities listed on SIX Swiss Exchange and also to foreign issuers if they are listed on SIX Swiss Exchange but not listed in their home country. This leads to the following conclusions:

- A company with (only) debt securities listed on SIX Swiss Exchange is outside the scope of the DCG.
- A non-Swiss issuer listed on SIX Swiss Exchange and also listed in its home country is outside the scope (irrespective of whether the home country listing is primary or secondary).
- A non-Swiss issuer listed on SIX Swiss Exchange and also listed in a country other than its home country is inside the scope (irrespective of which listing is primary or secondary).

The DCG and the DCG Annex are primarily designed for Swiss companies and use Swiss concepts and terminology. Non-Swiss issuers must apply these by analogy.

Relevant Date; Manner of Publication

The relevant date for the corporate governance reporting is the balance sheet date. Subsequent material changes must be reported either in a separate section on material changes or in a clearly designated manner under the relevant section. The disclosures must be made in a separate section of the annual report. Specific references to other sources of information (including websites) are permitted.

Principles: Clarity, Materiality, “Comply or Explain”

The guiding principles of the DCG are:

- Clarity:
Information should be presented so that it is clear and comprehensible to an average investor

- Materiality:
Only information essential to understanding and assessing the corporate governance of the issuer should be reported
- Comply or explain:
Companies may elect not to disclose certain information normally required if a specific and substantiated explanation for each instance of non-disclosure is given. In practice, however, this possibility has rarely been used.

Overview of Information to be Disclosed

The following briefly summarises the matters to be disclosed according to the DCG Annex following its order of sections (“Points” in the terminology of the DCG Annex).

Group Structure and Shareholders

This Point essentially covers a presentation of the operative group structure including all material consolidated entities and information on significant shareholders which must summarise (or refer to) the disclosure notifications by shareholders as required by the SESTA. For Swiss issuers, this means that the lowest relevant disclosure threshold is 3% of the voting rights. Non-Swiss issuers must report significant shareholders in analogy to the extent known. Finally, this Point includes any cross-shareholdings with other companies exceeding 5%.

Capital Structure

This Point requires disclosure of information on the issuer’s share capital, any authorised or conditional capital, changes in the share capital in the last three reporting years, number,

class and descriptions of shares and other equity securities, restrictions on transferability (including the rules and reasons for granting exceptions and the pertinent practice), the permissibility of nominee registrations, and the procedures and requirements for cancelling privileges and transfer restrictions. Further, this section must describe outstanding convertible bonds and options.

Board of Directors

The members of the issuer's board of directors must be presented with name, nationality, education and professional background. For executive directors, the management tasks entrusted to them must be mentioned. For non-executive directors, any management functions with the issuer in the last three years and any significant business connections of the director or persons or organisations related to the director must be reported. Any significant other governing, supervisory, permanent management or consultancy functions as well as governmental or political functions must also be reported.

Executive Committee

The members of the issuer's senior management (executive committee) must be presented with name, nationality, function, education, professional background and any previous tasks and positions held by them at the issuer. Further, any activities in governing or supervisory functions in other organisations as well as permanent management and consultancy functions must be mentioned. If management functions have been delegated to persons outside the issuer's group under management agreements, such delegations must also be mentioned.

Board and Executive Compensation, Shareholdings and Loans

The disclosure of executive compensation is a matter of significant public interest and ongoing discussion and controversy. For Swiss public companies, the disclosure of executive compensation is governed by mandatory corporate law (primarily Art. 663b^{bis} of the Swiss CO). Foreign

issuers listed at SIX Swiss Exchange are required to apply this provision by analogy. In summary, the following information must be disclosed in the notes to the annual balance sheet:

- remuneration paid to members of the board (and any advisory board) in the aggregate and individually for each member (stating name and function)
- remuneration paid to senior management in the aggregate and the highest payment made, but not for each member individually
- remuneration paid to persons closely related to a member of the board or the senior management or any advisory board
- remuneration paid to former members of the board (and any advisory board) or senior management if such remuneration relates to tasks previously carried out or if it is not customary

Remuneration includes any kind of benefits, including salaries, benefits in kind or under profit sharing schemes, allotment of shares or options, severance payments, guarantees and other security and pension benefits. Loans granted or outstanding to members of the board or senior management must equally be disclosed. Further, the shareholdings and options held by each member of the board (and any advisory board) and of the senior management must be disclosed individually.

In addition, the DCG requires issuers to describe the basic principles and elements of its compensation and participation programmes for the board and senior management and the competencies and procedures applicable to determine compensation.

Shareholders' Participation Rights

This Point requires a description of the following:

- limitations on voting and representation in shareholders' meetings and rules regarding exceptions from such limitations, in particular for institutional representatives, the reasons for any exceptions granted,

procedures and requirements for abolishment of such limitations and the rules on participation and representation at shareholders' meetings

- majority requirements for shareholders' resolutions
- rules governing the convocation of shareholders' meetings and the right to submit proposals
- record date for registration of shareholders to allow participation in shareholders' meetings

Change of Control and Defence Measures

Under this Point, issuers must indicate whether the issuer's articles of incorporation provide for an "opting-out" or an "opting-up", i.e. an election to be exempt from the mandatory offer duties of the SESTA or an election to increase the applicable shareholding percentage threshold triggering the mandatory offer duty (the statutory threshold triggering a mandatory bid under the SESTA is 33 $\frac{1}{3}$ % and an increase is permissible up to 49%). The issuer must further disclose change of control clauses in agreements and schemes for the benefit of members of the board or the management (e.g. "golden parachutes" and the like).

Auditors

The corporate governance section of the annual report must indicate since when the auditors and the lead auditor responsible for the audit are in charge, the total of auditing fees and the total of any additional fees charged by the auditors for other services.

Information Policy

Finally, the corporate governance section must indicate available sources of information, how and how often shareholder information is made available, and what other permanent sources of information and contact addresses are available to shareholders.



Financial Reporting Requirements – Overview

by Peter Dauwalder,
Partner, Transaction Advisory Services
& Roger Müller, Partner,
Financial Accounting Advisory Services,
Ernst & Young AG

Listed companies (or “issuers”) report to their shareholder and the financial community in various ways – some of them are scheduled throughout the year while others arise upon certain events. This article outlines the financial reporting requirements of a listed company. In addition it describes why risk management is an important element for a listed company to early address potential issues which also can have an impact on its reporting. Finally, the article describes the common issues beyond financial reporting which a newly listed company is confronted with after going public.

Financial Reporting Requirements

Listed companies (or “issuers”) are required to publish the following financial information (based on the Directive on Financial Reporting (DFR) issued by SIX Swiss Exchange):

Reporting Requirements for Public Companies

FINANCIAL INFORMATION	DUE DATE
Annual report *)	4 months after balance sheet date
Interim financial report *)	3 months after interim balance sheet date

*) additional information is required for investment companies and real estate companies

Reporting requirements regarding corporate governance are outlined in the section “Corporate Governance”.

Financial Reporting Requirements at Year-end

Each issuer is required to publish an annual report. This report includes the audited annual consolidated financial statements as well as the corresponding audit report. These consolidated financial statements also have to comply with Swiss law (Swiss CO). The financial information must be presented in accordance with the following recognised accounting standards:

Recognised Accounting Standards

*) additional information is required

ISSUERS OF EQUITY SECURITIES	IFRS	US GAAP	SWISS GAAP AAR
Main Standard	Allowed	Allowed	Not allowed
Standard for Investment companies	Allowed*)	Not allowed	Not allowed
Standard for Real Estate companies	Allowed*)	Allowed*)	Allowed*)
Domestic Standard	Allowed	Allowed	Allowed

For issuers not incorporated in Switzerland other internationally recognized accounting standards are accepted.

Besides the annual consolidated financial statements companies also have to present the financial statements of the ultimate parent ("issuer") to their shareholders. These financial statements are relevant for the distribution of profits and have to comply with Swiss law (CO).

Swiss law ("transparency law") further stipulates that corporations whose shares are listed on a stock exchange shall disclose in the notes to the financial statements any compensation and loans/credits granted to current or former members of the board of directors, the Executive Board or the Advisory Board and to persons closely related to members of such bodies. Legislation requires the information to be disclosed in the notes to the financial statements and thus makes it subject to audit. The auditor has to ascertain whether compensation, loans/credits and participation are completely and accurately disclosed in the notes.

Financial Reporting Requirements for Interim Periods

In addition issuers of listed equity securities are required to publish semi-annual consolidated financial statements. Interim financial statements must be prepared in accordance with the same accounting standard applied to the annual financial statements. The simplified manner of interim financial reporting provided for under IAS 34 or, as it were, Swiss GAAP ARR 12 is applicable. By way of analogy, US GAAP preparers must adhere to Financial Accounting Standards Board (FASB) Accounting Standards Codification Topic 270 in their interim financial statements, and must publish additionally at minimum a condensed balance sheet, statement of cash flows and statement of shareholder equity. In their interim financial reports, issuers that are not domiciled in Switzerland and do not apply IFRS or US GAAP must adhere at least to the provisions of Swiss GAAP AAR 12 with regard to reporting and disclosure.

The publication of quarterly financial statements is voluntary. In the case where quarterly financial statements are published, they must be prepared according to the same principles as apply to semi-annual financial statements.

Interim financial statements are not subject to a mandatory audit review.

Corporate Calendar

In addition to the financial reporting requirement, each Issuer must publish a corporate calendar which provides information on the dates that are of major importance to investors, specifically the annual general meeting and the publication dates of the annual and interim financial statements. Furthermore, in accordance with the ad hoc publicity rules, the issuer must inform the market of any price-sensitive facts which have arisen in its sphere of activity. Price-sensitive facts are facts which are capable of triggering a significant change in market prices.

It is generally recommended that companies prepare well in advance before completing an IPO, specifically establishing a robust financial reporting process covering monthly, quarterly, semi-annual and annual reporting.

Risk Management

In addition to establishing a robust financial reporting process, a newly listed company will need to consider priority issues in an environment of changing risks and higher attention by the shareholder and the financial community. The common threats which should be considered are:

- Financial risks:
Surprises and transparency.
The market does not like surprises. Setting and communicating realistic goals as well as ensuring that the business is financially transparent is key.
- Strategic risks:
Growth and governance.
Rapid growth and organisational

change create new risks and can expose weaknesses in corporate governance.

- Operational risks:
People and infrastructure.
Life after an IPO can be distracting for staff. The company should remain focused and understand their new responsibilities.
Furthermore, they should consider whether systems, controls and policies are still adequate
- Compliance risks:
Rules, regulations and controls.
The company will have to comply with a host of new rules and deadlines. Any failure to comply will alarm investors.

Specifically, new listed companies may need to reconsider their approach to risk management. The risk management process should be an integral part of a company's daily business, monitored regularly and when necessary enhanced or modified.

Other Challenges Beyond Financial Reporting

Leading a fast-growth company through an IPO can be an intense and emotional ride. But the need for hard work does not end there. Life is very different for newly listed companies. Three of the key challenges that companies typically face in the post-IPO period are:

- Delivering on promises
- Maintaining the pace of growth
- Working with a larger and more diverse body of investors

An IPO is a transformative step for a business. And it can change the lives of the executives involved. There are personal rewards, but also risks.

Delivering on Promises

The public market is an unforgiving place. To thrive, the company needs to demonstrate to investors that it is successfully executing the business

plan, while ensuring flawless Regulatory Compliance. Remember:

- Instilling new levels of discipline into the organisation
- Defining the key metrics that will drive the business forward
- Keeping on top of emerging threats

Maintaining the Pace of Growth

The preparations needed to take a business public can be arduous. With the transaction out of the way, it might be tempting to relax, but the company needs to keep moving forward. Priorities should include:

- Focus on the long term
- Keep the IPO in context

Working with Investors

A business in private hands is most often accountable to just a few investors. But for a public company the situation changes radically. The company will have hundreds, possibly thousands, of shareholders. The company needs to cultivate effective relationships with them. Key points to keep in mind are:

- It takes strategic planning and proactive effort to build effective relationships
- Keep refreshing and retelling the “story”
- Cultivate relationships with key analysts, helping them to understand the business

The history and experience of what makes fast-growth companies thrive tells that the margin between success and failure is very slim: getting it right means getting the focus right. The ability to move from “growth company” to “market leader” depends on the company’s ability to successfully execute priority tasks in core business areas. They encompass the disciplines the company needs to master as the business completes its IPO journey and becomes a public company.

“In addition to the financial reporting requirement, each Issuer must publish a corporate calendar which provides information on the dates that are of major importance to investors, specifically the annual general meeting and the publication dates of the annual and interim financial statements.”

Maintain the Listing

by Dr. Matthias Courvoisier,
Attorney-at-law, MSc in Finance, Partner,
Dr. Marcel Giger,
Attorney-at-law, M.C.J., Partner
& Theodor Härtsch,
Attorney-at-law, Partner,
Baker & McKenzie

To maintain its listing, an issuer has to comply with several ongoing obligations:

- Timely disclosure of potentially price-sensitive facts (ad hoc publicity)
- Periodic reporting obligations, including the filing of the semi-annual and annual financial statements
- Publication of a corporate calendar which must be kept up to date
- Periodic notification obligations
- Payment of annual listing fees
- Disclosure of management transactions

The most important obligation is the issuer's obligation to disclose potentially price-sensitive facts unknown to the public that occur in connection with its business activities in accordance with Art. 53 of the Listing Rules ("LR"). Price-sensitive facts are new facts which are likely to result in significant movements in the price of securities. The purpose of the ad hoc publicity rules is to ensure transparency and equal treatment of all market participants. Furthermore, the ad hoc publicity also helps to prevent insider trading.

The obligation to disclose price-sensitive facts only applies to events that are significantly price-sensitive and hence capable of affecting the average market participant in his/her investment decision. The question to be answered to test whether a fact or an event is price-sensitive is the following:

"Would the average market participant buy, sell or continue to hold the security concerned given this new unpublished fact because the market participant would think that the current price inadequately reflects this fact?"

If the answer to this question is "yes", the issuer is required to publish an ad hoc press release.

Potentially price-sensitive facts include:

- Financial results (annual and semi-annual financial statements)
- Significant changes in profits, such as a profit collapse or a profit hike (significant rise in profit), and, provided that the issuer has created expectations in the market, profit warnings
- Mergers and acquisitions (including takeovers)
- Restructurings (business reorganisations, spin-offs, financial restructurings)
- Changes in the capital structure (capital increases, capital decreases)
- Takeover offers
- Changes in the board of directors and changes in

the executive committee (such changes are always considered to be potentially price-sensitive – the issuer does not have any latitude of judgement as to the potential price-sensitivity in these cases)

The above list is not exhaustive, as it is not possible to give a comprehensive list of potentially price-sensitive facts. The price-sensitive facts must have arisen in the issuer's sphere of activity. However, events beyond the control of the issuer may lead to the obligation to publish an ad hoc release, provided such event has a direct impact on an issuer's operations and results. Typical examples include the revocation of a business-critical licence, the approval of a drug (in case of a pharmaceutical company) or the downgrading by a rating agency, which could negatively affect an issuer's refinancing possibilities.

In case of a so-called profit warning, the issuer is only required to issue an ad hoc press release if it has created market expectation, e.g. through respective statements at the occasion of a press conference or the publication of its annual results. Therefore, many issuers decide to be careful with forward looking statements. However, as seen above, in case of profit hikes or profit collapses, the issuer has the obligation to publish an ad hoc notice even if no expectations at all had been created.



The issuer must inform the market as soon as it becomes aware of the main points of the price-sensitive fact (Art. 53 para. 2 LR). It may postpone disclosure, provided the following conditions are cumulatively met:

- The fact is based on a plan or decision of the issuer and
- The dissemination of the fact might prejudice the legitimate interests of the issuer, while – according to the regulatory practice – these legitimate interests must prevail over the interests of the market participants that the fact is being disseminated (weighing of interests) and
- The issuer must ensure that the price-sensitive fact remains confidential for the entire term during which disclosure is postponed

The issuer is not allowed to postpone disclosure of facts which are beyond its control. This principle applies, for example in case of a financial collapse, a profit warning or a profit hike, as these events are not based on a conscious decision of the issuer. If the issuer decides to postpone disclosure, it must, however, immediately inform the market about the fact in the event of a leak. Therefore, issuers will typically prepare leakage concepts. A leak by itself does not constitute a violation of the relevant regulations; in contrast, not being able to react quickly enough and inform the market immediately in case of a leak may be considered as organisational negligence.

The above considerations regarding the postponement of disclosure apply also in case of a financial restructuring. In this case, it is key for the issuer to postpone disclosure, as any information of the market about the need for a financial restructuring would lead to an acceleration of its insolvency. Of course, the issuer will have to prepare a comprehensive leakage concept.

While Art. 53 LR only sets out the basic principles, the Directive on Ad hoc Publicity contains detailed rules on the time as well as the form of publication. As a general rule, the issuer must publish potentially price-

sensitive facts either 90 minutes prior to start of trading or after the close of the market (being the timeframe outside the so-called “critical trading hours”). This allows investors to assess the implications of an event on the price of the stock. Under exceptional circumstances, disclosure can or must be made during trading, provided that SIX Exchange Regulation has been informed 90 minutes in advance. This will give SIX Swiss Exchange the time to decide if a suspension of trading is necessary due to the disclosure during the critical trading hours.

The ad hoc press release must be sent to at least two electronic information systems widely used by investors (e.g. Bloomberg, Reuters, or Swiss-based SIX Telekurs) and at least two Swiss newspapers of national importance. In addition, the issuer must provide a service on its website that allows interested parties to receive notifications of potentially price-sensitive facts via e-mail (push system). Finally, all ad hoc communications must be available on the issuer’s website (pull system).

Selective notification of market participants constitutes a violation of the principle of equal treatment. This also applies with regard to the information of employees, selective press contacts or contacts with financial analysts. To avoid any violations of the ad hoc disclosure rules, issuers typically prepare internal rules and regulations setting out the criteria to determine price-sensitive facts and the related duties and responsibilities.

SIX Exchange Regulation as an independent part of SIX Swiss Exchange is in charge of ensuring that issuers comply with their ad hoc disclosure obligations. In cases where SIX Exchange Regulation has any doubts whether an issuer has complied with its respective obligations, they will start investigations. In case there is a violation of Art. 53 LR, the Sanction Commission of SIX Swiss Exchange or, under certain circumstances, SIX Exchange Regulation itself will sanction the respective issuer. Possible sanctions are, among others, reprimands and fines. The

decision will usually be published on SIX Exchange Regulation’s website.

In addition to the ad hoc disclosure obligations, issuers are subject to a number of periodic disclosure and notification requirements (Arts. 49 et seqq. LR). First of all, they have to file their annual and semi-annual reports with SIX Exchange Regulation. The annual report must contain a detailed report on the issuer’s corporate governance. The financial statements as well as the corporate governance report are subject to SIX Exchange Regulation’s review. Often, SIX Exchange Regulation provides certain guidance to issuers regarding the focus of its reviews, and issuers are well advised to follow such guidance (e.g. the SIX Exchange Regulation communications, which define the main points of focus for the review of annual reports each year).

Furthermore, the SIX Exchange Regulation’s Circular No. 1 “Reporting Obligations regarding the Maintenance of Listing” (“Circular No. 1”) sets out additional periodic reporting obligations, which include, among others:

- Name changes
- Information related to the general meeting of shareholders
- Information related to dividends
- Share capital structure or
- Information on the free float

Circular No. 1 contains detailed lists for each type of security listed on SIX Swiss Exchange, which makes it convenient for issuers, as they can only “tick the box.” All related information must be submitted to SIX Exchange Regulation.

The issuer has some organisational obligations in relation to the reporting of significant shareholdings in accordance with Art. 20 of the Swiss Federal Act on Securities Trading and Stock Exchanges and the reporting of management transactions according to Art. 56 LR.

Finally, the issuer must pay the annual listing fees, which consist of a basic charge in the amount of CHF 6,000 per year and an additional variable charge of CHF 10 per CHF 1 million of capitalisation per year which is capped at CHF 50,000, all as further specified in the list of charges.

Public Takeovers, Opting-out

by Dr. Matthias Courvoisier,
Attorney-at-law, MSc in Finance, Partner,
Dr. Marcel Giger,
Attorney-at-law, M.C.J., Partner
& Theodor Härtsch,
Attorney-at-law, Partner,
Baker & McKenzie

Public takeovers result from a series of share purchase agreements between an offeror and shareholders based on a public offer made by the purchaser. These agreements are governed by the laws on obligations – that is based on the principle of freedom of contract. Offers for traded securities, however, have to take into account particular interests that deserve protection. These are:

- interest of shareholders not to end up with an illiquid or delisted share or an investment that is being changed by a new controlling shareholder without having had the opportunity to divest at a fair price
- interest of the offeror that its offer is not frustrated by changes to the target
- interest of the target not to be negatively affected by the offer

To protect these interests, the Stock Exchanges and Securities Trad-

ing Act and ordinances thereto contain rules that restrict the offeror's freedom of contract and the offeror's and the target's conduct. These rules only apply to Swiss companies (i.e. those incorporated or managed in Switzerland) listed at a Swiss stock exchange; an amendment is being discussed to extend the rules to foreign companies.

Most Important Rules for the Offeror

Besides the general principles of transparency and acting in good faith, the most important rules applicable to the offeror are:

Mandatory Offer Rule

If a shareholder exceeds the 33 $\frac{1}{3}$ % threshold of voting rights in a listed company, it has to offer to all other shareholders the opportunity to purchase all listed equity securities of said company. The other shareholders thus have the option to divest in case of change of control. There is no further protection above this threshold such as an obligation of a majority shareholder to buy shares of minorities in case of a delisting.

Minimum Price Rule

The offeror may submit an offer for part or all of the shares. If the offer is for a number of shares that would bring the offeror across the mandatory

offer threshold or if the offeror must submit a mandatory offer, it has to comply with two minimum price rules (and the offer has to be extended to all listed equity securities of the target):

- the price must be at least 75% of the highest price the offeror paid during the 12 months period prior to the start of the offer. Purchases by persons acting in concert with the offeror and of derivatives on the shares are also to be taken into account. The 25% premium is currently under review by the legislator.
- the price must be above the market price which is either the 60-days volume weighted average price before the start of the offer or, if the share is illiquid, a price determined by valuation

Best Price and Equal Treatment Rule

From the start of the offer, the offeror has to treat all shareholders equally. This mainly concerns the price offered as opposed to prices paid when purchasing equity securities in the market. The offeror and parties acting in concert with the offeror may purchase shares in the market, but if they pay a higher price than the offer price, the offeror has to increase the offer price accordingly. This rule applies from the start of the offer until six months after the subsequent offer period.

Limitations Regarding Offer Conditions

In mandatory offers, the offeror may make its offer only dependent on obtaining necessary regulatory approvals, the board registering acquired shares with voting rights and maintaining the substance of the target company. In voluntary offers there are fewer restrictions. The offeror must have an interest in the condition and must not be able to substantially influence the condition. Conditions that in fact grant the offeror a right to withdraw the offer at will are inadmissible. Conditions that require the offeror to contribute substantially may nevertheless be admissible, such as obtaining regulatory approvals that require filings by the offeror. Conditions must not be such that they are almost impossible to meet. Typical conditions are, for example, reaching an acceptance threshold (often 66²/₃%), removal of transfer and voting rights restrictions, registration of the offeror with voting rights in the shareholders' register, consent of current board members to follow instructions of the offeror after offer settlement, non-occurrence of material adverse changes and approval by regulatory authorities.

Position of the Target Company

The target is not a party to the purchase agreements concluded between the offeror and the shareholders. Nevertheless, the target's board has an important role as gate keeper to any due diligence. Unless the board allows a due diligence, the offeror has no right to get non-public information. Depending on the type of company this may make an offer impossible. The board has also to submit a report on the offer containing a recommendation to the shareholders.

The target has various obligations within a public tender offer, such as:

Equal Treatment Rule

Under corporate law, the target's board is obligated to treat all shareholders equally. This means that the board shall use its position to aim at an offer that treats shareholders equally. The target company has also to treat competing bidders equally. If the board grants access to documents to one bidder, other bidders may review the same documents.

Submitting a Board Report

The board comments on the offer in the board report. To overcome conflicts of interest or to show diligence, the board often obtains a fairness opinion regarding the offer price.

Limitation of Defence Measures

Absent an approval of the shareholders, during the offer, the board is, for example, restricted from substantially changing assets and liabilities of the target, agreeing on excessive severance packages, issuing equity securities without granting shareholders their pre-emptive rights, and purchasing or selling own equity securities. Defence measures that obviously violate corporate law are also prohibited. Any defence measure intended to be implemented must be reported to the Takeover Board.

Reporting Obligations

The target has to report its trades in own equity securities. The target has also to comply with ad hoc publicity rules, and may have to make publications such as in case the offer results are announced.

Usual Timeline of a Public Offer

A public offer begins with the confidential preparations by the offeror, often without involving the target. In certain instances, the target is the driver, such as when its board con-

cludes that it has to put the company on sale or proposes to merge with another company by a public takeover submitted by the merger partner.

Unless the offeror plans a hostile bid, it will contact the target before the offer launch to get the board's support for the offer and to get access to further information. This is the most delicate point for the target's board and the offeror. The offeror contacting the target may trigger ad hoc reporting obligations, but a premature disclosure may be detrimental to the offer and the shareholders may lose an opportunity for an attractive offer. This may be avoided by either an outright refusal of an unspecific attempt to contact the target or by promptly entering into confidentiality undertakings. Such undertakings often also deal with information the target shall provide to the offeror, exclusivity undertakings of the target and non-trading obligations of the offeror.

For offers that are supported by the target's board, the offeror and the target enter into a transaction agreement. This agreement sets out the terms of the offer and the obligations of the parties in connection therewith. Typical obligations of the target are to support the offer, not to solicit a competing bid, to call shareholders' meetings, approve the transfer of shares and register acquired shares with voting rights, cause board members to resign, abstain from trading in own equity securities and operate the company in the ordinary course of business. By signing such an agreement the target becomes a party acting in concert with the offeror; actions by the target may be imputed to the offeror. The offeror must cause the target to abstain from acquiring its own equity securities and restrict the target in changing equity participation plans.

“Public takeovers are not the daily business of a public company and may come without warning.”

Part of the preparation is also the pre-discussion of the offer documentation with the Takeover Board and their review by a special review body.

After the preparatory phase, the offer normally starts by publishing a pre-announcement, which contains the key terms of the offer, binds the offeror to its offer, and triggers the application of the obligations of the offeror and the target. Normally shortly after the pre-announcement, the prospectus is published. In friendly transactions, the board report is included in the prospectus. Otherwise, that report is to be published within 15 trading days after the prospectus.

A cooling-off period of ten trading days follows the prospectus publication. The offer period, during which the offer may be accepted, then lasts for 20 to 40 trading days, as determined by the offeror. After the offer period, the offeror publishes the interim results of the offer and states whether the offer conditions are met or waived. There are conditions that may last longer than the offer period, such as the granting of approvals by regulatory authorities, but not, for example, the reaching of an acceptance threshold. If the offer conditions that last until the end of the offer period are met or waived, a subsequent offer period of ten trading days runs during which shares may be tendered again. After the subsequent offer period and provided the remaining conditions are met or waived, the offer must be settled within ten trading days.

At the end of an offer, normally not 100% of the shares are tendered. There are ways to acquire non-tendered shares. For example, the offeror may squeeze out the remaining shareholders at the offer price through court proceedings to be started within three months after the end of the subsequent offer period, provided



the offeror holds, at the start of the proceedings, more than 98% of the voting rights in the target.

Supervisory Authorities and Special Review Body

Public offers are supervised by the Takeover Board which decides whether the offer documents comply with and enforces compliance with takeover rules. Decisions of the Takeover Board may be appealed with FINMA and thereafter with the Federal Administrative Court.

Further, the offeror is accompanied by a special review body, which is chosen by the offeror and supervises offer and offeror. The role of that body is similar to the role of an auditor auditing financial accounts, except that the special review body has a direct reporting obligation to the Takeover Board and may be instructed by the Takeover Board to do further review work.

Early Preparation for Takeovers

Public takeovers are not the daily business of a public company and may come without warning. Thus, a public company has to do preparatory work early on and even prior to the listing of the company:

Opting-Out and Opting-Up

Listed companies may provide in their articles of incorporation that mandatory offer rules do not apply (opting-out) or that the 33 $\frac{1}{3}$ % threshold be increased up to 49% (opting-up). An opting-out may be of interest for companies controlled by a single shareholder or a group of shareholders, if such control shall continue over time. Without an opting-out, an acquirer of the majority stake has to submit a public bid to the other shareholders. This may limit the market for the majority stake. This obligation may also be triggered if part of a controlling group sells their shares to new group members. An opting-up may be

of interest if a shareholder holds about 33 $\frac{1}{3}$ % and wishes to have the flexibility to vary its holding. Opting-out and opting-up may be introduced (or removed) subsequently, but the Takeover Board may refuse to apply such clauses if they are introduced for a particular transaction.

Defence Measures

A number of measures may be taken to prevent an offeror from cheaply or easily acquiring a target. These measures shall allow the board to negotiate improved terms for the shareholders, but may also be abused by the board to keep its own position. Typical defence measures in the articles are limitations of voting rights and transfer restrictions, a staggered board with limitations on the number of directors that may be dismissed at a time, the possibility for the board to use authorised capital to issue shares and conditional capital to issue convertibles even during a public offer. Certain companies even agree on change of control clauses in major agreements with the only purpose of preventing hostile offers. The defence measures in the articles do not help against an offer at a good offer price since shareholders will remove those limitations. Such defence measures help however to defend against creeping takeovers. Other defence measures, such as poison pills, are often of doubtful legality and may, if detrimental to the target, expose the directors to personal liability. They may also not help to defend against offers at a good price since the shareholders may always remove a board that unduly resists a good offer. The most effective defence is good performance of the company and effective communication of such good performance.

Defence Handbook

Most important for the board of a public company is to know what to do if it is approached by an offeror.

For this purpose it is helpful to prepare a defence handbook. If properly made, it is a useful guide to create awareness and to allow the board to take the legally correct and economically appropriate immediate actions after having been approached by an offeror or when rumours of a public takeover are spread in the market. There is often no time to wait until the next regular board meeting.

“Opting-in” by Foreign Companies

Companies listed in Switzerland, but incorporated and managed abroad are not subject to Swiss takeover laws. Their shareholders are often not protected by rules of the country of incorporation either. If foreign corporate law allows, such companies may elect to submit to Swiss takeover laws. This does not cause the Takeover Board supervising the offer. The Swiss takeover rules only apply as rules forming part of the articles of incorporation by reference. The company therefore also has to include in its articles the consequences for an offeror not following the rules, such as restricting that offeror's voting rights. Some Italian companies listed at SIX Swiss Exchange have chosen this route. There is a proposal for an amendment to the law to extend Swiss takeover rules also to foreign companies with a primary listing in Switzerland.



The Keys to Successful Stakeholder Communication

by Urs P. Knapp,
Maurus Staubli,
Sophie Dres
& Dominic Thalmann,
Members of the Financial
Communications Practice Group,
Farnert Consulting AG

During an IPO process, a company puts a lot of work into establishing coherent messages and raising awareness of its attributes to investors and other stakeholders. Once the first shares have traded, the whole team can take a big breath of relief. But, the work's not done yet – it's actually just starting. Because strategically planned and executed financial communication and reputation management are critical to a company's survival in the long term.

Investor Relations = Managing Perceptions

Corporate communication is all about ensuring a timely and effective dissemination of information, maintaining a smooth and affirmative

relationship with stakeholders, and building a positive corporate image. It's also about managing perceptions. In today's environment of easy access to and overflow of information, increasing competition, and fast market movements, communicating adequately and managing a company's reputation has become a significant asset to a company's well-being.

The reputation of a company and its products is built through the messages disseminated by the company to stakeholders such as employees, customers, investors. Companies have to develop a clear line of messaging to use when communicating with all internal and external target groups. The practice of managing relations with the financial community, or, more specifically, with investors, cannot stand alone. An investor does not only base his investment decision on financial information, but rather on his view of the company that is influenced by the outside world. Investor relations, corporate communication and reputation management are all complementary to and co-dependent of each other.

"The Story is the Business, Not the Stock Price"

Investor relations is a strategic management responsibility with the purpose of enabling an effective two-way communication between a company and the financial community.

For a newly listed company, the ultimate goal of investor relations is to increase share price, right? No – that is not the whole story. The goal of investor relations is to build trust, to manage a company's reputation, and that of its products, its people, and its projects. Investor relations entails more than just disseminating financial information. Financial indicators provide information about past performance, while information about the company strategy focuses on the future potential. For example, a study finds that information about the top-management is the most important for the financial community when making decisions about buying and selling a stock (Ernst & Young, 1997. Measures that Matter.).

Positioning Your Company – On Three Levels

We have seen that what and how a company communicates can have a huge impact on its reputation and hence its survival. Effective and regular communication activities are thus more than just nice-to-haves – they’re essentially must-haves. And they should thus be thoroughly discussed and defined in a corporate communication strategy. A company can position itself on different levels – focusing on the company itself, the management, or the product (or a mix). Determining the profiling focus, the stakeholders to target, and the mix of channels and instruments to use are the key elements of a communication strategy.

Communication Tools

A company can use an array of tools for building its relationship with stakeholders and for conveying its investment and business propositions:

- Quarterly earnings and annual reports:
Obligatory for listed companies
- Press releases:
On company, product, management, and other news. Can be subject to ad hoc disclosure regulations if the news has the ability to impact the stock price
- One-on-one media contacts and

press conferences:
Regular media relations activities can have a large impact on building a company’s profile

- Investor meetings:
Roadshows, one-on-ones, company-sponsored events and so on
- Corporate websites:
Posting important information for investors and the media
- Social and online media:
Media influence has been extended further as social media takes a more prominent role in companies’ communication strategies

Role of a Communications Firm

Financial communication is a fast-moving and rapidly changing world where communications technology, official regulations, financial trends and the press frequently challenge the status quo. When initiating an IPO process in a new market, an external counsellor that has local expertise can offer you support and guidance during the ever so complex IPO process as well as beyond the first gong of the bell.

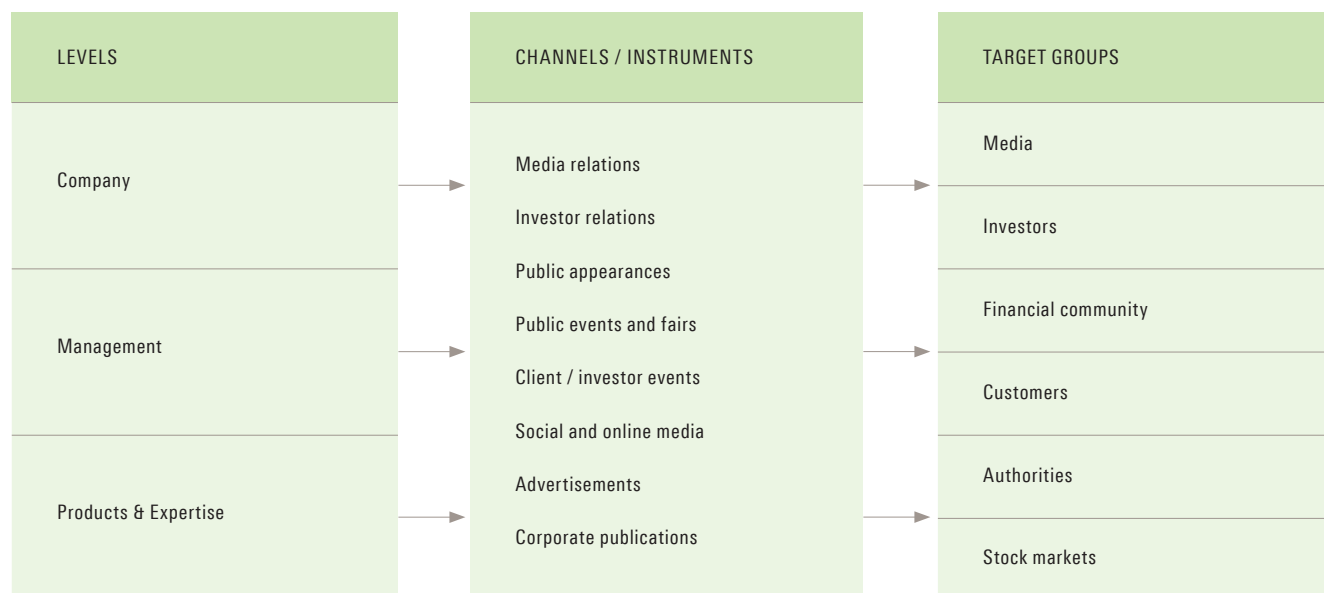
- A bridge between the company and the financial community to enhance management’s relationship with analysts, investors and key media
- Guidance and counsel on key topics such as shaping the com-

pany’s messages to prospective investors and the financial community, communicating news and events, the timing and content of disclosure

- Marketing impetus and support to increase visibility of the company’s public image

The practice of investor relations blends financial analysis and ad hoc regulation compliance with the arts of communication and strategic planning. Investor relations and financial communication are thus complementary to and an integral part of a company’s internal and external communication strategy. Only if investors and other company stakeholders are satisfied with the company strategy, reputation and progress can a company survive in the long term.

Three Levels of Positioning and Profiling



Investor Relations in the Age of Social Media

Social media spells new opportunities in investor relations. True, Twitter, Wikipedia, LinkedIn and others cannot replace personal contact and traditional communications. But used intelligently, social media does open new doors, not least in financial communications. Companies that conduct investor relations know the respective institutional investors and analysts well. Dialogue with these target groups relies on one-on-one contact. Another key element of financial communication is managing current and potential investor expectations, transmitted through traditional media and by means of regular and ad hoc reporting.

Social Media as a Relationship Management Tool

In the context of managing relations with the financial community, today's social media can help solidify contacts. Blogs and Twitter, on the other hand, can provide access to more contacts and wider groups. Such social media tools can help spot emerging trends early, set agendas, convey messages, and thus boost the company profile. Social media can initiate the kind of close interaction with private investors that was the exclusive province of institutional investors in the past.

That all sounds good, so should companies really should consider using social media in investor relations? The most common answer is probably: yes, as a complementary tool. And with the objective of actively participating in raising public awareness and forming the company's reputation through its presence in the network community. One must keep in mind, though, that social media is not the solution for all communication problems under the sun. In fact, these channels create their own set of imponderables: controlling the flow of information is more difficult and contacts tend to be less personal. Not to mention that in areas such as real-time stock quotations, Facebook, Xing and the like are not equal to traditional communication channels.

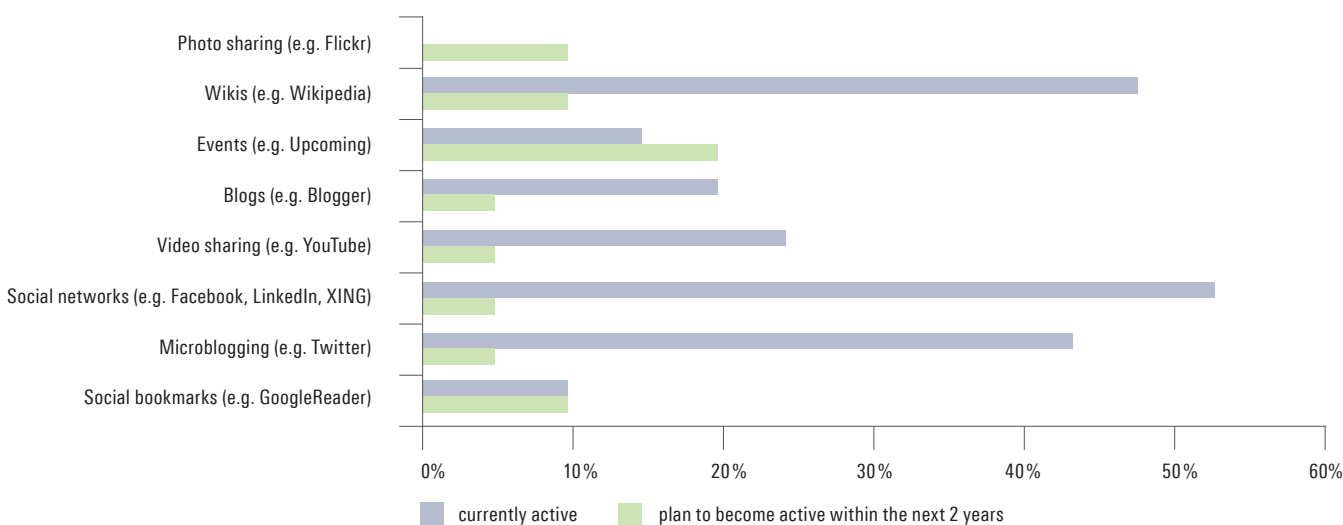
New Communication Culture

Let us not mistake the social media as the exclusive province of adolescents. The influence of the ever-larger internet and the social networks it has given rise to is vast and keeps on growing. We are used to having instant, 24/7 access to information, wherever we may be. And we are used to using virtual platforms to gather information and build opinions on companies, products, and people.

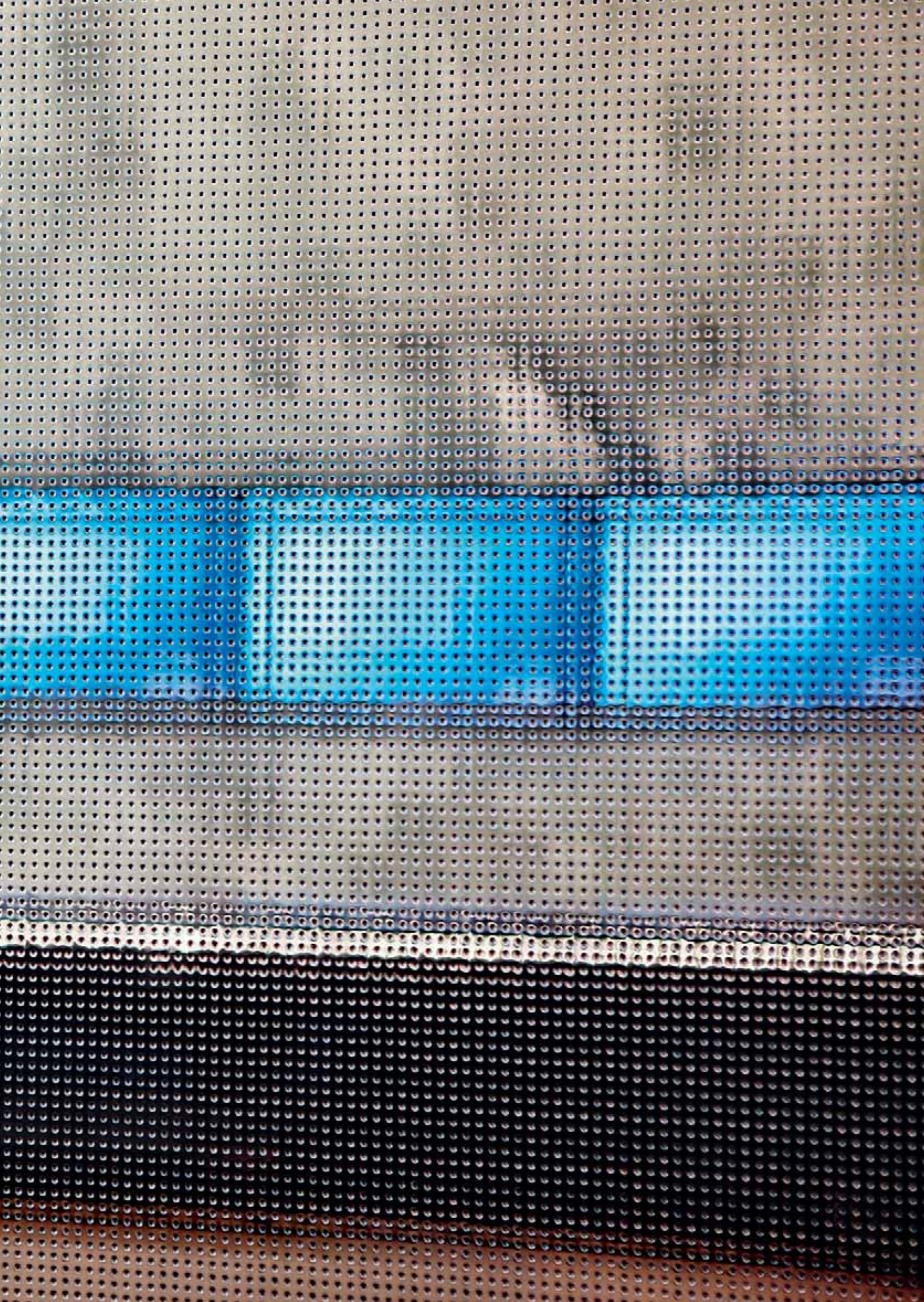
Financial figures and investment opportunities are often discussed in forums and online communities.

Companies ignore their potential opinion-shaping power at their peril. Active participation is the appropriate response. While institutional investors and analysts might perceive social networks as threats to their personal contacts, for most businesses monitoring and involvement in the social media are musts because today, professional investors trawl electronic networks for information and opinion-shaping tools as much as private investors.

Investor Relations Related Social Media Activities of Swiss Companies



Source: Bernhard Wolf, Global Head of Corporate Communications, GfK SE; DIRK-Stimmungsbarometer, Spring 2011.



Swiss Media Landscape: A Land of Many Facets

Due to the different language regions, the Swiss media landscape boasts a large number of regional titles, radio and TV programmes, but no Swiss-wide media – something that companies must keep in mind whilst planning their communication activities.

The distinct characteristics that make Switzerland – its strategic geographic location, its cultural and linguistic diversity, its differentiated political system – all contribute to the Swiss media landscape. Switzerland's reliance on international trade is also reflected in the media coverage: international financial news is covered in great depth, and international business newspapers are widely read.

Historically, Switzerland has the greatest number of newspapers published in proportion to its population and geographic size. Local, regional and national publications serve a diverse, highly educated, affluent and independent readership. Newspaper readership, which has not varied substantially in the last decade, remains on a very high level compared to most EU countries. Nonetheless, since the turning of the 21st century, all common forms of press concentration – publisher concentration (a declining number of publishing houses), journalistic concentration (a declining number of fully staffed papers) and a concentration of circulation – can be observed in Switzerland.

A new phenomenon is the growing importance of online media such as newspaper websites, specialty news platforms and also, though more slowly than in the United States, social media.

“The distinct characteristics that make Switzerland – its strategic geographic location, its cultural and linguistic diversity, its differentiated political system – all contribute to the Swiss media landscape.”

How to Work with Swiss Journalists

Swiss journalists may appear reserved and less aggressive than in other countries. They are, however, very conscious of their independence. Swiss journalists are, in general, highly educated and well-informed about the topics they write about and the people they talk to.

Therefore, it is crucial that information content and all materials intended for the press, e.g. news releases, are adapted to the specifics of the Swiss market and translated into the local languages. For communication professionals, expertise in their company's products and services and sound knowledge of the Swiss market and media landscape are essential when dealing with the press. A continuous information flow on a company's activities to the relevant journalists strengthens its position and profile in the press. However, journalists value quality over quantity.



IPO with Registered Shares – “Share Ownership Mechanics”

by Dr. Otto Haus,
CEO,
SIX SAG AG

If an issuer plans to launch an IPO by issuing registered shares, then they can count on the support of SIX SAG AG.

An initial public offering and the associated listing of registered shares on SIX Swiss Exchange requires the issuer to make several decisions and take the necessary precautions associated with a share register. SIX SAG supports and advises the issuer in all important questions arising in this context and also assumes responsibility for coordinating between the lead-managing bank and SIX SIS.

From the issuer’s point of view, there is a “before” and “after” phase of an IPO. The most important tasks are as follows:

Pre-IPO Phase

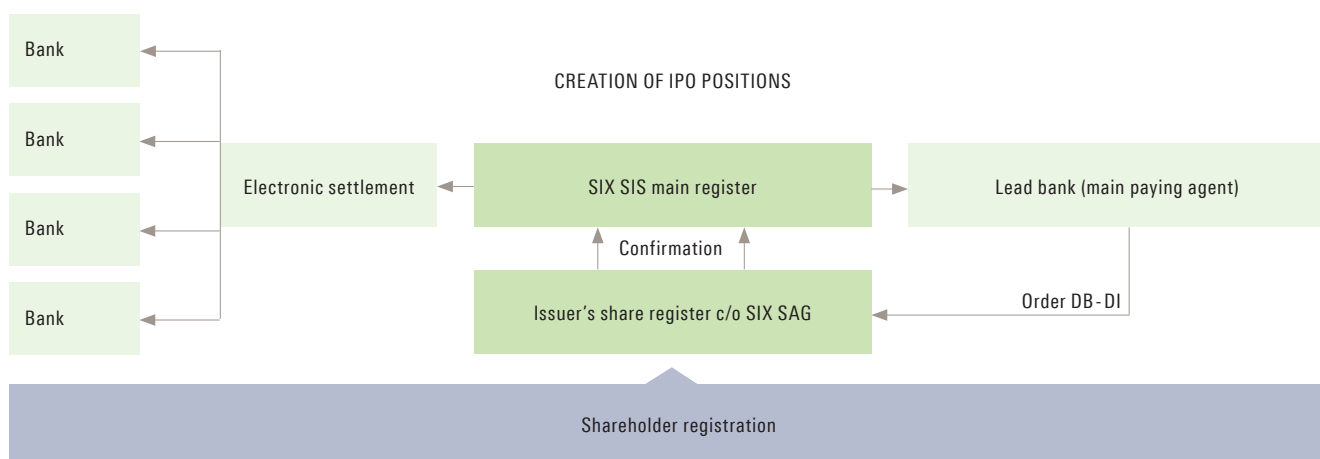
- Choice of share register (outsourcing vs. in-house)
- Choosing the “static disposable holdings” or “SIX SIS nominee disposable holdings” model
- Opening a share register with the registrar
- Entering share capital and number of shares in the share register
- Setting up the uncertificated securities book (FISA)
- Takeover of existing shareholders
- Entering registered shares with SIX SIS
- Setting up the issuer as a business partner in the SIX SIS share register model (SECOM)
- Transfer of IPO positions to the SIX SIS system (SECOM)

Post-IPO Phase

After the IPO has successfully been processed, SIX SAG manages the register in line with the legal and statutory regulations.

- Set-up of share register
- Confirmation of electronic messages in the SECOM system (AREG data)
- Registrations and de-registrations in share register
- Maintenance of shareholder data
- Reports to issuer
- Monitoring and notification of management transactions
- Formation of groups (board of directors, management, etc)
- Set-up of internet access to the share register
- Assistance with friends and family programmes
- Management of share deposit accounts for staff or shareholders

Diagram of IPO Registered Share Settlement





Shareholder Activism

by Michael Trippel,
Attorney-at-law, LL.M., Partner
& Dr. Till Spillmann,
Attorney-at-law,
Bär & Karrer AG

Shareholder activism describes the use of an equity stake in a company to directly or indirectly influence decisions of a corporation (*Aktiengesellschaft*). In the past, shareholders of public companies often limited their activities as shareholders to selling their shares in case they were not satisfied with the strategy of the board of directors and/or the performance of the corporations' stock (so-called "voting with feet"). Such a behaviour is legitimate under Swiss Law as shareholders have no obligations towards "their" corporation other than to fully pay-in the share capital and certain disclosure obligations under stock exchange laws and regulations. In particular, shareholders of a Swiss corporation are neither obliged to actively participate in shareholders meetings nor are they subject to fiduciary duties or confidentiality obligations vis à vis the corporation or other shareholders.

The reasons for shareholders to engage in shareholder activism may range from increasing the short- or long-term shareholder value to striving for objectives of a non-financial or even idealist nature. The attraction lies in the relative inexpensiveness and simplicity compared to other forms of exerting influence or obtaining control over a corporation, e.g. by launching a takeover bid. A relatively small stake

may, depending on the shareholder structure, be sufficient to be able to effectively influence the conduct of business or corporate policy of a corporation.

In companies with a widespread shareholder base with no major shareholder, shareholder activism can counterbalance the power of the board of directors and the senior management.

Potential Goals

Depending on the background of activist shareholders, their goals may vary within a wide range. Among others, such goals can comprise:

- Performance in compliance with good corporate governance: Shareholder activism can focus on a corporation's corporate governance, in order to improve transparency or cause management compensation to be lowered if such compensation is deemed to be excessive.
- Establishment of specific policies: An activist shareholder may try to improve environmental awareness, employment conditions or achieve other improvements of a similar, non-financial nature.
- Appointment of new board members: An activist shareholder who is not satisfied by the way the board of directors runs the corporation may try to replace specific members of the board or even the entire board.
- Capital structure/leverage/return on equity:

Any activist shareholder may intend to optimise the return on equity by forcing the corporation to restructure the balance sheet or distribute (higher) dividends.

- Sale/break-up of a company: An activist shareholder may intend to work towards the sale or break-up of the company as this could potentially cause the share price to rise, leading to an increase in the value of such a shareholder's stake in the company.

Types of Activist Shareholders

Shareholder activism is not limited to a certain type of shareholder. Therefore major as well as minority shareholders may act as activist shareholders. However, the following types of institutions are known to regularly appear as activist shareholders:

- Investment companies and investment funds (in particular hedge funds) who are pursuing specific financial goals.
- Proxy advisors analysing and commenting prior to shareholders meetings on the agenda items and proposals of the board of directors. Such proxy advisors are of particular relevance in cases of corporations with a widespread shareholder basis where no shareholder is able or willing to spend the necessary time and resources to analyse and assess the proposals of the board of directors.
- Public pension funds and other institutional investors who focus primarily on good corporate governance.

“A well founded business strategy which is generally convincing to shareholders may prevent shareholder activism.”

Instruments of Shareholder Activism

There are various ways in which an activist shareholder may attempt to influence a corporation and its management. Generally it can be distinguished between (i) the exercise of participation rights (*Mitwirkungsrechte*) granted to shareholders (such as the right to call and participate in shareholders meetings, to request that certain items are included in the agenda of a shareholders’ meeting as well as to exercise voting rights in shareholders meetings) and (ii) the exercise of rights granted to shareholders to protect their investment (*Schutzrechte*) (such as the right to receive financial and other information regarding the company or to initiate a review of specific matters). Accordingly, activist shareholders of a Swiss corporation have in particular the following possibilities to actively influence a corporation:

- By making proposals and/or counter-proposals or putting specific items on the agenda of a shareholders’ meeting: The board of directors may be forced to react or comment on proposals and/or counter-proposals brought forward by an activist shareholder with regard to topics tabled by the board of directors or items tabled by activist shareholders representing shares with a nominal amount of at least CHF 1 Million.
- By electing or removing members of the board of directors: Activist shareholders may try to have a representative of their own elected to the board of directors, or to remove existing members to be able to permanently influence and/or monitor the strategy of the management through “their” representatives.
- Proxy fights/empty voting: Activist shareholders may try to undermine plans of the board of directors by having other shareholders vote in accordance with such activist shareholders and/or by borrowing shares to increase their voting power (“empty voting”).
- By exercising the shareholders’ right to information or by initiating a special audit (*Sonderprüfung*).
- By entering into shareholders agreements with other shareholders thereby permanently pooling their interests.
- By starting publicity campaigns or litigation: Shareholder activism may also include launching publicity campaigns or taking legal action against the corporation to

enforce shareholders' rights and thereby increasing pressure on the corporation as well as the corporation's board and senior management. Experience shows that publicity campaigns quite often prove to be a powerful instrument for activist shareholders.

Mitigating Shareholder Activism

As mentioned earlier, shareholders of a Swiss corporation are neither subject to any fiduciary duties (neither towards the corporation nor other shareholders) nor bound by confidentiality obligations. Therefore it might be desirable to mitigate shareholder activism as it could be that an activist shareholder's interests do not necessarily have to be aligned with the interests of the corporation and/or other shareholders (e.g. an activist shareholder may intend to force the corporation to enter into agreements with such activist shareholder or parties affiliated with such activist shareholder at terms which are favourable to such activist shareholder).

Although there is no way (and no reason) to completely prevent shareholders from trying to exert influence on a corporation, its board of directors or senior management, there are nevertheless a number of precautions and measures that can mitigate the risks connected with shareholder activism such as:

- Disclosure obligations and mandatory takeover offer: Any acquirer of equity securities of a public company must disclose his shareholding if it exceeds (and falls below) certain thresholds of voting rights.¹ The board of directors is therefore informed about shareholders who hold or are building significant stakes and respective voting rights.

Further, if such an acquirer's shareholding exceeds one-third he is obliged to make a mandatory takeover offer. However, as an equity stake of 25 to 30% in a public corporation is often sufficient to control a public corporation the threshold of one-third does not always offer adequate protection.

- Transfer restrictions / Refusal of registration / Voting cap: A corporation may refuse the registration of an activist shareholder in the share register as shareholder with voting rights if such activist shareholder (i) does not expressly declare that he has acquired the shares in his own name and for his own account or (ii) requires registration in excess of a registration limitation stated in the corporation's articles of association.
- No surprises at shareholders' meetings: All agenda items and proposals for the shareholders' meetings must be published in advance by the corporation. Subject to two minor exceptions no valid shareholders' resolution can be taken with regard to matters not properly announced. An activist shareholder may therefore during a shareholders' meeting not bring forward new items. The board of directors may thus prepare itself and limit the agenda items to the maximum intent possible in order to prevent activist shareholders to bring up new proposals which are not intended by the board of directors to be resolved during the meeting. However, it is permissible to make counter proposals with regard to items already put on

the agenda (e.g. if the board of directors proposes to elect Mr X as new members of the board of directors an activist shareholder could propose during the shareholders meeting (i.e. without informing the corporation in advance) that Ms Y instead of Mr X should be elected).

- Good Performance: A well founded business strategy which is generally convincing to shareholders may prevent shareholder activism. However, as described above, the interests of shareholders may vary significantly or even contradict each other and it is therefore difficult for the board of directors to take into consideration all interests.

¹ The thresholds are:

3, 5, 10, 15, 20, 25, 33 1/3, 50, 66 2/3%



*Liquidity
in the Market*



Liquidity in the Market

by Patrick Treuer,
Head Equity Capital
Markets Switzerland
& Amanda Robinson,
Associate Equity Capital
Markets Switzerland,
Credit Suisse AG

Liquidity, or in other words the ability to buy or sell an asset without significantly moving its price or changing its value, is an important criterion for investors when evaluating an investment opportunity.

The liquidity of a company is a function of its overall market capitalisation and its free float as well as its investor base. Furthermore, the liquidity of the overall stock exchange as well as the main index the company is included in play an important role. SIX Swiss Exchange is a highly liquid stock exchange, with almost 130,000 trades in domestic and foreign equities worth c. CHF 3.6 billion a day in 2010¹. The SPI, comprising practically all of primary listed SIX Swiss Exchange-traded equity securities, had a free float adjusted market cap of CHF 1,098 billion as of end of December 2010.

To guarantee maximum liquidity whilst retaining support from long-term-oriented investors, it is important to target and maintain a diverse investor base, comprising different geographies and constituencies. SIX Swiss Exchange is a highly regarded listing venue by both domestic as well as international investors, allowing issuers to attract a broadly diversified shareholder base and research coverage.

Following the marketing activities during the execution of the IPO, companies engage in investor relation activities to maintain a relationship with their existing shareholders and to attract new investors. It is common practice for the management of a company to go on a “non-deal” roadshow following results announcements, where banks organise for the management team an investor roadshow with one-on-one and group meetings. Furthermore, various banks host investor conferences with different regional and sector teams, giving companies the opportunity to meet with a number of different investors.

Establishing broad research coverage is an additional factor influencing a company’s trading liquidity. The Swiss market is followed by both domestic and international research. Some companies included in the SMI have 40 or more research analysts covering them. For new companies listed on the stock exchange, additional research from other banks is usually initiated following results announcements. Many companies also host analyst days, inviting existing and new research analysts for a one-day presentation on the company, often combined with a site visit.

¹ Source: SIX Swiss Exchange

What Investors Expect in a Main Standard Company

by *Thorsten Pauli*,
Managing Director and Head Equity
Capital Markets Switzerland,
UBS AG

On SIX Swiss Exchange, five standards can be distinguished with individual admission and maintenance requirements, i.e. the Main Standard, Domestic Standard, Investment Companies, Real Estate Companies and Depository Receipts. Strictest criteria are required in the Main Standard. These criteria are covering disclosure as well as corporate governance requirements and reporting standards. Therefore, the Main Standard is considered the “blue-chip” segment from an investor perspective and as such, expectations towards companies not only compare on a purely regulatory perspective but also with respect to “best-in-class” practice vis-à-vis its main competitors in other markets.

An investor with an investment in a company listed on the Main Standard does not only expect the company to be fully compliant with the SIX Swiss Exchange requirements but also adhere to best-in-class standards in terms of investor relations, corporate governance and capital market presence of the company in general.

Investor Relations and public communication are key areas where a company is expected to do more than what is required under SIX Swiss

Exchange regulations. The items below are by no means conclusive but should provide some guidance as to what a company can do to fulfil investors’ expectations.

- Non-deal roadshows
On a regular basis i.e. as at least twice a year around financial results (in reality probably even more often), the management team should embark on investor roadshows to meet local as well as international investors and research analysts. Such roadshows usually take place post full year or half-year/quarterly results and are usually organised by brokers covering the company. During a roadshow, the company will meet investors in one-on-one as well as group meetings. The direct contact to management is an important aspect for most of the institutional investors and here roadshows are perfect occasions to address it.
- Investor relations/
public relations department
Ideally, a company should have a dedicated person and/or department dealing with requests from investors and the media. This ensures one line of communication and timely response to incoming requests from media, research analysts and investors alike.
- Company webpage
Investors expect an up to date company webpage which is easy to navigate and provides all relevant media releases, company

presentations, annual reports, corporate calendar, excel download files with relevant company figures, etc. In essence, the company website should provide all publicly available information about the business in an orderly and easy accessible manner in order to provide maximum transparency to investors.

What will help the company in further firming its capital market profile and to increase its market presence is transparency, timeliness of information provision to investors, consistency of information, access to top management, i.e. CEO and CFO on a regular basis. Investors prefer a consistent information style that rather proves to be under-promising and over-delivering.

An additional important factor in terms of a Main Standard company is adhering to the “one share, one vote” concept. Whilst it is acceptable for investors that certain companies maintain dual share classes due to various historic reasons, it is no longer considered best-in-class and can significantly influence the attractiveness and underlying liquidity in the underlying share.

Trading liquidity as well as (broad) research coverage are factors typically associated with companies listed on the Main Standard. Transparency, good corporate governance, keeping a well-established and regular capital market presence will increase the likelihood of enhancing both liquidity and research coverage.

Share Buy-backs

by Dr. Sebastian Harsch,
Executive Director and Head
Transactions Legal Switzerland,
UBS AG
& Dr. Flavio Romerio,
Attorney-at-law, LL.M., Partner,
Homburger AG

Share buy-backs are done for multiple reasons; the most important include returning excess capital to shareholders and the conduct of management, employee participation schemes or as underlying for equity-linked products (i.e. convertible bonds).

In Switzerland, a company can buy-back of up to 10% of its share capital and hold it as treasury shares on its balance sheet. The company can buy more than that if the shares will be destroyed thereafter. To do so management needs to seek AGM approval. Buying back shares to destroy them thereafter can be a way of returning capital instead of paying dividend which might make sense for a company from a tax perspective.

Another reason for share buy-backs are employee participation schemes. To serve option plans, reward and keep employees as well as align senior management's interests to those of the other shareholders a company might need to purchase its own shares in the market.

To serve the option element of an equity-linked product (i.e. a convertible bond) rather than creating new shares the company can make use of existing/treasury shares that it buys or already bought in the market.

To avoid investor concerns, share buy-back programmes should be clearly communicated to the market to inform existing share holders of the desired effects. Otherwise, market participants might react nervously which can lead to unfounded volatility and a destabilised investor base.

Types of Share Buy-Back Programmes

Three types of share buy-back programmes are most commonly used in the Swiss market:

The predominant method for repurchasing shares is the second trading line, where only the issuer – through a mandated bank – offers a bid price on a separate trading line. The price paid on the second trading line is derived from the market price on the main trading line, with a small premium paid to the sellers as compensation for the deferred reimbursement of the Swiss withholding tax and underlying funding costs. The second trading line provides the issuers with a maximum flexibility on timing and volume of their repurchases, but these programmes – depending on their volume and the underlying liquidity of the issuer's stock – may take significantly more time to complete than other types of buy-backs.

An issuer may also repurchase shares by issuing put options to its shareholders for free. The put options are tradable and listed, typically for a period of 10 to 15 trading days. To ensure an orderly trading during the entire exercise period, the put options are issued at a premium of typically 15 to 30% over the market price on the issue date. Compared to buy-backs on

the second trading line, put option programmes are completed within a comparatively short time window, but they offer – once issued – no flexibility to the issuer. Beside this shares are bought back at a premium.

Both of these types of buy-backs are exclusively used for returning share capital to the investors, with a subsequent cancellation of the repurchased shares. In both programmes, the Swiss withholding tax of 35% is automatically deducted from the sales proceeds. For this tax reason, only Swiss institutional investors and arbitrageurs sell shares on the second trading line or exercise the put options, which they purchase from Swiss retail and foreign investors.

Finally, an issuer may repurchase shares on the main trading line if it requires shares for an employee participation program or, depending on the volume, an equity-linked programme. For tax reasons, the shares purchased on the main trading line may not be cancelled but must be transferred to an unrelated party within a specified period of time (six years).

Corporate Law Requirements

The board of directors of a Swiss company is authorised to launch a share buy-back programme without prior approval of the shareholders' meeting. The shareholders must approve, however, the cancellation of the shares and the reduction of the company's share capital. Once approved by the shareholders, the reduction of the share capital can be implemented after observing a two-month waiting period, during which the company's creditors may submit their claims.

Under Swiss corporate law, share buy-backs are permitted to the extent a company has unrestricted capital surplus. Swiss law limits the total number of shares a company may own to 10% of the total outstanding share capital. The 10% threshold may be exceeded, however, if shares are repurchased for subsequent cancellation.

Swiss Takeover Board no later than on the date of its public announcement. The general exemption is available, however, for only one programme per financial year.

If a programme is not eligible for the general exemption, the issuer may nonetheless request, on a form, an

of 10% of the capital or voting rights of the issuer.

An issuer may not publicly announce a buy-back programme, publicly repurchase its own shares or issue put options if (i) the issuer withholds price-sensitive information (e.g., during the negotiations of a material M&A

“Under Swiss corporate law, share buy-backs are permitted to the extent a company has unrestricted capital surplus. Swiss law limits the total number of shares a company may own to 10% of the total outstanding share capital.”

Regulatory Requirements

Share buy-backs are regulated by the Swiss Takeover Board. In a circular, it established simplified procedures for exempting buy-backs from the provisions of the Swiss takeover rules. These exemptions are sufficiently broad to cover the large majority of all buy-back programmes:

Buy-backs not exceeding 2% of the issuer’s capital or voting rights are subject to a general exemption. The program must only be notified to the

exemption where the programme does not exceed (i) 10% of either the capital or voting rights of the issuer, and (ii) 20% of the issuer’s free float. The issuer may submit its request for such an exemption to the Swiss Takeover Board no later than five trading days prior to its public announcement.

If a buy-back is not eligible for an exemption, the issuer must submit a case-specific application to the Swiss Takeover Board. Such an application is required for programmes in excess

transaction), (ii) during the 10 trading days prior to the release of the financial results to the media and (iii) if more than 9 months have elapsed since the reference date of the issuer’s most recent published consolidated financial statements. During these black-out periods, the issuer may continue a previously launched programme but only if the issuer appointed a bank or securities dealer independently to execute the buy-back programme.

Secondary Sales

*by Dr. Andreas Casutt,
Attorney-at-law, LL.M., Partner,
Marco Häusermann,
Attorney-at-law, LL.M., C.B.A., Partner
& Dr. Patrik R. Peyer,
Attorney-at-law, LL.M.,
Executive MBA, Senior Associate,
Niederer Kraft & Frey AG*

Structured sales of large blocks of shares listed on SIX Swiss Exchange are most frequently motivated (i) by the wish of one or several large shareholders either to monetise their investment in a listed company or to divest for other reasons without excessively suffering from the consequences of an oversupply of the listed shares in the market and, therefore, the probable loss created by falling stock prices, or (ii) by situations where the capacity of the market would not be able to absorb a large stake of shares. In return, selling shareholders are generally willing to sell at a slight discount to the prevailing market price.

The type of secondary sale is chosen (e.g. a block-trade, a marketed offering or an off-market one-to-one sale of a share stake) by the involved parties (i.e. the selling shareholder, the investment bank(s), and, depending on the situation, the company) and

strongly depends on the size of the block of shares, the liquidity and the volatility of the market, the timing and the circumstances of the divestment.

Despite the fact that the terminology is not used consistently in legal writing:

- Block-trade is used for the most common way to sell a smaller block of shares (i.e. up to 10% of the equity/voting rights), where timing is of essence and, therefore, mostly an accelerated bookbuilding is used, where the drafting of a sale documentation (e.g. information or placement memorandum) is not essential, where the transaction cost shall be kept reasonably small, and where, hence, no or practically no due diligence is made and the company has only a minor involvement, if any
- Marketed offering generally means that the seller envisages a sale of a substantial block of shares (i.e. more than 10% of the equity/voting rights) where a sale documentation is drafted, the marketing and bookbuilding period is longer and the involvement of the company is usually more significant and low costs are not decisive and

- One-to-one deal is where a large, maybe even a controlling stake of shares is sold to a new anchor shareholder and the transaction structure highly depends on the individual circumstances. In respect of the price at which the shares are sold, this third alternative of a structured secondary sale differs from block-trades and marketed offerings in so far as it is more an M&A-like transaction where the investor has a strategic interest in the company and the selling shareholder may expect to receive a package/control premium.

Key legal issues to be considered in connection with the above described transactions are:

- Right of due diligence regarding the company for new investor
- Safeguarding of company's interests
- Equal treatment of all shareholders
- Insider trading rules and other market behaviour rules
- Ad hoc publicity rules
- Disclosure/reporting of shareholdings
- Mandatory offer rules and issues of acting in concert

Private Investment in Public Equity (PIPEs)

The purpose of PIPE transactions is to raise new equity in a fast, confidential, secure, flexible and cost-effective way by offering such new equity directly to a limited number of sophisticated investors (i.e. without a public offering). For Swiss companies listed on SIX Swiss Exchange, the main hurdle effecting a PIPE transaction is the statutory pre-emptive rights (*Bezugsrechte*) of existing shareholders.

The withdrawal of the statutory pre-emptive rights of existing shareholders in an equity offering is a significant restraint of shareholder rights and, therefore, is subject to strict formal (e.g. qualified majority of shareholder votes) and material requirements: A withdrawal is generally deemed permitted only if the withdrawal is justified by a (qualified) objective interest of the company, all shareholders are treated equally and the withdrawal sufficiently complies with the general principle of considerate exercise of rights. Whether these requirements can be met must be carefully assessed when considering a PIPE transaction for a Swiss company.

Under Swiss law, there are three different ways to effect a capital increase, i.e. by way of an ordinary

capital increase (*ordentliche Kapitalerhöhung*), a capital increase out of authorised capital (*genehmigte Kapitalerhöhung*) or a capital increase out of authorised capital (*bedingte Kapitalerhöhung*), the latter two requiring a basis in company's articles of association (c.f. "Capital Raising").

For a PIPE transaction, the authorised and the conditional capital increase will be the preferred route because no additional shareholder vote is necessary which saves considerable time, the board of directors enjoys flexibility in determining the size of the capital increase and the issue price, which considerably improves the position of the company during the negotiations with the investors and also improves transaction certainty. Finally, the shareholders are, in principle, not in a position to challenge the withdrawal of the pre-emptive right by the board of directors as long as the board remains within the competence granted by the shareholders' meeting in the articles. The downside of the increased flexibility given to the board is that the directors always remain liable under Art. 754 CO. However, as long as the issue price for the PIPE equity corresponds to the market price in a liquid market, the shareholders will not suffer damage and consequently, cannot successfully bring a claim.

When preparing a PIPE transaction, a Swiss issuer must also assess whether it needs to draw up a listing prospectus or whether it can benefit from one of the few exemptions, e.g. if a listing prospectus or an information document deemed under the Listing Rules to be equivalent to a listing prospectus has already been published with regard to the listing of the securities in question within the last 12 months.

Allowing PIPE-investors to do a due diligence on the Swiss issuer raises confidentiality issues that need to be addressed in order to avoid conflicts with insider dealing, ad hoc publicity and abusive market behaviour rules and regulations. Therefore, a Swiss issuer will generally want to have confidentiality and standstill agreements in place that mitigate such risks. Finally, all parties involved need to carefully monitor reporting duties relating to the disclosure of shareholdings as well as the mandatory public offer rules.

Capital Raisings of Public Companies in Switzerland

Amid continuing economic uncertainty following the global financial crisis, the recovery of the Swiss economy continues. While the Swiss market has seen a limited number of successful IPOs recently, Swiss public companies have returned to the equity markets. Increasingly, issuers with a strong equity story were able to offer new shares without discount in so-called at-market rights offerings.

This article discusses the legal framework for capital raisings of public companies in Switzerland.

Pre-emptive Rights and Types of Capital

Under the Swiss Code of Obligations (CO), new share capital can be created by way of ordinary, authorised or conditional capital increase. When implemented, the proposed amendments of the Swiss banking rules to strengthen financial sector stability (too big to fail proposal) will create new types of capital for Swiss banks in the form of reserve capital (*Vorratskapital*), designed to facilitate new share issuances, and conversion capital (*Wandlungskapital*), designed as a source of capital for contingent capital securities (CoCos) that convert into shares upon certain regulatory capital triggers. The new rules are expected to come into force in 2012.

All types of capital require, at some point in time, shareholders' approval at a shareholders' meeting, which must be called at least 20 calendar days in advance. The table (on the right) sets out the main features of each type of capital increase.

Swiss corporate law gives pre-emptive rights to shareholders with respect to any issuance of equity or equity linked debt instruments. A company that raises capital must therefore offer existing shareholders the opportunity to subscribe for new shares or equity-linked instruments in proportion to their shareholdings.

Pre-emptive rights can be excluded by shareholders with a majority of at least two-thirds of the votes and an absolute majority of the nominal value of the shares represented at the shareholders' meeting. In addition to this supermajority, the CO requires a valid reason for the cancellation of pre-emptive rights and adherence to the principles of equal treatment of shareholders and considerate exercise of rights. A valid reason to exclude pre-emptive rights requires an objective and justified interest of the company issuing the shares. Generally accepted as valid reasons are, for example, M&A transactions and employee participation, recapitalisation in financial distress or (under certain conditions) welcoming a new strategic investor.

Whereas in an ordinary capital increase the shareholders themselves exclude the pre-emptive rights, by creating authorised capital the shareholders delegate the decision to exclude pre-emptive rights to the board. In a non-pre-emptive capital increase from authorised capital, the board must, therefore, decide to exclude the pre-emptive rights on the basis of the authorised capital in the articles of association that must authorise the board to do so and state a valid reason for such an exclusion.

by Dr. François M. Bianchi,
Attorney-at-law, LL.M., Partner,
Dr. Philippe Weber,
Attorney-at-law, LL.M., Partner
& Daniel Bono,
Attorney-at-law, LL.M., Senior Associate,
Niederer Kraft & Frey AG

Main Features of Types of Capital under Swiss Corporate Law

	ORDINARY CAPITAL ART. 650 CO	AUTHORISED CAPITAL ART. 651 CO	CONDITIONAL CAPITAL ART. 653 CO
SHAREHOLDERS' RESOLUTION	Shareholders resolve on terms of capital increase and instruct board to increase capital. Fixing of issue price (and in limited circumstances also the number of shares) may be delegated to board.	Shareholders amend the articles of association to include authorised capital to authorise board to issue a maximum amount of shares.	Shareholders create unissued share capital for <ul style="list-style-type: none"> – Equity-linked debt – Bonds with warrants or – Employee stock options by amending the articles of association New share capital will be created by operation of law upon conversion/ exercise of options.
MAXIMUM VOLUME	Unlimited	Up to 50% of existing share capital	Up to 50% of existing share capital
VALIDITY	3 months from shareholders' resolution	2 years from shareholders' resolution	Unlimited
PRE-EMPTIVE RIGHTS	√	√	√
EXCLUSION OF PRE-EMPTIVE RIGHTS	Shareholders may exclude pre-emptive rights for valid reasons	Shareholders may authorise board to exclude pre-emptive rights for stated valid reasons upon issuance of the authorised shares	Shareholders may exclude pre-emptive/ subscription rights for stated valid reasons
CONTRIBUTION IN KIND	√	√	X
MAJORITY REQUIREMENTS	Majority of votes represented at shareholders' meeting	Two-thirds of the votes and majority of nominal value of shares represented at the shareholders' meeting	Two-thirds of the votes and absolute majority of nominal value of shares represented at the shareholders' meeting
ADVANTAGES / DISADVANTAGES	<ul style="list-style-type: none"> + No size limitation - Minimum 20-day period for convening necessary shareholders meeting - Board has less flexibility 	<ul style="list-style-type: none"> + No shareholders' approval required at time of issuance of the shares + Flexibility of the board to determine timing, offer size and issue price + Shareholders cannot challenge withdrawal of pre-emptive rights upon issuance if made within the authorisation - Potential liability of the board when setting terms of issuance 	<ul style="list-style-type: none"> - Limited purpose + No shareholders' approval required at time of issuance of the shares + Flexibility of the board to determine timing, offer size and issue price + Shareholders cannot challenge withdrawal of pre-emptive rights upon issuance if made within the authorisation

Because a cancellation of preemptive rights may constitute a major impairment of the existing shareholders' rights in the company, the board must also adhere to principles of equal treatment of shareholders and considerate exercise of rights. Failure to do so may expose the board to liability.

Prospectus Requirements

If shares are listed on SIX Swiss Exchange, the prospectus requirements of the SIX Swiss Exchange Listing Rules apply. In addition, Art. 652a of the CO requires an offering prospectus when new shares are offered to the public in Switzerland and also contains certain disclosure items that must be included.

The SIX Swiss Exchange Listing Rules are largely modelled after the EU Prospectus Directive, but are less extensive and more flexible. The CO disclosure requirements are not particularly demanding and a SIX Swiss Exchange Listing Rules compliant prospectus generally contains the minimum disclosure requirements of the CO.

The SIX Swiss Exchange Listing Rules require that an approved prospectus be published before shares are admitted to trading on SIX Swiss Exchange. The SIX Exchange Regulation prospectus review and approval process takes 20 SIX Swiss Exchange trading days. In practice the approval process is timed such that SIX Swiss Exchange Regulatory Board approval has been obtained before printing of the prospectus and the start of the subscription period.

Structuring Considerations

Rights Offerings and Non-preemptive Placements

Most secondary equity offerings in Switzerland are traditional rights offerings. Accelerated rights offerings, volume underwriting or rights offerings with backstop commitments are uncommon.

Where execution speed and certainty of funds are essential, Swiss companies typically place shares sourced from authorised capital with institutional investors in a non-preemptive placement by way of accelerated bookbuilding.

Prospectus-free Offerings

For rights offerings, where shares are listed on SIX Swiss Exchange, the SIX Swiss Exchange Listing Rules require publication of a listing prospectus, which is not substantially different to what is required in an initial public offering. There are, however, certain exemptions that allow the listing of prospectus-free rights offerings, for example if the shares offered in the rights offering account for less than 10% of the shares (including conditional capital) of the issuer already listed. These exemptions, however, do not apply to the requirement to publish a CO-compliant offering prospectus.

Discounted vs. At-market

Where new shares are offered at a discount to current market price, the (nil paid) rights of the shareholders to subscribe for the new shares are typically tradable so that shareholders that are unable or unwilling to exercise their rights can realise some value as a compensation for the dilution of their shareholdings.

Recently, issuers with a strong equity story have been able to use the positive market environment to conduct rights offerings without discount to the market price. Because the rights allocated to shareholders in these so-called at-market rights offerings have no intrinsic value, there typically is no trading of these rights.

Timing Considerations

There are no rules on how long the rights offer period must last. Market practice is for the rights offer period to be between 5 and 10 SIX Swiss Exchange trading days. If a shareholders' meeting is required to create the

new shares offered, the rights offer period typically does not start until the necessary shareholder approvals have been obtained.

Under Swiss law, shares only come into existence upon registration of the capital increase with the competent commercial registry. This, in combination with the fact that SIX Swiss Exchange requires the delivery of a certified excerpt from the commercial registry evidencing registration of the capital increase, before start of trading, makes it necessary to effect the share issuance (by way of payment by the underwriters of the nominal amount of the new shares and filing of a public deed with the commercial registry) before pricing (in case of an at-market offering), start of SIX Swiss Exchange trading and closing (payment of offer price net of pre-paid nominal versus delivery) of the offering. Banks have become comfortable with this standard practice although it deviates from that in many other jurisdictions.



Imprint

SIX Swiss Exchange AG

Selnaustrasse 30
8021 Zurich
www.six-swiss-exchange.com

*Dr. Christian A. Katz, CEO
(page 13)*

*Andrea von Bartenwerffer,
Senior Relationship Manager Issuer Relations
Marco Estermann,
Head Issuer Relations
(page 32 from left to right)*

SIX Exchange Regulation

Selnaustrasse 30
8021 Zurich
www.six-exchange-regulation.com

*Rodolfo Straub,
Head of SIX Exchange Regulation
(page 32, on the right)*

SIX SAG AG

Baslerstrasse 90
4601 Olten
www.six-securities-services.com

*Dr. Otto Haus, CEO
(page 142)*

Swiss Association for Location Management (SVSM)

Wengistrasse 7
8004 Zurich
www.svsm-standortmanagement.ch

Robert E. Gubler, Chairman

University of St.Gallen

Dufourstrasse 50
9000 St.Gallen
www.unisg.ch

*Dr. Manuel Ammann,
Professor of Finance and Director
of the Swiss Institute of Banking and Finance
Dustin Schütte,
Research Assistant at the Swiss Institute
of Banking and Finance*

Investment Banks

Credit Suisse AG

Giesshübelstrasse 62
8070 Zurich
www.credit-suisse.com

*Amanda Robinson,
Associate Equity Capital Markets Switzerland
Patrick Treuer,
Head Equity Capital Markets Switzerland
(page 96, from left to right)*

UBS AG

Europastrasse 1
8152 Opfikon
www.ubs.com

*Thorsten Pauli,
Managing Director and Head Equity
Capital Markets Switzerland
Dr. Sebastian Harsch,
Executive Director and Head Transactions
Legal Switzerland
Daniel Wüest,
Managing Director,
Investment Banking Department
(page 45, from left to right)*

Law Firms

Baker & McKenzie

Holbeinstrasse 30
8034 Zurich
Other offices:
Geneva
www.bakermckenzie.com

*Dr. Matthias Courvoisier,
Attorney-at-law, MSc in Finance, Partner,
Dr. Marcel Giger,
Attorney-at-law, M.C.J., Partner
Theodor Härtsch,
Attorney-at-law, Partner
(page 69, from left to right)*

Bär & Karrer AG

Brandschenkestrasse 90
8027 Zurich
Other offices:
Geneva, Lugano and Zug
www.baerkarrer.ch

*Michael Trippel,
Attorney-at-law, LL.M., Partner
Dr. Thomas U. Reutter,
Attorney-at-law, LL.M., Partner
Dr. Ralph Malacrida,
Attorney-at-law, LL.M., Partner
Dr. Till Spillmann,
Attorney-at-law
(page 38, from left to right)*

Homburger AG

Prime Tower
Hardstrasse 201
8005 Zurich
www.homburger.ch

*Dr. Dieter Gericke,
Attorney-at-law, LL.M., Partner
Dr. Hansjürg Appenzeller,
Attorney-at-law, M.C.J., Partner
Dr. Daniel Daeniker,
Attorney-at-law, LL.M., Partner
Dr. Frank Gerhard,
Attorney-at-law, LL.M., Partner
(page 62, from left to right)
Dr. Flavio Romerio,
Attorney-at-law, LL.M., Partner*

Lenz & Staehelin

Bleicherweg 58
8027 Zurich
Other offices:
Lausanne, Geneva
www.lenzstaehelin.com

*Matthias Wolf,
Attorney-at-law, LL.M., Partner
Dr. Jacques Iffland,
Attorney-at-law, Partner
Dr. Patrick Schleiffer,
Attorney-at-law, M.C.J., Partner
(page 115, from left to right)
Urs Reinwald,
Attorney-at-law, LL.M.*

Niederer Kraft & Frey AG

Bahnhofstrasse 13
8001 Zurich
www.nkf.ch

Dr. François M. Bianchi,

Attorney-at-law, LL.M., Partner

Dr. Andreas Casutt,

Attorney-at-law, LL.M., Partner

Daniel Bono,

Attorney-at-law, LL.M., Senior Associate

Andrea Huber,

Attorney-at-law, LL.M., Senior Associate

Dr. Christoph Balsiger,

Attorney-at-law, Partner

Marco Häusermann,

Attorney-at-law, LL.M., C.B.A., Partner

Thomas M. Brönnimann,

Attorney-at-law, LL.M., Senior Associate

(page 71, from left to right)

Philipp Haas,

Attorney-at-law, LL.M., Partner

Dr. Patrik R. Peyer,

Attorney-at-law, LL.M., Executive MBA,

Senior Associate

Dr. Philippe Weber,

Attorney-at-law, LL.M., Partner

Auditors

Ernst & Young AG

Maagplatz 1
8005 Zurich
www.ey.com/ch

Peter Dauwalder,

Partner, Transaction Advisory Services

Dr. Georg Lutz,

Partner, Head Transaction Tax

Robin Errico,

Partner, Audit

Roger Müller,

Partner, Financial Accounting Advisory Services

(page 29, from left to right)

KPMG AG

Badenerstrasse 172
8026 Zurich
www.kpmg.ch

Peter Uebelhart,

Partner, International Corporate Tax

Therese Amstutz,

Director, Legal

Susanne Schreiber,

Director, International Corporate Tax

Lukas Marty,

Member of the Executive Committee

Thomas Wicki,

Director, International Accounting and Reporting

Susanne Haas,

Director, Audit

(page 60, from left to right)

PricewaterhouseCoopers AG

Birchstrasse 160
8050 Zurich
www.pwc.ch

Dr. Philipp Hofstetter,

Partner, Corporate Finance

(page 25)

Insurance Provider

Kessler & Co AG

Forchstrasse 95
P.O. Box
8032 Zurich
www.kessler.ch

Pascal Schweingruber,

Executive Committee Member

(page 55)

IR Firms

Farner Consulting AG

Oberstrasse 28
8001 Zurich
Other offices: Basel, Bern, Geneva,
Lausanne and Lugano
www.farner.ch

Urs P. Knapp

Maurus Staubli

Sophie Dres

Dominic Thalmann

Members of the Financial Communications

Practice Group, Farner Consulting AG

(page 136, from left to right)

IRF Communications AG

Rämistrasse 4
P.O. Box
8024 Zurich
www.irfcom.ch

Martin Meier-Pfister, lic. oec. HSG

Dr. iur. Michael Düringer

Jürg Stähelin, lic. oec.

(page 88, from left to right)

Concept and Artwork

Gremlich Fatzer Partner AG

Bahnhofstrasse 62
8021 Zurich
www.gremlichfatzer.ch

Fotography

Markus Bühler

www.buehler-fotograf.ch

Publication Date:

November 2011

