Fast and Easy Access to the Swiss Debt Capital Market with a Foreign Approved Prospectus.

The new regime under the Swiss Financial Services Act (FinSA) and the Swiss Financial Service Ordinance (FinSO), which entered into force at the beginning of 2020, allows issuers to list and admit to trading securities on SIX Swiss Exchange based on a prospectus approved by a foreign authority recognized by SIX Exchange Regulation. This allows issuers of debt instruments with a foreign approved prospectus a fast and easy access to the Swiss debt capital market of SIX Swiss Exchange.

An issuer aiming to list and to admit to trading debt instruments on SIX Swiss Exchange must produce a prospectus, which must be approved by a Swiss review body (such as the Prospectus Office of SIX Exchange Regulation; hereinafter Prospectus Office). However, Swiss law provides alternative ways to access the Swiss debt capital market, which are explained hereinafter.

Approval of prospectuses drafted in accordance with certain recognized foreign laws

As a rule, the same rules and regulations apply to the listing of debt instruments by domestic and foreign issuers. Pursuant to the FinSA and the FinSO, prospectuses produced under foreign laws may be approved by the Prospectus Office if they are drafted in accordance with international standards established by international organizations of securities regulators, in particular the International Organizations of Securities Regulators (IOSCO) and if the disclosure obligations are equivalent to the requirements under FinSA.

Approval of prospectuses approved by recognized foreign authorities

In addition to the possibility of having an approved prospectus drawn up in accordance with recognized international standards, Swiss law provides an even easier way for issuers. The FinSA allows the Prospectus Office to publish a list with authorities whose prospectus approvals grant the right to issuers to list securities on SIX Swiss Exchange without an approval from the Prospectus Office. The Prospectus Office publishes a list of countries with the relevant approval authorities whose prospectus approval is automatically recognized by SIX Exchange Regulation. The list of countries includes:

- Members of the European Union, including Luxembourg (CSSF), France (AMF), Germany (BaFin), and Spain (CNMV)
- The United Kingdom (FCA)
- The United States (SEC)
- Australia (ASIC)

The full list of countries with the relevant authorities can be accessed here.

What are the requirements that a prospectus approved by a recognized foreign authority is deemed to be approved?

The prospectus needs to be drafted either in English or in one of the Swiss official languages. If a prospectus is deemed to have been approved within the meaning of FinSA, it must be published no later than the commencement of the public offering in Switzerland or no later than the admission of the relevant securities to trading on SIX Swiss Exchange and:

- be approved with a recognized authority stipulated in the above-mentioned list of countries and authorities; and

– be deposited with a review body (such as the Prospectus Office); and
– be published in accordance with the FinSA; and
– be made available in paper form free of charge upon request.

An Illustrative Case Study*

Fast+Furious Car Parts AG (F+F), domiciled in Munich, Germany, is a supplier of aluminum and steel components for the automotive industry. Given the fact that the production of aluminum and steel components is highly capital intensive, F+F has a regular funding need which it mainly covers through the European debt capital and loan market. In order to increase efficiency in the bond origination process and to benefit from market opportunities, F+F maintains a so-called European Medium Term Notes (EMTN) Program with a maximum aggregated nominal issuance amount of up to EUR 3.0 billion. The EMTN Program is designed as a retail program, meaning debt securities can have a denomination of EUR 1,000 and be sold to retail investors as well. The EMTN Program documentation is filed with and approved by the Commission de Surveillance du Sector Financier (CSSF) in Luxembourg. F+F lists and admits to trading is EUR bonds on the Luxembourg Stock Exchange (LuxSE).

F+F wants to reduce its dependency from the European debt capital and loan market and from the Euro currency. Further, F+F wants to access an additional investor base and subsequently selected the Swiss debt capital market as an additional funding market fulfilling all objectives F+F is looking for. Subsequently, the company deposits its EMTN Base Prospectus approved by the CSSF with the Prospectus Office. Once a Swiss Franc bond is originated by F+F, it only needs to extract and fill out the Final Terms (as stipulated in the EMTN Program documentation) and deposit them with the Prospectus Office. This is fast and easy access to the Swiss debt capital market.

Admission to listing and to trading

In addition to the prospectus approval, a recognized representative of SIX Exchange Regulation must apply for the admission to trading and listing of the securities of an issuer. If the issuer is deemed to be a new issuer, the recognized representative must apply for the admission of the new issuer. For the admission of the securities, the recognized representative files an application for the provisional admission to trading of the securities which must be filed at the latest three trading days prior to the intended first day of trading on SIX Swiss Exchange. The listing application for a debt instrument must be filed within two months following the provisional admission to trading. For more information about the listing process, please refer to the listing rules and other rules of SIX Exchange Regulation. For an overview of the listing process on SIX Swiss Exchange for debt instruments, in particular bonds, please refer to the Bond Listing Guide of SIX Swiss Exchange.

Considerations and conclusions

Switzerland is known for its political, economic and social stability. Its debt capital market is a large and international financial market. With the introduction of the deemed approval of foreign prospectuses for Swiss debt securities offerings or admission to trading, frequent issuers with foreign approved prospectuses get an efficient access to one of the most resilient capital markets in the world which mitigates and diversifies their (re)financing risks from other capital markets. If an issuer intends to tap the Swiss debt capital market and already has a prospectus approved by a foreign authority, it only needs to deposit the prospectus with the Prospectus Office and the bond origination process can start. The new regime and the efficient listing process offer issuers an easy and quick access to the Swiss debt capital market respectively SIX Swiss Exchange.

* The case study and the named issuer is fictitious and does not refer to an existing company.

> **"Thanks to the new regime which recognizes prospectuses approved by recognized foreign authorities, issuers may quickly tap the Swiss debt market, which creates additional and diversified funding, access to an additional investor base and last but not least offers opportunities for issuers."**

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