

In Accordance with international Standards

Exemptions from the Prospectus Requirement under the new Financial Services Act

In contrast to the legislation in the EU, in particular the EU prospectus directive (Prospectus Directive of the European Union), current Swiss law does not provide for uniform and comprehensive rules on prospectuses. The provisions on prospectuses are currently scattered over a number of different laws and self-regulations. The Financial Services Act (FinSA), which was passed by the Swiss Parliament and is likely to enter into force on 1 January 2020, will change this situation as it contains comprehensive rules relating to prospectuses for the offering of securities and the admission of securities to trading, which will apply to all types of financial instruments. **By Dr Christoph Heiz, Dr Wolfgang Müller, Andrea Sieber, and Dr Alexander Vogel**



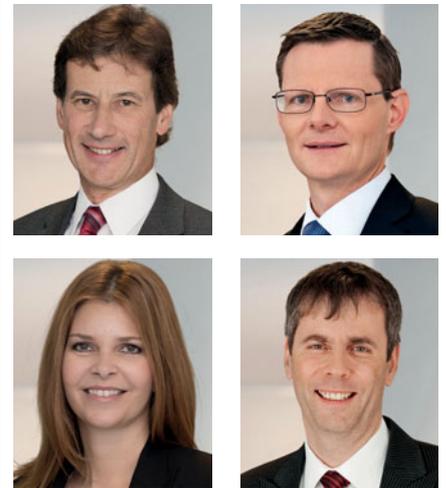
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The new act provides that a prospectus must be published in advance by anyone who offers securities to the public or applies for admission of such securities to trading on a trading venue. However, the FinSA will provide for a number of exemptions from the requirement to prepare a prospectus, which are largely in line with the current Prospectus Directive of the European Union and existing regulations of SIX Swiss Exchange. The exemptions can be divided into three categories, namely exemptions according to the type of offer, exemptions according to the type of securities, and exemptions in connection with the admission to trading.

Type of offer

The list of exempted transactions includes public offers limited to professional clients such as financial intermediaries, large companies, companies with a professional treasury, and – subject to certain yet-to-be-specified criteria – wealthy private clients and family offices. Furthermore, offerings addressed to less than 500 (private or professional) clients and offerings with a minimum investment amount of CHF 100,000 or of securities with a denomination of at least CHF 100,000 each are excluded. Also, de minimis offerings with a total value of less than CHF 8 million over a period of twelve months are exempted.

As mentioned, the exemptions are largely based on the exemptions contained in the EU Prospectus Directive, but with some more liberal tendencies (e.g. according to



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the EU Prospectus Directive, the threshold for public offerings to private or unqualified clients is currently 150 while the FinSA sets the threshold at 500). Moreover, FinSA provides that the Federal Council may adjust the various thresholds (e.g. number of investors or total volume of the offer) in the future, taking into account international standards and legal developments in other jurisdictions.

Type of security

The FinSA includes an extensive list of types of securities which can be offered publicly without triggering an obligation to publish a prospectus. Among others, the following securities are exempted from the obligation to publish a prospectus:

- ◆ Equity securities that are issued outside a capital increase in exchange for equity securities of the same class that have already been issued
- ◆ Equity securities issued or delivered as a result of the exercise of rights attached to financial instruments of the same issuer or group
- ◆ Securities offered for exchange in case of a takeover, where information is available which is equivalent in content to an offering prospectus
- ◆ Securities offered or allotted in connection with a merger, demerger, conversion or transfer of assets, provided that information is available which is equivalent in content to an offering prospectus
- ◆ Equity securities distributed as dividends to holders of equity securities of the same class, provided that information is available on the number and type of equity securities and the reasons for and details of the offer



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Similar to the exemptions regarding the type of offer, the Swiss Federal Council may provide for further exemptions from the prospectus requirement for other types of securities, taking into account recognized international standards and foreign legal developments.

Admission to trading

Finally, there are exemptions to the prospectus requirement in connection with the admission of securities to trading on a stock exchange, which, like the other exemptions, are based on the corresponding European regulation. The FinSA provides for the following four exemptions in connection with the admission to trading:

- ◆ Equity securities which, over a period of twelve months, represent less than 20% of the total number of equity securities of the same class, and which are already admitted to trading on the same trading venue
- ◆ Equity securities issued upon conversion or exchange of financial instruments or as a result of the exercise of a right attached to financial instruments, provided that such equity securities are of the same class as the equity securities already admitted to the relevant stock exchange

- ◆ Securities that are admitted for trading on a non-Swiss trading venue, provided that the relevant non-Swiss law is recognized as appropriate with regard to regulation, supervision and transparency
- ◆ Securities for which admission is sought for a trading segment which is open only to professional clients trading for their own account and for the account of professional clients

Moreover, the exemptions from the obligation to publish a prospectus based on type of offer and type of security shall also apply mutatis mutandis to the admission to trading.

Summary

With the entering into force of the FinSA, Switzerland will have comprehensive rules on prospectuses which comply with international standards. The exemptions are also based on international regulations and are in part more liberal than the current EU regulation. As the FinSA also contains options for future adjustments of relevant limits and thresholds, the Swiss prospectus law can develop dynamically in line with international standards, taking into account the Swiss particularities. ■